

ITEM 10
PROPOSED PARAMETERS AND GUIDELINES
STAFF ANALYSIS

Public Resources Code Sections 40148, 40196.3, 42920, 42921, 42922, 42923, 42924,
42925, 42926, 42927, and 42928;

Public Contract Code Sections 12167 and 12167.1;

Statutes 1999, Chapter 764; Statutes 1992, Chapter 1116;

“State Agency Model Integrated Waste Management Plan” February 2000;

“Conducting a Diversion Study – A Guild for California Jurisdictions” September 1999

“Solid Waste Generation, Disposal, and Diversion Measurement Guide” March 2000;

“Waste Reduction Policies and Procedures for State Agencies” August 1999.

Integrated Waste Management (00-TC-07)

Filed by the Santa Monica and Lake Tahoe Community College Districts

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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. Office 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 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. (j).)

- 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.

State Agency Model Integrated Waste Management Plan

February 2000



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Governor

Winston Hickox
Secretary, California Environmental Protection Agency

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Executive Summary

Diversion is the process of reducing potential waste by means such as source reduction (reducing or eliminating the amount of materials used for any purpose before they become waste), recycling, and composting. AB 75 (Strom-Martin, Chapter 764, Statutes of 1999) added Sections 40148-42928 to the Public Resources Code (PRC). The legislation requires State agencies to meet waste diversion goals of 25 percent by 2002 and 50 percent by 2004 and to document their efforts in meeting these goals.

To disclose how they will meet these goals, PRC Section 42920 (b) (2) requires State agencies to submit an adopted integrated waste management plan (IWMP) to the California Integrated Waste Management Board (CIWMB) by July 15, 2000.

The Board is required by law to adopt a model integrated waste management plan that shall be available for use by State agencies in developing their plan. PRC Section 42920 (b) (3) requires that if a State agency has not submitted an adopted IWMP to the Board by January 1, 2001, or if the Board has disapproved the plan submitted by the agency, then the Board's model IWMP shall be implemented by the agency and become the agency's plan.

This document contains the following key sections:

- Instructions for completing the *State Agency Model Integrated Waste Management Plan*
- Forms, worksheet, and plan questions
- Appendices

You may prefer to complete the forms, worksheet, and plan questions on line and then print them out for the appropriate signature(s). Access them by going to the Board's Project Recycle Web page (www.ciwmb.ca.gov/ProjectRecycle/) and choosing the link entitled "New Requirements for State Agencies."

Two Board publications being distributed with this document are *Waste Reduction Policies and Procedures for State Agencies, Conducting a Diversion Study—A Guide for California Jurisdictions*.

Note: To further document their efforts in achieving the goals of 25 percent and 50 percent waste diversion, State agencies and large State facilities as defined in statute are required by PRC Section 42926 (a) to provide annual reports to the CIWMB beginning April 1, 2002.

Instructions for Completing the State Agency Model Integrated Waste Management Plan

AB 75 (Strom-Martin, Chapter 764, Statutes of 1999—see Appendix 2) added Sections 40148-42928 to the Public Resources Code (PRC). The legislation requires State agencies to meet waste diversion goals of 25 percent by 2002 and 50 percent by 2004 and to document their efforts in meeting these goals.

To satisfy the requirements of PRC Section 42920 (b) (2), each State agency must submit an adopted integrated waste management plan (IWMP) to the California Integrated Waste Management Board (CIWMB). The IWMP should specify an agency's plan for achieving mandated waste diversion goals of 25 percent by 2002 and 50 percent by 2004. (Diversion is the process of reducing potential waste by means such as source reduction [reducing or eliminating the amount of materials used for any purpose before they become waste], recycling, and composting.) This publication is provided to assist State agencies in preparing their plans.

All information called for in this document is required to be submitted to the Board. To complete the forms (Parts I-A, I-B, and II), worksheet (Part III), and plan questions (Part IV) on line, go to the Board's Project Recycle Web page at www.ciwmb.ca.gov/ProjectRecycle/ and select the link entitled "New Requirements for State Agencies." After completing Parts I-A-IV, you will still need to print them out and obtain the appropriate signature(s).

Completed plans should be submitted to the following address:

Public Education and Programs Implementation
Branch
ATTN: AB 75 Review Team
California Integrated Waste Management Board
8800 Cal Center Drive
Sacramento, CA 95826

"State Agencies"—An IWMP must be completed for each State agency, which is defined in Public Resources Code (PRC) Section 40196.3 as every State office, department, division, board, commission, or other agency of the State. Each

State agency should aggregate data for all its applicable facilities, excluding large State facilities, described below.

"Large State Facilities"—PRC Section 40148 defines large State facilities as those campuses of the California State University and the California Community Colleges, prisons within the Department of Corrections, facilities of the State Department of Transportation, and facilities of other State agencies that the Board determines are primary campuses, prisons, or facilities.

The Board has determined that each of these large State facilities shall complete a separate integrated waste management plan, signed by the facility director. This IWMP must also be signed at the facility's State agency level by the chairman, commissioner, director, or president.

Example: The California Department of Corrections (CDC) has 33 prisons and numerous field offices. A separate IWMP must be completed and submitted for each of the 33 prisons, as well as one for CDC's headquarters and offices, as described above under "State Agencies." The department's director is responsible for approval of IWMPs for both the prisons and the agency headquarters and offices.

Modified IWMP—If a State agency has fewer than 200 total employees and generates less than 100 total tons of waste statewide per year, it may submit a modified IWMP. Agencies that meet this criteria must still complete "Part I-A: State Agency Information Form" and check the box indicating they are submitting a modified plan. In addition, the agency must complete Part II and Part IV, questions 1, 5, 6, and 7, and submit that information to the CIWMB by July 15, 2000.

Part I-A: State Agency Information Form (page 4)

State agencies must submit this completed form.

Part I-B: Large State Facility Information Form (page 5)

Large State facilities must submit this completed form.

Part II: State Agency List of Facilities (page 6)

All State agencies and large State facilities must provide information on all their facilities using this form. This information should include the name and address of each facility; a contact person's name, phone number, and e-mail address; and the number of employees at the facility.

If you are using hard copy from this manual and have insufficient space, use additional sheets.

Part III: State Agency Waste Reduction and Recycling Program Worksheet (pages 8-12)

State agencies and large State facilities should use the following instructions to complete Part III.

You may find the Board's publication entitled *Conducting a Diversion Study—A Guide for California Jurisdictions* helpful in determining tonnages for program activities. Workshops will be conducted in March and April 2000 to help State agencies determine diversion rates and complete an IWMP. For information about these workshops, call (916) 255-2385.

You do not need to submit your analyses used in arriving at diversion and generation figures entered on the worksheet. However, you are responsible for providing documentation and records if a review is needed by the CIWMB to verify your figures.

Remember: When identifying programs within your IWMP, a total diversion amount for all facility locations should equal or exceed 1 ton. You are not required to list any program activity that generates less than that amount, but you are encouraged to do so.

Diversion and disposal activities for all projects (e.g., construction, demolition, and park renovation) need to be included in the final calculation of total tonnage generated. The State agency with project authority is responsible for including these diversion and disposal tonnages, regardless of who performs the work (e.g., State agency, contractor, nonprofit organization).

Section 1: Program Activities, Rows 1-77, Pages 8-10

Columns B1, B2, B3, Rows 1-73, Pages 8-10

If your State agency or large State facility has programs other than those listed that are existing

or are proposed for implementation, note them in the blank rows under the appropriate program activity areas in Column B1. Identify all your agency's existing programs with an "X" in Column B2. Identify the proposed programs with an "X" in Column B3.

Column C (Projected Tonnage, 2000), Rows 1-73, Pages 8-10

1. In Column C, Rows 1-73, enter the amount of material anticipated to be diverted for every existing program activity at your State agency or large State facility.
2. Row 74, Page 10 (Total Tonnage Diverted): Total all rows and enter the sum.
3. Row 75, Page 10 (Total Tonnage Disposed): Enter the amount of waste that is projected for disposal in calendar year 2000 by your State agency or large State facility at a disposal facility, or that is being collected by a waste hauler for disposal. Use any available actual data in calculating this amount.
4. Row 76, Page 10 (Total Tonnage Generated): Add figures from Row 76 and Row 77 (total tonnage generated = total tonnage diverted + total tonnage disposed).
5. Row 77, Page 10 (Overall Diversion Percentage): Divide the number in Row 74 (Total Tonnage Diverted) by the number in Row 76 (Total Tonnage Generated). Multiply the result by 100.

Columns D, F, H, J, L, N (Proposed Tonnage for 2001-2006), Rows 1-73, Pages 8-10

The purpose of estimating proposed diversion tonnage is to help State agencies and large State facilities focus on the programs that will achieve the greatest amount of diversion, while using the least amount of energy and resources. The achievement of the 50 percent diversion goal, therefore, becomes more readily attainable.

In arriving at figures for these columns, take into account the information entered into previous columns. For example, in determining the proposed tonnage diverted for recycling of beverage containers in 2002 (Row 16, Column F), take into account the projected tonnage for 2000 and the proposed tonnage for 2001.

It is important to complete the proposed diversion tonnage through the calendar year 2006 to show which programs the State agency/large State facility will emphasize to meet the waste diversion goals of 25 percent by 2002 and 50 percent by 2004.

1. In Columns D, F, H, J, L, and N, Rows 1-73 (pages 8-10), provide proposed tonnages for each identified diversion program.
2. Row 74, Page 10 (Total Tonnage Diverted): For each of the six columns, total all rows and enter the sum.
3. Row 75, Page 10 (Total Tonnage Disposed): For each of the six columns, subtract the figure in Row 74 (Total Tonnage Diverted) from the figure in Row 75, Column C (total projected tonnage disposed for 2000).
4. Row 76, Page 10 (Total Tonnage Generated): For each of the six columns, add figures from Row 74 and Row 75 (total tonnage generated = total tonnage diverted + total tonnage disposed).
5. Row 77, Page 10 (Overall Diversion Percentage): Divide the number in Row 74 (Total Tonnage Diverted) by the number in Row 76 (Total Tonnage Generated). Multiply the result by 100.

Rows E, G, I, K, M, O (Actual Tonnage), Rows 1-73, Pages 8-10

As it becomes available, information from Rows E, G, I, K, M, and O is intended to be used in the required annual report updates. Having a format early in the process and using it at the appropriate time will enable a State agency or large State facility to easily provide needed information by April 1 of the required reporting years, commencing in 2002. Rows 74-77 on page 10 should be calculated as per steps 2-5 above.

Section 2: Promotional Programs, Rows 78-106, Page 11

Column B, Rows 78-106, Page 11

List additional existing or proposed promotional programs your agency has.

Column C (Existing), and Columns D, F, H, J, L, N (Proposed), Rows 78-106, Page 11

Put an "X" in Column C if a promotional program exists in 2000. Put an "X" in Columns D, F, H, J, L, and/or N, if a promotional program is proposed for any year from 2001 through 2006.

Columns E, G, I, K, M, O (Implemented), Rows 78-106, Page 11

In future years, indicate whether the proposed program has been implemented by putting an "X" in the appropriate column.

Section 3: Procurement Activities,

Rows 107-126, Page 12

Column B, Rows 119-126, Page 12

List additional existing or proposed procurement activities your agency has.

Column C (Existing) and Columns D, F, H, J, L, N (Proposed), Rows 107-126, Page 12

Put an "X" in Column C if procurement of recycled-content products exists for the year 2000. Put an "X" in Columns D, F, H, J, L, and/or N if procurement of recycled-content products is proposed. Procurement activities should be coordinated through the State Agency Buy Recycled Campaign (SABRC). For more information on this program, see the SABRC Web page at www.ciwmb.ca.gov/StateAgency/, or contact Jerry Hart at (916) 255-4454 or jhart@ciwmb.ca.gov.

Columns E, G, I, K, M, O (Implemented), Rows 107-126, Page 12

In future years, indicate whether the proposed program has been implemented by putting an "X" in the appropriate column.

Part IV: State Agency Integrated Waste Management Plan Questions (pages 13,14)

State agencies and large State facilities should use this form to provide information regarding the integrated waste management plan. State agencies submitting a modified integrated waste management plan should fill out questions 1, 5, 6, and 7. The Board's publication entitled *Waste Reduction Policies and Procedures for State Agencies* (distributed with this document) provides suggestions for source reduction, recycling, composting, and other programs that can be implemented to reduce the waste stream. You may find information from this publication helpful in filling out Part IV.

State Agency Model Integrated Waste Management Plan
Part I-A: State Agency Information Form

State Agency Name: _____

Address: _____

City: _____ ZIP Code: _____

State Agency Director's Name: _____

Recycling Coordinator: _____

Name: _____

Address: _____

City: _____ ZIP Code: _____

Telephone Number: (____) _____ E-Mail Address: _____

Fax Number: (____) _____

Number of Employees: _____

Check this box if the State agency is submitting a modified integrated waste management plan, since the agency has less than 200 full-time employees and generates less than 100 tons of waste statewide, per year.

The signatures below serve to certify that this integrated waste management plan is consistent with and meets the requirements of PRC 42920 (b).

Signature of Chairman, Commissioner,
or Director

Date

Printed Name

Title

State Agency Model Integrated Waste Management Plan

Part I-B: Large State Facility Information Form

Facility: _____

Address: _____

City: _____ ZIP Code: _____

Facility Director: _____

Recycling Coordinator:

Name: _____

Address: _____

City: _____ ZIP Code: _____

Telephone Number: (_____) _____ E-Mail Address: _____

Fax Number: (_____) _____

Number of Employees: _____

The signatures below serve to certify that this integrated waste management plan is consistent with and meets the requirements of PRC 42920 (b).

Signature of District or Facility Director

Date

Printed Name

Title

Signature of Chairman, Commissioner,
Director, or President

Date

Printed Name

Title

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2025

Part II: State Agency List of Facilities

State Agency or Large State Facility: _____

No.	Facility Name and Mailing Address (List all facilities that are part of the State Agency or Large State Facility.)	Contact			No. of Employees
		Name	Phone	E-Mail	
1					
2					
3					
4					
5					
6					
Total Number of Employees at all facilities combined is:					

39

No.	Facility Name and Mailing Address (List all facilities that are part of the State Agency or State Facility)	Name	Phone	Contact	No. of Employees
7					
8					
9					
10					
11					
12					
13					
					Total Number of Employees

Part III: State Agency Waste Reduction and Recycling Program Worksheet

A	B			C	D	E	F	G	H	I	J	K	L	M	N	O
	Section 1 Program Activities			2000	2001		2002		2003		2004		2005		2006	
	B1	B2*	B3*	Projected Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage
1	Source Reduction															
2	Use of Reusable Cups															
3	Use of Electronic Forms															
4	Use of Electronic Media															
5	Double-Sided Copies															
6	Utilize Property Reutilization															
7	Utilize CalMAX															
8	Utilize a Food Exchange															
9	Salvage Yards															
10	Xeriscaping/Grass-cycling															
11	Other Source Reduction Programs															
12																
13																
14																
15	Recycling															
16	Beverage Containers															
17	Cardboard															
18	Glass															
19	Newspaper															
20	Office Paper															
21	Plastics															
22	Scrap Metal															
23	Other Materials															
24																
25																
26																

*B1: Add existing programs or those proposed for implementation, if not listed. B2: Insert "X" if program exists. B3: Insert "X" if program is proposed for implementation.

A	B			C	D	E	F	G	H	I	J	K	L	M	N	O
	Section Program/Activities			2000	2001		2002		2003		2004		2005		2006	
	B1	B2*	B3*	Projected Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage
27	Other Recycling Programs															
28	Special Collection Programs															
29	Clean-Up Events															
30																
31																
32	Composting															
33	Commercial Pick-Up of Green Waste															
34	Commercial Self-Haul of Green Waste															
35	Food Waste Composting															
36	Other Composting Programs															
37																
42																
41																
42																
43																
44																
45																
46																
47																
48	Special Waste															
49	Construction/Demolition Recycling															
50	Concrete/Rubble Reuse															
51	Concrete/Asphalt Recycling															
52	Rendering/Grease Recycling															

*B1: Add existing programs or those proposed for implementation, if not listed. B2: Insert "X" if program exists. B3: Insert "X" if program is proposed for implementation.

A	B			C	D	E	F	H	I	J	K	L	M	O		
	Section 1 Program Activities			2000	2001		2002		2003		2004		2005		2006	
	B1	B2*	B3*	Projected Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage
53	Tires															
54	Use of Retreads															
55	Tire Reuse															
56	Tire Recycling															
57	Use of Rubberized Asphalt															
58	Use of Tire- Derived Products															
59	Collection Program															
60	Drop-Off at Landfills															
61	Used Oil/Antifreeze															
62	White and Brown Goods (Reuse/Recycling)															
63	Wood Waste															
64	Wood Waste Chipping for Mulch or Compost (Drop- Off)															
65	Brush/Wood Waste Chipping															
66	Other Special Waste															
67																
68																
69																
70																
71																
72																
73																
74	Total Tonnage Diverted															
75	Total Tonnage Disposed															
76	Total Tonnage Generated															
77	Overall Diversion Percentage															

*B1: Add existing programs or those proposed for implementation, if not listed. B2: Insert "X" if program exists. B3: Insert "X" if program is proposed for implementation.

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
		2000	2001		2002		2003		2004		2005		2006	
	Section 2 Promotional Programs	Existing	Proposed	Imple- mented	Proposed	Imple- mented	Proposed	Imple- mented	Proposed	Imple- mented	Proposed	Imple- mented	Proposed	Imple- mented
78	Web Page													
79	Newspaper Articles/Ads													
80	Brochures, Newsletters, Publications													
81	Fliers													
82	Office Paper Recycling Guide													
83	Fact Sheets													
84	New Employee Package													
85	Outreach (technical assistance, presentations, awards, fairs, field trips)													
86	Seminars													
87	Workshops													
88	Waste Information Exchange													
89	Recycled Goods Procurement Training													
44	awards Program/Public awareness													
44	speakers (staff available for presentations)													
92	Technical Assistance													
93	College Curriculum													
94	Waste Audits													
95	Waste Evaluations/Survey													
96	Other Promotional Programs													
97														
98														
99														
100														
101														
102														
103														
104														
105														
106														

A	B	C	D	E	F	G	H	I	J	K	L	M	O	
	Section 3: Procurement Activities	2000	2001		2002		2003		2004		2005		2006	
		Existing	Proposed	Imple- mented	Proposed	Imple- mented	Proposed	Imple- mented	Proposed	Imple- mented	Proposed	Imple- mented	Proposed	Imple- mented
107	State Agency Buy Recycled Campaign (SABRC)—All procurement activities should be coordinated through SABRC.													
108	Department-Wide Recycled-Content Procurement (RCP) Policy													
109	Exceeding SABRC Goals													
110	Department-Wide Automated Procurement Tracking System													
111	Requiring Recycled-Content Product Certification for All Purchases													
112	Annual Submittal of SABRC Report													
45	Staff Recycled-Content Procurement Training													
114	Participating in Dept. of General Services Buy Recycled Task Force													
115	Proactively Working With RCP Suppliers													
116	Sharing Success Stories With SABRC													
117	Joint Purchase Pools													
118	Other Procurement Activities													
119														
120														
121														
122														
123														
124														
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4. Based on the worksheet information provided in Part III, briefly describe the programs proposed for implementation to meet waste diversion goals of 25 and 50 percent. Please include a timeline as to when these programs will be implemented.

5. Does the State agency/large State facility have a waste reduction policy? If so, what is it? See *Waste Reduction Policies and Procedures for State Agencies* for a sample waste reduction and recycling policy statement.

6. Briefly describe what resources (staff and/or funds) the State agency/large State facility plans to commit toward implementing its integrated waste management plan, thus meeting the waste diversion goals outlined in Public Resources Code Section 42921.

7. This question applies only for State agencies submitting a modified IWMP: Briefly describe the waste diversion program activities currently in place.

Appendix 1: Glossary of Terms

Cardboard – Paper product made of unbleached kraft fiber, with two heavy outer layers and a wavy inner layer to provide strength.

Composting – The biological decomposition of organic materials such as leaves, grass clippings, brush, and food waste into a soil amendment.

Disposal – Management of solid waste through landfilling, incineration, or other means at permitted solid waste facilities.

Diversion Rate – The amount of materials recycled as a percentage of the solid waste stream.

Glass – All products comprised primarily of glass materials, including, but not limited to, containers, windows, fiberglass insulation, reflective beads, and construction blocks.

Grasscycling – The practice of leaving grass clippings on the lawn while mowing, which allows the nutrients to return to the soil, and decreases water needs.

Ledger Paper – A paper category that includes most office paper, such as letterhead, computer paper, copier bond, and notebook paper.

Materials Exchange Programs – Programs in which two or more companies exchange materials that would otherwise be discarded. Programs may also be managed by organizations using electronic and/or catalog networks to match companies that want to exchange their materials.

Newspaper – A paper product including, but not limited to, legislative bills, all papers that come with old newspapers, and newsprint.

Office Paper – See “Ledger Paper.”

Recycled Content Products – A product which has been manufactured using pre-consumer or postconsumer recycled material.

Recycling – The process by which materials otherwise destined for disposal are collected, remanufactured, and purchased.

Source Reduction – Any action undertaken by an individual or organization to eliminate or reduce the amount of materials before they enter the

municipal solid waste stream. This action is intended to conserve resources, promote efficiency, and reduce pollution.

Special Waste – Solid wastes/recyclables that can require special handling and management, such as used motor oil, whole tires, white goods, mattresses, lead-acid batteries, furniture, and medical wastes.

Vermicomposting – The process whereby worms feed on slowly decomposing materials (e.g., vegetable scraps) in a controlled environment to produce a nutrient-rich soil amendment.

Waste Assessment – An on-site assessment of the waste stream and recycling potential of an individual business, industry, institution, or household.

Waste Audits – See “Waste Assessment.”

Waste Evaluation – See “Waste Assessment.”

Waste Generation – Section 18722(g)(2) of Title 14 of the California Code of Regulations provides the following equation for jurisdictions to use in computing waste generation. It applies to State agencies and large State facilities as well.

Expressed as an equation, the total solid waste generated by the jurisdiction shall be computed as follows:

$$GEN = DISP + DIVERT$$

where:

GEN = the total quantity of solid waste generated within the jurisdiction.

DISP = the total quantity of solid waste, generated within the jurisdiction, which is transformed or disposed in permitted solid waste facilities.

DIVERT = the total quantity of solid waste, generated within the jurisdiction, which is diverted from permitted solid waste transformation and disposal facilities, through existing source reduction, recycling, and composting programs.

Waste Stream – The total flow of solid waste generated by a business, industry, institution, household, or municipality [or in this case of this

document, a State agency or large State facility]. Components of the waste stream are reduced by implementing source reduction, reuse, recycling, and composting techniques.

White Goods – Large appliances such as refrigerators, stoves, water heaters, washers, dryers, and air conditioners that are made of enameled metal.

Xeriscaping – The practice of landscaping with slow growing, drought-tolerant plants.

Sources

1. *Definitions*. California Integrated Waste Management Board. 1994. Publication #500-94-039.
2. *Establishing a Waste Reduction Program at Work, Participant's Manual*, California Integrated Waste Management Board. 1996. Publication #442-95-070.
3. *Landfill Mining Feasibility Study*, CalRecovery Incorporated. 1993.
4. *State Agency Buy Recycled Campaign, 1999 manual*, California Integrated Waste Management Board.
5. *Scrap Specifications Circular 1997: Guidelines for Nonferrous Scrap, Ferrous Scrap, Glass Cullet, Paper Stock, Plastic Scrap*, Institute of Scrap Recycling Industries, Inc. 1997.

Appendix 2: Assembly Bill 75

BILL NUMBER: AB 75 CHAPTERED
BILL TEXT

CHAPTER 764
FILED WITH SECRETARY OF STATE OCTOBER 10, 1999
APPROVED BY GOVERNOR OCTOBER 7, 1999
PASSED THE SENATE SEPTEMBER 9, 1999
PASSED THE ASSEMBLY SEPTEMBER 9, 1999
AMENDED IN SENATE SEPTEMBER 7, 1999
AMENDED IN SENATE SEPTEMBER 2, 1999
AMENDED IN SENATE AUGUST 17, 1999
AMENDED IN ASSEMBLY APRIL 27, 1999
AMENDED IN ASSEMBLY MARCH 23, 1999
AMENDED IN ASSEMBLY FEBRUARY 19, 1999

INTRODUCED BY Assembly Member Strom-Martin
(Coauthors: Senators Chesbro, McPherson, and Sher)

DECEMBER 7, 1998

An act to add Sections 40148, 40196.3, and 41821.2 to, to add Chapter 18.5 (commencing with Section 42920) to Part 3 of Division 30 of, and to repeal Sections 42922, 42923, 42927, and 42928 of, the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

AB 75, Strom-Martin. State agency recycling: waste diversion: community service districts.

(1) The existing California Integrated Waste Management Act of 1989, which is administered by the California Integrated Waste Management Board, establishes an integrated waste management program to which cities, counties, and regional agencies, as defined, are subject. The act requires the board to implement various state programs designed to encourage the reduction of solid waste. This bill would require each state agency, as defined, on or before July 1, 2000, to develop and adopt, in consultation with the board, an integrated waste management plan.

The bill would require each state agency and each large state facility, as defined, to divert at least 25% of the solid waste generated by the state agency or large state facility from landfill disposal or transformation facilities by January 1,

2002, and at least 50% by January 1, 2004. The bill would authorize the board to establish, until January 1, 2006, a source reduction, recycling, and composting requirement that would be an alternative to the 50% reduction required under the bill. The board would also be authorized to grant single or multiyear extensions from these diversion requirements, until January 1, 2006. The board would be required to develop and adopt, by February 15, 2000, collection, storage, and loading requirements for recyclable materials. The bill would require each state agency to submit an annual report to the board regarding solid waste reduction. The board would be authorized to adopt regulations, that would be operative until January 1, 2006, regarding the granting of alternative reduction requirements or extensions. The bill would also prescribe related matters.

(2) Existing law requires each city, county, and regional agency to submit a report to the board summarizing its progress in achieving specified waste diversion requirements.

This bill would require each community service district, as defined, to provide the city, county, or regional agency in which it is located, information on the programs implemented by the district and the amount of waste disposed and diverted within the district. By imposing new duties on the districts, the bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 40148 is added to the Public Resources Code, to read:

40148. "Large state facility" means those campuses of the California State University and the California Community Colleges, prisons within the Department of Corrections, facilities of the State Department of Transportation, and facilities of other state agencies, that the board determines, are primary campuses, prisons, or facilities.

SEC. 2. Section 40196.3 is added to the Public Resources Code, to read:

40196.3. "State agency" means every state office, department, division, board, commission, or other agency of the state, including the California Community Colleges and the California State University. The Regents of the University of California are encouraged to implement this division.

SEC. 3. Section 41821.2 is added to the Public Resources Code, to read:

41821.2. (a) For the purposes of this section, "district" means a community service district that provides solid waste handling services or implements source reduction and recycling programs.

(b) Notwithstanding any other law, each district shall provide the city, county, or regional agency in which it is located, information on the programs implemented by the district and the amount of waste disposed and diverted within the district. The board may adopt regulations pertaining to the format of the information to be provided and deadlines for supplying this information to the city, county, or regional agency so that it may be incorporated into the annual report submitted to the board pursuant to Section 41821.

SEC. 4. Chapter 18.5 (commencing with Section 42920) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 18.5. STATE AGENCY INTEGRATED WASTE MANAGEMENT PLAN

42920. (a) On or before February 15, 2000, the board shall adopt a state agency model integrated waste management plan for source reduction, recycling, and composting activities.

(b) (1) On or before July 1, 2000, each state agency shall develop and adopt, in consultation with the board, an integrated waste management plan, in accordance with the requirements of this chapter.

The plan shall build upon existing programs and measures, including the state agency model integrated waste management plan adopted by the board pursuant to subdivision (a), that will reduce solid waste, reuse materials whenever possible, recycle recyclable materials, and procure products with recycled content in all state agency offices and facilities, including any leased locations. It is the intent of the Legislature that the local jurisdiction and the state agency or large state facility located within that jurisdiction work together to implement the state agency integrated waste management plan.

(2) Each state agency shall submit an adopted integrated waste management plan to the board for review and approval on or before July 15, 2000. The board shall adopt procedures for

reviewing and approving those integrated waste management plans. The board shall complete its plan review process on or before January 1, 2001.

(3) If a state agency has not submitted an adopted integrated waste management plan or the model integrated waste management plan with revisions to the board by January 1, 2001, or if the board has disapproved the plan that was submitted, then the model integrated waste management plan, as revised by the board in consultation with the agency, shall take effect on that date, or on a later date as determined by the board, and shall have the same force and effect as if adopted by the state agency.

(c) Notwithstanding subdivision (b) of Section 12159 of the Public Contract Code, at least one solid waste reduction and recycling coordinator shall be designated by each state agency. The coordinator shall perform the duties imposed pursuant to this chapter using existing resources. The coordinator shall be responsible for implementing the integrated waste management plan and shall serve as a liaison to other state agencies and coordinators.

(d) The board shall provide technical assistance to state agencies for the purpose of implementing the integrated waste management plan.

42921. (a) Each state agency and each large state facility shall divert at least 25 percent of all solid waste generated by the state agency from landfill disposal or transformation facilities by January 1, 2002, through source reduction, recycling, and composting activities.

(b) On and after January 1, 2004, 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.

42922. (a) On and after January 1, 2002, upon the request of a state agency or a large state facility, the board may establish a source reduction, recycling, and composting requirement that would be an alternative to the 50-percent requirement imposed pursuant to subdivision (b) of Section 42921, if the board holds a public hearing and makes all of the following findings based upon substantial evidence on the record:

(1) The state agency or a large state facility has made a good faith effort to effectively implement the source reduction, recycling, and composting measures described in its integrated waste management plan, and has demonstrated progress toward meeting the alternative requirement as described in its annual reports to the board.

(2) The state agency or the large state facility has been unable to meet the 50-percent diversion requirement despite implementing the measures described in paragraph (1).

(3) The alternative source reduction, recycling, and composting requirement represents the greatest diversion amount that the state agency or the large state facility may reasonably and feasibly achieve.

(b) In making the decision whether to grant an alternative requirement pursuant to subdivision (a), and in determining the amount of the alternative requirement, the board shall consider circumstances that support the request for an alternative requirement, such as waste disposal patterns and the types of waste disposed by the state agency or the large state facility. The state agency or the large state facility may provide the board with any additional information that the state agency or the large state facility determines to be necessary to demonstrate to the board the need for the alternative requirement.

(c) If a state agency or a large state facility that requests an alternative source reduction, recycling, and composting requirement has not previously requested an extension pursuant to Section 42923, the state agency or the large state facility shall provide information to the board that explains why it has not requested an extension.

(d) A state agency or a large state facility that has previously been granted an alternative source reduction, recycling, and composting requirement may request another alternative source reduction, recycling, and composting requirement. A state agency or a large state facility that requests another alternative requirement shall provide information to the board that demonstrates that the circumstances that supported the previous alternative source reduction, recycling, and composting requirement continue to exist, or shall provide information to the board that describes changes in those previous circumstances that support another alternative source reduction, recycling, and composting requirement. The board shall review the original circumstances that supported the state agency's or the large state facility's request, as well as any new information provided by the state agency or the large state facility that describes the current circumstances, to determine whether to grant another alternative requirement. The board may approve another alternative requirement if the board holds a public hearing and makes both of the following findings based upon substantial evidence in the record:

(1) The state agency or the large state facility has made a good faith effort to effectively implement the source reduction,

recycling, and composting measures described in its integrated waste management plan, and has demonstrated progress toward meeting the alternative requirement as described in its annual reports to the board.

(2) The alternative source reduction, recycling, and composting requirement represents the greatest diversion amount the state agency or the large state facility may reasonably and feasibly achieve.

(e) If the board establishes a new alternative requirement or rescinds the existing alternative requirement, the board shall do so at a public hearing. If the board establishes a new alternative requirement, it shall make all of the following findings based upon substantial evidence in the record:

(1) The state agency or the large state facility has made a good faith effort to effectively implement the source reduction, recycling, and composting measures described in its integrated waste management plan, and has demonstrated progress toward meeting the alternative requirement as described in its annual reports to the board.

(2) The former alternative diversion requirement is no longer appropriate.

(3) The new alternative requirement represents the greatest amount of diversion that the state agency or the large state facility may reasonably and feasibly achieve.

(f) (1) No single alternative requirement may be granted for a period that exceeds three years and, if after the granting of the original alternative requirement, another alternative requirement is granted, the combined period that the original and the new alternative requirement is in force and effect shall not exceed a total of five years.

(2) No alternative requirement shall be granted for any period after January 1, 2006, and no alternative requirement shall be effective after January 1, 2006.

(3) No state agency or large state facility shall be granted an alternative requirement if the state agency or the large state facility has failed to meet, on or before January 1, 2002, the requirements of subdivision (a) of Section 42921.

(g) (1) When considering a request for an alternative source reduction, recycling, and composting requirement, the board may make specific recommendations for the implementation of the alternative plan.

(2) Nothing in this section precludes the board from disapproving any request for an alternative requirement.

(3) If the board disapproves a request for an alternative requirement, the board shall specify, in writing, the reasons for its disapproval.

(h) If the board grants an alternative source reduction,

recycling, and composting requirement, the state agency may request technical assistance from the board to assist it in meeting the alternative source reduction, recycling, and composting requirement. If requested by the state agency or the large state facility, the board shall assist with identifying model policies and plans implemented by other agencies.

(i) A state agency or a large state facility that is granted an alternative requirement pursuant to this section 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.

(j) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

42923. (a) The board may grant one or more single or multiyear time extensions from the requirements of subdivision (a) of Section 42921 to any state agency or large state facility if all of the following conditions are met:

(1) Any multiyear extension that is granted does not exceed three years, and a state agency or a large state facility is not granted extensions that exceed a total of five years.

(2) No extension is granted for any period after January 1, 2006, and no extension is effective after January 1, 2006.

(3) The board considers the extent to which a state agency or a large state facility complied with its plan of correction before considering another extension.

(4) The board adopts written findings, based upon substantial evidence in the record, as follows:

(A) The state agency or the large state facility is making a good faith effort to implement the source reduction, recycling, and composting programs identified in its integrated waste management plan.

(B) The state agency or the large state facility submits a plan of correction that demonstrates that the state agency or the large state facility will meet the requirements of Section 42921 before the time extension expires, includes the source reduction, recycling, or composting steps the state agency or the large state facility will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, 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.

(b) (1) When considering a request for an extension, the board may make specific recommendations for the implementation of the alternative plans.

(2) Nothing in this section shall preclude the board from disapproving any request for an extension.

(3) If the board disapproves a request for an extension, the board shall specify its reasons for the disapproval.

(c) (1) In determining whether to grant the request by a state agency or a large state facility for the time extension authorized by subdivision (a), the board shall consider information provided by the state agency or the large state facility that describes relevant circumstances that contributed to the request for extension, such as a 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 by agency.

(2) The state agency or the large state facility may provide the board with any additional information that the state agency or the large state facility determines to be necessary to demonstrate to the board the need for the extension.

(d) If the board grants a time extension pursuant to subdivision (a), the state agency may request technical assistance from the board to assist it in meeting the diversion requirements of subdivision (a) of Section 42921 during the extension period. If requested by the state agency or the large state facility, the board shall assist the state agency or the large state facility with identifying model policies and plans implemented by other agencies.

(e) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

42924. (a) On or before February 15, 2000, the board shall develop and adopt requirements relating to adequate areas for collecting, storing, and loading recyclable materials in state buildings. In developing the requirements, the board may rely on the model ordinance adopted pursuant to Chapter 18 (commencing with Section 42900).

(b) Each state agency or large state facility, when entering into a new lease, or renewing an existing lease, shall ensure that adequate areas are provided for, and adequate personnel are available to oversee, the collection, storage, and loading of recyclable materials in compliance with the requirements established pursuant to subdivision (a).

(c) In the design and construction of state agency offices and facilities, the Department of General Services shall allocate adequate space for the collection, storage, and loading of recyclable materials in compliance with the requirements established pursuant to subdivision (a).

42925. (a) Any cost savings realized as a result of the state agency integrated waste management plan shall, to the extent feasible, be redirected to the agency's integrated waste management plan to fund plan implementation and administration costs, in accordance with Sections 12167 and 12167.1 of the Public Contract Code.

(b) The board shall establish and implement a waste reduction award program for state agencies and large state facilities that develop, adopt, and implement innovative and effective integrated waste management plans in compliance with this chapter.

42926. (a) In addition to the information provided to the board pursuant to Section 12167.1 of the Public Contract Code, each state agency shall submit a report to the board summarizing its progress in reducing solid waste as required by Section 42921. The annual report shall be due on or before April 1, 2002, and on or before April 1 in each subsequent year. The information in this report shall encompass the previous calendar year.

(b) Each state agency's annual report to the board shall, at a minimum, include all of the following:

(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 made in implementing the integrated waste management plan.

(4) The extent to which the state agency intends to utilize programs or facilities established by the local agency for the handling, diversion, and disposal of solid waste. If the state agency does not intend to utilize those established programs or facilities, the state agency shall identify sufficient disposal capacity for solid waste that is not source reduced, recycled, or composted.

(5) If the agency has been granted a time extension by the board pursuant to Section 42923, the state agency shall include a summary of progress made in meeting the integrated waste management plan implementation schedule pursuant to subdivision (b) of Section 42921 and complying with the state agency's plan of correction, prior to the expiration of the time extension.

(6) If the state agency has been granted an alternative source reduction, recycling, and composting requirement pursuant to Section 42922, the state agency 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.

(7) Other information relevant to compliance with Section 42921.

(c) The board shall use, but is not limited to the use of, the annual report in the determination of whether the agency's integrated waste management plan needs to be revised.

42927. (a) If a state agency is unable to comply with the requirements of this chapter, the agency shall notify the board in writing, detailing the reasons for its inability to comply and shall request an alternative pursuant to Section 42922 or an extension pursuant to Section 42923.

(b) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

42928. (a) The board may adopt regulations that establish specified criteria for granting, reviewing, and considering reductions or extensions pursuant to Sections 42922 and 42923.

(b) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Public Resources Code Sections 40148, 40196.3, 42920, 42921, 42922, 42923, 42924, 42925, 42926, 42927, and 42928; Public Contract Code Sections 12167 and 12167.1;

Statutes 1999, Chapter 764; Statutes 1992, Chapter 1116;

State Agency Model Integrated Waste Management Plan (February 2000); *Conducting a Diversion Study – A Guide for California Jurisdictions* (September 1999); *Solid Waste Generation, Disposal, and Diversion Measurement Guide* (March 2000); *Waste Reduction Policies and Procedures for State Agencies* (August 1999).

Filed on March 9, 2001,

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

No. 00-TC-07

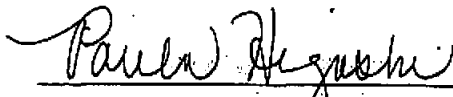
Integrated Waste Management

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

(Adopted on March 25, 2004)

STATEMENT OF DECISION

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



PAULA HIGASHI, Executive Director

3-26-04
Date

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Public Resources Code Sections 40148, 40196.3, 42920, 42921, 42922, 42923, 42924, 42925, 42926, 42927, and 42928; Public Contract Code Sections 12167 and 12167.1;

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Integrated Waste Management

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

(Adopted on March 25, 2004)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on March 25, 2004. Keith Petersen appeared on behalf of claimants, Santa Monica and South Lake Tahoe Community College Districts. Deborah Borzelleri and Trevor O'Shaughnessy appeared on behalf of the Integrated Waste Management Board. Michael Wilkening appeared on behalf of the Department of Finance (DOF).

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

The Commission adopted the staff analysis at the hearing by a vote of 5-0.

Adopted Statement of Decision
00-TC-07

BACKGROUND

Test claim legislation: The test claim legislation¹ requires each "state agency,"² defined to include community colleges,³ to develop and adopt, in consultation with the Board, an integrated waste management plan. The Board is required to develop and adopt a model integrated waste management plan by February 15, 2000, and if the community college does not adopt one, the Board's model plan will govern the community college.

Each community college is also required to divert⁴ at least 25 percent of generated solid waste by January 1, 2002, and at least 50 percent by January 1, 2004. The test claim legislation includes a process by which, upon request, the Board may establish an alternative to the 50-percent requirement, and a separate process by which the Board may grant one or more time extensions to the 25-percent requirement. These sections sunset on January 1, 2006.

When entering into a new lease or renewing a lease, the test claim legislation requires a community college to ensure that adequate areas are provided for and adequate personnel are available to oversee collection, storage and loading of recyclable materials in compliance with requirements established by the Board.

Any cost savings as a result of the integrated waste management plan are to be redirected, to the extent feasible, to the community college's integrated waste management plan to fund plan implementation and administration costs, in accordance with sections 12167 and 12167.1 of the

¹ Public Resources Code sections 40148, 40196.3, 42920, 42921, 42922, 42923, 42924, 42925, 42926, 42927, 42928; Public Contract Code section 12167 and 12167.1; Statutes 1999, chapter 764; Statutes 1992, chapter 1116; *State Agency Model Integrated Waste Management Plan*, February 2000; *Conducting a Diversion Study – A Guide for California Jurisdictions*, September 1999; *Solid Waste Generation, Disposal, and Diversion Measurement Guide*, March 2000; *Waste Reduction Policies and Procedures for State Agencies*, August 1999. Note: Claimants did not plead Public Resources Code section 41821.2, even though it was added by Statutes 1999, chapter 764. Thus, staff makes no findings on section 41821.2.

² "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. The Regents of the University of California are encouraged to implement this division (Pub. Resources Code, § 40196.3).

"Large state facility" is "those campuses of the California State University and the California Community Colleges, prisons within the Department of Corrections, facilities of the State Department of Transportation, and the facilities of other state agencies, that the board determines, are primary campuses, prisons, or facilities." (Pub. Resources Code, § 40148).

³ Community colleges are the only local government to which the test claim legislation applies. Community college is used interchangeably with "state agency" or "large state facility" (the language of the test claim statute) in this analysis.

⁴ "Diversion means activities which reduce or eliminate the amount of solid waste from solid waste disposal..." (Pub. Resources Code, § 40124).

Public Contract Code. Each state agency is required to report annually to the Board on its progress in reducing solid waste, with the report's minimum content specified in statute.

The Public Contract Code provisions of the test claim legislation require revenue received from the community college's integrated waste management plan to be deposited in the Integrated Waste Management Account at the Board. After July 1, 1994, the Board is authorized to spend the revenue upon appropriation by the Legislature to offset recycling program costs. Annual revenue under \$2,000 is continuously appropriated for expenditure by state agencies and institutions, whereas annual revenue over \$2,000 is available for expenditures upon appropriation by the Legislature.

The legislative history of Statutes 1999, chapter 764, (adding the Public Resource Code provisions of the test claim legislation) cited a study by the Board that estimated state agencies generate between 520,000 and 850,000 tons of solid waste (1-2 percent of the state total) annually. It further estimated that state agency solid waste diversion hovers around 12 percent, well below the statewide local government average of 33 percent. The Legislative Analyst's Office (LAO) estimated that the diversion rate of state facilities was between 3.6 and 5.2 percent in 1997. Both the Board and LAO concluded that the low diversion rates of state agencies may be having a significant, adverse effect on many local governments' waste diversion rates and thus their ability to comply with a 50-percent solid waste diversion requirement by 2000.⁵ (This local requirement is not to be confused with the state agency requirement in the test claim. Although both ultimately call for a 50-percent diversion, they are distinct goals enacted at different times.)

The test claim legislation was based on a previous attempt by the same author to enact a state agency waste reduction bill, Assembly Bill No. 705 (1997-1998 Reg. Sess.), which was vetoed. According to the legislative history of Assembly Bill No. 705, prior to the test claim legislation, most state agencies had implemented some type of a recycling program pursuant to Governor Wilson's 1991 Executive Order W-7-91 (approximately 1,200 state sites had recycling programs), but most agencies had not implemented a comprehensive waste management plan.⁶

Executive order W-7-91 applied to "state agencies," which was not defined. However, it did not apply to community colleges, as the last paragraph states: "FURTHER BE IT RESOLVED, that the University of California, *State College systems*, State Legislature and Constitutional Officers are strongly encouraged to adopt similar policies to those outlined in this Executive Order."⁷ [Emphasis added.] Community colleges and the California State University make up the state college systems cited in the order. Because these college systems, including the community colleges, were "strongly urged to adopt similar policies," the executive order did not apply to them.

⁵ Assembly Floor Analysis, Concurrence in Senate Amendments Analysis of Assembly Bill No. 75 (1999 - 2000 Reg. Sess.) as amended Sept. 7, 1999.

⁶ Assembly Committee on Consumer Protection, Governmental Efficiency, and Economic Development, Analysis of Assembly Bill No. 705 (1997-1998 Reg. Sess.) as amended April 2, 1997. There is a reference to the executive order in Public Resources Code section 40900.1, subdivision (c).

⁷ Governor's Executive Order No. W-7-91 (April 2, 1991).

Integrated Waste Management: Article XI, section 7 of the California Constitution authorizes a county or city to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.

In 1989, the Legislature enacted the California Integrated Waste Management Act (Stats. 1989, ch. 1095), declaring that the responsibility for solid waste management is shared between the state and local governments, and calling for cities and counties to divert 25 percent of their waste by 1995, and 50 percent by 2000. In the act, the Legislature found there "is no coherent state policy to ensure that the state's solid waste is managed in an effective and environmentally sound manner for the remainder of the 20th century and beyond."⁸ The goal was "an effective and coordinated approach to the safe management of all solid waste generated within the state and... design and implementation of local integrated waste management plans."⁹ The act created the Board,¹⁰ and outlined its powers and duties.¹¹ The act also required cities and counties to prepare integrated waste management plans, to include source reduction and recycling elements.¹² The cities and counties have fee authority for preparing, adopting and implementing the integrated waste management plans.¹³

Claimants' Position

Claimants contend 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. Claimants seek reimbursement for labor, materials and supplies, travel, data processing services and software, contracted services and consultants, equipment and capital assets, staff training, and student and public awareness training for community colleges to implement the following activities:

- Develop and adopt, on or before July 1, 2000, an integrated waste management plan that will reduce solid waste, reuse materials whenever possible, recycle recyclable materials, and procure products with recycled content pursuant to the general policy statement issued by the Board in its executive order entitled "Waste Reduction Policies and Procedures for State Agencies" (August 1999).
- Submit, on or before July 15, 2000, an adopted integrated waste management plan to the Board. According to the Board's Model Integrated Waste Management Plan, the plan would include completion of prescribed information forms, a list of facilities, a worksheet for reporting progress of waste reduction and recycling programs, and a questionnaire regarding the college's mission statement, waste stream and waste diversion activities.

⁸ Public Resources Code section 40000, subdivision (c).

⁹ Public Resources Code sections 40001, 40052 and 40703, subdivision (c).

¹⁰ Public Resources Code section 40400 et seq.

¹¹ Public Resources Code section 40500 et seq.

¹² Public Resources Code sections 40900 - 40901 et seq.

¹³ Public Resources Code section 41900 et seq.

- Provide additional information and clarification to the Board to bring the plan to the level needed for approval.
- Accept and be governed by the model integrated waste management plan prepared by the Board in the event one is not submitted by July 15, 2000 and approved by January 1, 2001.
- Designate and pay at least one person as a solid waste reduction and recycling coordinator who is responsible for implementing the integrated waste management plan and serving as liaison to other state agencies and coordinators.
- Develop, implement and maintain source reduction, recycling and composting activities that divert at least 25 percent of all solid waste generated on campus from landfill disposal or transformation facilities by January 1, 2002.
- Request one or more extensions of time to comply with the 25 percent requirement by January 1, 2002, in the event the community college finds it necessary. In accordance with the request, create and maintain records to present substantial evidence: (1) that the community college is making a good faith effort to implement the programs in its integrated waste management plan, and (2) that would permit the community college to submit a plan of correction that demonstrates it will meet the requirements before the time extension expires, providing a date before the extension expires when the requirements will be met, identifying existing programs that will be modified, and identifying any new programs that will be implemented and the means by which these programs will be funded.
- Develop, implement and maintain source reduction, recycling and composting activities that divert at least 50 percent of all solid waste generated on campus from landfill disposal or transformation facilities by January 1, 2004.
- Request one or more alternatives to the time to comply with the 50 percent requirement by January 1, 2004, in the event the community college finds it necessary. In accordance with the request, create and maintain records to present substantial evidence: (1) that the community college is making a good faith effort to implement the programs in its integrated waste management plan, and has demonstrated progress toward meeting the alternative requirement as described in its annual reports to the Board; (2) as to why the community college has been unable to meet the 50-percent diversion requirement despite implementing its plan; and (3) that the alternative source reduction, recycling and composting requirement requested represents the greatest diversion amount the community college may reasonably and feasibly achieve.
- Ensure that adequate areas are provided and adequate personnel are available to oversee collection, storage, and loading of recyclable materials when entering into or renewing a lease.
- Submit an annual report to the Board summarizing progress in reducing solid waste, to include at a minimum the following: (1) calculations of annual disposal reduction; (2) information on changes in waste generated or disposed of; (3) summary of progress in implementing the integrated waste management plan; (4) extent to which local agency programs or facilities for handling, diversion, and disposal of solid waste will be used; (5) summary of progress if a time extension was granted; (6) summary of progress toward an

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alternative requirement if one was granted; (7) other information relevant to compliance with section 42921.¹⁴

- Comply with regulations when adopted by the Board and follow specified criteria in applying for reductions or extensions to individual plans.
- Develop, implement and maintain an accounting system to enter and track source reduction, recycling and composting activities, the costs of those activities; and proceeds from the sale of any recycled materials, and other accounting systems which will allow making annual reports and determining savings, if any, from the source reduction, recycling and composting activities.

In responding to state agency comments, claimants state that DOF's comments are incompetent and should be stricken from the record because they do not comply with section 1183.02, subdivisions (c)(1) and (d) of the Commission's regulations. The first regulation requires comments to be submitted under penalty of perjury, with a declaration that they are true and complete to the best of the representative's personal knowledge or information and belief. The second regulation requires assertions or representations of fact be supported by documentary evidence submitted with the state agency's response, and authenticated by declarations under penalty of perjury. Claimants also state that the hearsay statements do not come to the level of the type of evidence people rely on in the conduct of serious affairs. Claimants reassert these comments in response to the draft staff analysis, requesting a recommendation on their objection and request to strike DOF's comments from the record.¹⁵

Claimants respond to other state agency contentions (of DOF, the Board and Chancellor's Office), comment on the draft staff analysis, and comment on the Board's comments as discussed in the analysis.

State Agency Positions

Department of Finance: DOF comments that community colleges are not required to develop or submit an integrated waste management plan, perform compliance reviews of the plan, be governed by the Board's model plan, designate a solid waste reduction or recycling coordinator, submit an annual report to the Board summarizing its progress, or comply with Board regulations, for the following reasons. First, these requirements are solely for state agencies, and as such do not apply to community colleges, but only to the Community Colleges Chancellor's Office. Moreover, because a model integrated waste management plan would govern should the community college district not submit or not have an approved plan, DOF argues that local campuses do not have to develop, adopt or submit their own plan. But if the Commission identifies this activity as state-mandated, DOF asserts that some of the activities pled by claimants are one-time activities.

¹⁴ References in this analysis will be to the Public Resources Code unless otherwise indicated.

¹⁵ DOF's comments are not supported by "documentary evidence ... authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so." (Cal. Code Regs., tit. 2, § 1183.02, subd. (c)(1).) DOF's comments, however, are not relied on by the Commission, which reaches its conclusions based on its independent analysis of the statutes and facts supported in the record.

DOF also states that the cost of any program would be minimized or eliminated because: (1) savings from source reduction or increased revenue from recycling or selling compost, which should be excluded from the community college's costs; (2) sections 12167 and 12167.1 of the Public Contract Code state that any revenue exceeding \$2,000 annually shall be available to state agencies to offset recycling program costs. DOF argues that these provisions do not apply to community colleges, which therefore should be able to keep all recycling program revenues. (3) The community colleges may institute fees to offset administrative costs and state reimbursement.

Regarding the source reduction, recycling and composting activities to divert 25 percent of solid waste by January 1, 2002, and 50 percent by January 1, 2004, DOF states that these appear to be state mandated because they apply to "large state facilities" including community college campuses. But DOF notes that the costs should be mitigated and perhaps eliminated due to the three reasons cited above. DOF makes the same observation regarding the activity of ensuring adequate areas and personnel for collection, storage and loading recyclable materials when entering into or renewing a lease. DOF states that colleges already enter into or renew leases, so any costs should be minimal.

Regarding the activities related to obtaining extensions of time, DOF argues that these do not constitute a state-mandated local program because the law allows, but does not require a community college to request time extensions, and because the section stipulates that the colleges should identify the means for funding the programs. As to the activities related to seeking alternatives to the 50-percent goal, DOF again argues that this is authorized but not required by the test claim legislation.

Finally, DOF argues that the activities of developing, implementing and maintaining an accounting system to enter and track source reduction, recycling and composting is not state mandated because an accounting system is already in place to record the financial affairs of a community college (Ed. Code, § 84030 and Cal. Code Regs., tit. 5, § 58303). However, should the Commission find a reimbursable activity, DOF argues that costs would be minimized or eliminated for the three reasons stated above.

DOF did not comment on the draft staff analysis.

California Integrated Waste Management Board: The Board argues that the test claim legislation does not contain a state-mandated reimbursable program because community colleges have fee authority, pursuant to Education Code section 70902, sufficient to pay for the new program or higher level of service. The Board observes that such a fee would be nominal, if necessary at all, given the ability of recycling programs to recover costs through sale of recyclable materials, disposal cost avoidance and reuse of materials.

The Board further argues that Government Code section 17556, subdivision (e) applies in that the test claim legislation provides for offsetting savings and additional revenue. The Board argues that section 42925 of the Public Resources Code, as added by the test claim legislation, shows intent by the Legislature that cost savings be redirected to the agency or college to fund implementation and administration costs. The Board also states that the Public Contract Code provisions pled by claimants probably do not apply to community colleges, but even if they do, pursuant to Public Resources Code section 42925, cost savings and revenue generation that result from the program are to be directed back to the community college for funding implementation

and administrative costs. According to the Board, avoiding disposal costs and reusing materials that would otherwise be disposed of are other examples of cost avoidance that would occur under the test claim legislation.

The Board issued new comments in February 2004 reiterating the alleged fee authority of community colleges.

California Community Colleges Chancellor's Office: The Chancellor's Office believes the subject statutes result in a new program for community colleges that result in reimbursable costs. The Chancellor's Office states that according to Board staff, all campuses in the community colleges system have filed the reports required by Public Resources Code sections 40148, 42920, et al. and are implementing Board executive orders. The Chancellor's Office believes there may be some offsetting revenues and cost savings attributable to the mandate that will vary among community college campuses and districts. However, it also believes that none of the exceptions to "costs mandated by the state" in Government Code section 17556 would apply, as additional revenues are unlikely to offset much of the costs of implementing the mandate.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution¹⁶ recognizes the state constitutional restrictions on the powers of local government to tax and spend.¹⁷ "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."¹⁸ A test claim statute or executive order may impose a reimbursable state mandated program if it orders or commands a local agency or school district to engage in an activity or task.¹⁹ In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.

¹⁶ Article XIII B, section 6 provides: "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 to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

¹⁷ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735.

¹⁸ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

¹⁹ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174. In *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal.4th at page 742, the court agreed that "activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds - even if the local entity is obligated to incur costs as a result of its discretionary decision to participate in a particular program or practice." The court left open the question of whether

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.²⁰ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must impose costs mandated by the state.²¹

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state mandated programs within the meaning of article XIII B, section 6.²² In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."²³

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?

non-legal compulsion could result in a reimbursable state mandate, such as in a case where failure to participate in a program results in severe penalties or "draconian" consequences. (*Id.*, at 754.)

²⁰ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

²¹ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

²² *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

²³ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of Sonoma v. Commission on State Mandates, supra*, 84 Cal.App.4th at page 1280.

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

The first issue is whether the test claim legislation applies to community colleges.

A. Do the test claim statutes apply to community colleges?

DOF argues that community colleges are not required to perform many of the test claim requirements that apply solely to "state agencies" because community colleges are not state agencies, and as such are not included in the requirements. The test claim legislation contains definitions of "large state facility," and "state agency." Section 40148 defines "large state facility" to include "campuses of the ... community colleges," so according to DOF, the only mandated activities are those imposing requirements on large state facilities. Section 40196's definition of "state agency" does not reference *campuses* of the community colleges. Even though the "state agency" definition references community colleges (plural), DOF believes the reference applies to the Chancellor's Office because it is a state agency, as opposed to individual community college campuses, which are local government entities.

Claimants respond that the plain meaning of the statutory definition includes community colleges, and agrees with the Chancellor's Office that the test claim legislation results in a new program for community college districts. As to DOF's assertion that the definition of "state agency" only applies to the Chancellor's Office, claimants state that if that had been the Legislature's intent, it could have said so.²⁴

The Commission disagrees with DOF and finds that the test claim legislation applies to community colleges. "If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs."²⁵

The definitions in the test claim legislation are as follows:

"State agency" means every state office, department, division, board, commission, or other agency of the state, including the California Community Colleges and the California State University. The Regents of the University of California are encouraged to implement this division (Pub. Resources Code, § 40196.3).

"Large state facility" means those campuses of the California State University and the California Community Colleges, prisons within the Department of Corrections, facilities of the State Department of Transportation, and the facilities of other state agencies; that the board determines, are primary campuses, prisons, or facilities." (Pub. Resources Code, § 40148).

This definition of "large state facility" states "campuses of the ... California Community Colleges, ... and facilities of other state agencies, that *the board determines*, are primary campuses... or facilities" (emphasis added).²⁶ The plain meaning of this statute indicates that whether something is a "large state facility" is based on a determination by the Board.²⁷

²⁴ Letter from claimants' representative to Paula Higashi, August 10, 2001.

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

²⁶ According to the *State Agency Model Integrated Waste Management Plan* (Feb. 2000), page 1: "The Board has determined that each of these large State facilities shall complete a separate

The plain meaning of the statutory definition of "state agency," on the other hand, specifies "every state office, department, division, board, commission, or other agency of the state, including the California Community Colleges..." No Board determination is necessary to determine a "state agency" as it is to determine a "large state facility." This explains why the term "campuses" is used in the definition of "large state facility," since it does not necessarily include all campuses. On the other hand, it is unnecessary to mention campuses in defining "state agency" since all campuses are included when the definition specifies the plural "California Community Colleges."

Assuming for the sake of argument there is ambiguity in the statute, we may look to extrinsic sources to interpret it, including the legislative history.²⁸ In this case, the legislative history states that the author attempted to enact a similar bill in 1997 (Assem. Bill No. 705), which was vetoed. The Assembly Natural Resources Committee analysis of Assembly Bill No. 705 indicated that the bill did not define "state agency," and suggested it should do so if the intent was to include community colleges among other entities, within its scope.²⁹ The July 8, 1997 version of Assembly Bill No. 705 was amended to define state agencies to include community colleges. The author included these definitions from Assembly Bill No. 705 (1997-1998 Reg. Sess.) into the test claim legislation.

There is a sub-issue as to whether the definition of "state agency" includes only each community college district, or each community college campus. The Board has interpreted this definition of "state agency" as follows:

Example: The California Department of Corrections (CDC) has 33 prisons and numerous field offices. A separate IWMP [integrated waste management plan] must be completed and submitted for each of the 33 prisons, as well as one for CDC's headquarters and offices, as described above under "State Agencies."³⁰

The Commission extends the Board's interpretation by analogy to community colleges so that each campus as well as each district would constitute a "state agency." Therefore, the Commission finds that "state agency," as used in the test claim statutes, includes the California community colleges, which means each community college district as well as each campus.³¹

integrated waste management plan, signed by the facility director. This IWMP must also be signed at the facility's State agency level by the chairman, commissioner, director, or president."

²⁷ *Ibid.*

²⁸ *Estate of Griswald, supra*, 25 Cal.4th 904, 911.

²⁹ Assembly Committee on Natural Resources, Analysis of Assembly Bill No. 705 (1997-1998 Reg. Sess.) as amended April 2, 1997, page 4.

³⁰ California Integrated Waste Management Board, *State Agency Model Integrated Waste Management Plan* (Feb. 2000), page 1.

³¹ A community college district, however, would be the eligible claimant under the parameters and guidelines.

The test claim statute defines a state agency to include community colleges. Both statutory definitions at issue are in article 2 of division 30 of the Public Resources Code. Public Resources Code section 40100 states "Unless the context otherwise requires, the definitions in this article govern the construction of this division." Therefore, a "state agency" includes community colleges only for purposes of division 30 of the Public Resources Code.

However, a community college district is a school district for purposes of mandates law. According to Government Code section 17510, "the definitions contained in this chapter govern the construction of this part," or part 7, of the Government Code. Section 17519 defines "school district" to include a community college district. Therefore, a community college is a state agency for purposes of division 30 of the Public Resources Code, and community college costs would be eligible for reimbursement when claimed by a community college district.

B. Does the test claim legislation impose state-mandated duties?

Some of the activities in the test claim legislation may not impose state mandated duties subject to article XIII B, section 6, as analyzed below.

Ensure oversight (Pub. Resources Code, § 42924): Subdivision (a) of this section requires the Board to develop and adopt requirements relating to adequate areas for collecting, storing, and loading recyclable materials in state buildings. Subdivision (c) requires the Department of General Services to allocate space for recyclables in the design and construction of state agency offices and facilities. Because these provisions impose no duties on a community college, the Commission finds that subdivisions (a) and (c) of section 42924 are not subject to article XIII B, section 6.

Subdivision (b) of this section states:

(b) Each state agency or large state facility, when entering into a new lease, or renewing an existing lease, shall ensure that adequate areas are provided for, and adequate personnel are available to oversee, the collection, storage, and loading of recyclable materials in compliance with the requirements established pursuant to subdivision (a).

DOF commented that colleges already enter into or renew leases, so any costs should be minimal.

Claimants respond to DOF that the test claim statute goes beyond mere leasing or renewal of existing leases in that it requires adequate areas for waste management and adequate personnel be available to oversee, collect, store and load recyclable materials. Claimants note that the duty to provide adequate personnel is ongoing.

This section does not require a community college to enter into or renew a lease. Thus, the activity of ensuring "adequate areas are provided for, and adequate personnel are available to oversee, the collection, storage, and loading of recyclable materials" is also not reimbursable because it is only required "when entering into a new lease, or renewing an existing lease." Performing these activities would be at the college's discretion and so would not result in state mandated costs.³²

³² *Department of Finance v. Commission on State Mandates, supra*, 30 Cal. 4th 727, 742.

Claimants assert that "legislative history in California shows a continuous uninterrupted pattern of ... assisting school districts and community college districts in the financing of new facilities... [demonstrating] that these districts cannot do it alone. Leases are part of that history." Claimants cite Education Code sections 81330-81331 regarding community college authority to enter into leases, including lease purchase agreements, concluding that they are not an option, but "are necessary if those school facilities are to be built." Claimants also argue that the *Department of Finance* case³³ is limited to its facts, and that DOF's interpretation of it "would preclude almost all educational activity from reimbursement, since almost all activities are a 'down stream' result of an initial discretionary decision." Claimants do not argue that entering into a new lease, or renewing an existing lease are mandated activities, but once done, claimants contend that subdivision (b) requires districts to ensure adequate areas and personnel to oversee compliance with the test claim legislation.

The Commission disagrees. The statutes claimants cite are permissive and do not require districts to enter into leases. Nor do they require ensuring "adequate areas are provided for, and adequate personnel are available to oversee, the collection, storage, and loading of recyclable materials" unless the district enters into or renews a lease. The interpretation of the *Department of Finance* case regarding the non-reimbursability of discretionary decisions is supported by a recent court decision that found "in order for a state mandate to be found ... there must be compulsion to expend revenue."³⁴ Because here there is no compulsion to enter into leases, there is no compulsion to spend revenue. Therefore, the Commission finds that pursuant to section 42924, subdivision (b), ensuring that adequate areas and personnel to oversee collection, storage, and loading of recyclable materials when entering into and renewing a lease is not a mandated activity, and thus not subject to article XIII B, section 6.

Board regulations (Pub. Resources Code, § 42928): This section authorizes the Board to adopt regulations that establish criteria for granting, reviewing and considering reductions or extensions pursuant to sections 42922 or 42923. Claimants did not plead any regulations. Thus, the Commission finds section 42928 is not subject to article XIII B, section 6 because it does not impose requirements on a community college district.

Board manuals: As part of the test claim, claimants plead the following manuals as executive orders of the Board: *State Agency Model Integrated Waste Management Plan* (February 2000), *Conducting a Diversion Study – A Guide for California Jurisdictions* (September 1999); *Solid Waste Generation, Disposal, and Diversion Measurement Guide* (March 2000); and *Waste Reduction Policies and Procedures for State Agencies* (August 1999).

Government Code section 17516 defines executive order, for purposes of mandates law,³⁵ as "any order, plan, requirement, rule, or regulation issued by any of the following: (a) The

³³ *Ibid.*

³⁴ *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal. App. 4th 1176, 1189 citing *City of Merced v. State of California* (1984) 153 Cal. App.3d 777, 780, 783, and *Department of Finance v. Commission on State Mandates, supra*, 30 Cal. 4th 727.

³⁵ Government Code section 17510 states, "the definitions contained in this chapter govern the construction of this part," meaning part 7 of the Government Code.

Governor. (b) Any officer or official serving at the pleasure of the Governor. (c) Any agency, department, board, or commission of state government.”

The *State Agency Model Integrated Waste Management Plan* (February 2000) constitutes an executive order within the meaning of Government Code section 17516 because it is a “requirement, rule or regulation” issued by the Board, a state agency, and because it applies to community colleges. The model plan itself refers to Statutes 1999, chapter 764, and to “community colleges” in the definition of “Large State Facilities” in Public Resources Code section 40148. Although the stated intent of the model plan is to “assist State agencies in preparing their plans,” it also states that “[a]ll information called for in this document is required to be submitted to the Board.” Therefore, the Commission finds that the *State Agency Model Integrated Waste Management Plan* (February 2000) is an executive order within the meaning of Government Code section 17516, and is therefore subject to article XIII B, section 6.

However, the other three of these Board publications do not fall within this definition of executive order. For example, *Conducting a Diversion Study* (September 1999) is merely technical advice that contains no rules or requirements. It states: “This report was prepared by staff ... to provide information or technical assistance.” Therefore it does not qualify as an “executive order” for purposes of mandates law.

This is also true of the *Solid Waste Generation, Disposal, and Diversion Measurement Guide* (March 2000). It states: “This report was prepared ... to provide technical assistance to State agencies....” The *Measurement Guide* was prepared for the express purpose of assisting state agencies to comply with the test claim legislation, as indicated in the introduction. However, by its own terms, it is merely technical assistance and therefore does not qualify as an “executive order” for purposes of mandates law.

Claimants stated that community colleges are required to procure products with recycled content pursuant to the general policy statement issued by the Board in its executive order entitled *Waste Reduction Policies and Procedures for State Agencies*.

The Commission disagrees that *Waste Reduction Policies and Procedures for State Agencies* (August 1999) is subject to article XIII B, section 6 for the following reasons. First, it contains no requirements, but merely a list of activities that state agencies “should” do, so it is not an executive order under Government Code section 17516. Moreover, in the *State Agency Model Integrated Waste Management Plan*, it states “The Board’s publication entitled *Waste Reduction Policies and Procedures for State Agencies* provides *suggestions* for ... programs that can be implemented to reduce the waste stream” (p. 3 emphasis added). Second, *Waste Reduction Policies and Procedures for State Agencies* does not apply to community colleges. The statutes it references (Pub. Contract Code, § 12165, subd. (a); Pub. Resources Code, § 42560 – 42562; and Stats. 1989, ch. 1094) apply only to state agencies, not community colleges.³⁶ Third, the document itself does not refer to community colleges, nor does its own definition of “California State Agency” (on p. 14, appendix A).

In comments on the draft staff analysis, claimants rebut only the analysis of the manuals’ permissive language, but do not address the other reasons for finding the manuals are not

³⁶ The definition of “state agency” that includes community colleges only applies to Division 30 of the Public Resources Code. (Pub. Resources Code, §§ 40100 & 40196.3.)

executive orders. If community colleges were to comply with the test claim legislation while disregarding the manuals, nothing in the manuals or statutes precludes them from doing so.

Therefore, because they do not contain requirements, do not apply to community colleges, or both, the Commission finds that the following three publications are not "executive orders" as defined in Government Code section 17516 and therefore not subject to article XIII B, section 6: *Conducting a Diversion Study - A Guide for California Jurisdictions* (September 1999); *Solid Waste Generation, Disposal, and Diversion Measurement Guide* (March 2000); and *Waste Reduction Policies and Procedures for State Agencies* (August 1999).

C. Does the test claim legislation qualify as a program under article XIII B, section 6?

In order for the test claim legislation³⁷ to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program," 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.³⁸ Only one of these findings is necessary to trigger article XIII B, section 6.³⁹

The issue is whether the remaining test claim legislation⁴⁰ constitutes a program. These statutes involve the duty of community colleges to more effectively reduce or recycle their waste. This is a program that carries out governmental functions of sanitation, solid waste management, public health, and environmental protection. The Legislature has indicated "an urgent need for state and local agencies to enact and implement an aggressive new integrated waste management program."⁴¹ Although outside the traditional educational function of community colleges, these are governmental functions nonetheless.

Because of the statutory scheme in this test claim that applies to state agencies as well as community colleges, the question arises as to whether the test claim legislation must be unique to "local" government, as opposed to state government. In *County of Los Angeles v. State of*

³⁷ Hereafter, "test claim legislation" refers to the statutes and executive orders subject to article XIII B, section 6. It no longer refers to Public Resources Code sections 42924 and 42928, or the following three Board publications: *Conducting a Diversion Study - A Guide for California Jurisdictions* (September 1999); *Solid Waste Generation, Disposal, and Diversion Measurement Guide* (March 2000); and *Waste Reduction Policies and Procedures for State Agencies* (August 1999).

³⁸ *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

³⁹ *Carmel Valley Fire Protection Dist.* (1987) 190 Cal.App.3d 521, 537.

⁴⁰ The remaining statutes and executive orders subject to article XIII B, section 6, are: Public Resources Code sections 40148, 40196.3, 42920, 42921, 42922, 42923, 42925, 42926, 42927; Public Contract Code section 12167 and 12167.1; Statutes 1999, chapter 764; Statutes 1992, chapter 1116; *State Agency Model Integrated Waste Management Plan* (Feb. 2000). Subsequent reference to the test claim statutes or legislation is limited to these.

⁴¹ Public Resources Code section 40000, subdivision (d), which applies to Division 30.

*California*⁴² the court did not distinguish between local governmental functions and those at other levels of government. Rather the court stated "the intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out **functions peculiar to government**, not for expenses incurred by local agencies as an incidental impact of laws that apply generally..."⁴³ [Emphasis added.] Thus, the program at issue need not be unique to *local* government, rather it need only provide a governmental function or impose unique requirements on local governments that do not apply generally to all residents or entities of the state, as in the definition of "program" cited above.

Moreover, the test claim legislation imposes unique waste reduction and reporting duties on government, including community colleges, which do not apply generally to all residents and entities in the state. Therefore, the Commission finds that the remaining test claim statutes constitute a "program" within the meaning of article XIII B, section 6.

Issue 2: Does the test claim legislation mandate 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." 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.⁴⁴ As discussed above, a community college is a state agency for purposes of division 30 of the Public Resources Code.

INTEGRATED WASTE MANAGEMENT PLAN

Adopt and submit the plan (Pub. Resources Code, § 42920, subs. (a), (b)(1), (b)(2) & (d)): Subdivision (a) of Public Resources Code section 42920 requires the Board to develop a state agency model integrated waste management plan by February 15, 2000. Subdivision (d) requires the Board to provide technical assistance to state agencies in implementing the integrated waste management plan. The Commission finds that these subdivisions do not mandate a new program or higher level of service subject to article XIII B, section 6 because they do not require a local government activity.

Subdivision (b)(1) of section 42920 states, "[o]n or before July 1, 2000, each state agency shall develop and adopt, in consultation with the board, an integrated waste management plan, in accordance with the requirements of this chapter." Subdivision (b)(2) states, "[e]ach state agency shall submit an adopted integrated waste management plan to the board for review and approval on or before July 15, 2000." Read in isolation, these statutes appear to be mandates by using the word "shall."⁴⁵

⁴² *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

⁴³ *Ibid.*

⁴⁴ *Lucia Mar Unified School Dist. v. Honig, supra*, 44 Cal.3d 830, 835.

⁴⁵ Public Resources Code section 15: "Shall" is mandatory and "may" is permissive."

However, subdivision (b)(3) states:

If a state agency has not submitted an adopted integrated waste management plan or the model integrated waste management plan with revisions to the board by January 1, 2001, or if the board has disapproved the plan that was submitted, then the model integrated waste management plan, as revised by the board in consultation with the agency, shall take effect on that date, or on a later date as determined by the board, and shall have the same force and effect as if adopted by the state agency.

Because a model integrated waste management plan would automatically govern should the community college district neither submit nor have an approved plan, DOF argues that community college campuses do not have to develop, adopt or submit their own plan.

Claimants respond to DOF by arguing that the statutory language is unmistakably mandatory: "each state agency *shall* develop and adopt ... an integrated waste management plan"⁴⁶ and "each state agency *shall* submit an adopted integrated waste management plan."⁴⁷ Claimants assert that an alternative for noncompliance, i.e., the mandatory requirement to comply with a Board-developed plan, makes it nonetheless mandatory. Claimants argue that a choice of methods for a mandated activity (developing a plan versus using a model one) is not the same as a choice of whether or not to develop and adopt a plan. Thus, claimants contend the initial duty is mandated.

Claimants also respond to the draft staff analysis that denied reimbursement for a community college to adopt its own integrated waste management plan. Claimants maintain that the "fall-back provision of subdivision (b)(3) ... merely ... assures that all districts will comply with the mandate, either by developing and implementing its own plan or by implementing the Board's plan." Claimants assert that the draft's conclusion punishes districts with unique waste management problems, or those that may find the model plan is inappropriate or ineffective for their situation. "Because these districts are, by the facts applied to them, compelled to develop their own plans, the staff analysis would prohibit them from seeking reimbursement." Claimants further dispute the conclusion that since there is no penalty for not submitting a plan, or being governed by the model plan, that the statute is not compulsory.

The Commission disagrees. Since a community college can be automatically governed by the model integrated waste management plan adopted by the Board,⁴⁸ a community college that

⁴⁶ Public Resources Code section 42920, subdivision (b)(1).

⁴⁷ Public Resources Code section 42920, subdivision (b)(2).

⁴⁸ The test claim statute requires the Board to adopt the model plan by February 15, 2000 (Pub. Resources Code, § 42920, subd. (a)). The Board, at its September 11-12, 2001 meeting, disapproved of 12 community colleges' integrated waste management plans (Resolution 2001-345). See

<<http://www.ciwmb.ca.gov/Agendas/agenda.asp?RecID=280&Year=2001&Comm=BRD&Month=9>> [as of February 17, 2002]. At its September 17-18, 2002 meeting, the Board almost recommended adopting an integrated waste management plan for one community college (Resolution 2002-499) but it appears this item was pulled from the Board's agenda (see

chooses to develop its own plan is exercising its discretion in doing so. A local decision that is discretionary does not result in a finding of state-mandated costs.⁴⁹ Although a district may incur extra costs in developing a plan to deal with its unique waste management problems, those are not "costs mandated by the state" because the district's problems are not increased costs "as a result of any statute ... or any executive order." (Gov. Code, § 17514).

Neither Public Resources Code section 42920, subdivision (b), nor any other provision in the test claim legislation, contain a legal compulsion or penalty⁵⁰ for nonparticipation, i.e., not submitting a plan, other than being governed by the Board's model plan developed pursuant to subdivision (a). Therefore, because it does not constitute a state mandate, the Commission finds that subdivisions (b)(1) and (b)(2) of section 42920 are not mandated new programs or higher levels of service subject to article XIII B, section 6. This includes the activities of developing, adopting, and submitting to the Board an integrated waste management plan.

Comply with the model plan (Pub. Resources Code, § 42920, subd. (b)(3); and *State Agency Model Integrated Waste Management Plan*, February 2000): Section 42920, subdivision (b)(3) states:

If a state agency has not submitted an adopted integrated waste management plan or the model integrated waste management plan with revisions to the board by January 1, 2001, or if the board has disapproved the plan that was submitted, then the model integrated waste management plan, as revised by the board in consultation with the agency, shall take effect on that date, or on a later date as determined by the board, and shall have the same force and effect as if adopted by the state agency.

The *State Agency Model Integrated Waste Management Plan* (model plan) promulgated by the Board in February 2000 contains requirements for gathering and submitting information to the Board. It is intended to assist community colleges in meeting their diversion requirements.

Prior law did not require community colleges to comply with a model integrated waste management plan. Prior law merely required cities⁵¹ and counties⁵² to submit integrated waste management plans to the Board.

[http://www.ciwmb.ca.gov/Agendas/agenda.asp?RecID=418 &Year=2002 &Comm=BRD&Month=9](http://www.ciwmb.ca.gov/Agendas/agenda.asp?RecID=418&Year=2002&Comm=BRD&Month=9) > [as of February 17, 2002].

⁴⁹ *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal. 4th 727, 742.

⁵⁰ In *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal. 4th 727, 751, the court found it "unnecessary to resolve whether [the] reasoning in *City of Sacramento* ... 50 Cal. 3d 51 applies with regard to the proper interpretation of the term "state mandate" in section 6 of article XIII B" ... because claimants did not face "certain and severe...penalties" such as "double...taxation" and other "draconian" consequences...and hence have not been "mandated," under article XIII [B], section 6 to incur increased costs." Like the court, staff finds nothing in the record of this case regarding penalties or draconian consequences for failure to adopt a plan.

⁵¹ Public Resources Code section 41000 et seq.

⁵² Public Resources Code section 41300 et seq.

Thus, the Commission finds that it is a new program or higher level of service for community colleges to comply with the Board's model plan. This includes completing and submitting to the Board the following: (1) state agency or large state facility information form (pp. 4-5 of the model plan); (2) state agency list of facilities (p. 6); (3) state agency waste reduction and recycling program worksheet, including the sections on program activities, promotional programs, and procurement activities (pp. 8-12); and (4) state agency integrated waste management plan questions (pp. 13-14).

SOLID WASTE COORDINATOR

Designate a solid waste reduction and recycling coordinator (Pub. Resources Code, § 42920, subd. (c)): Subdivision (c) of section 42920 requires designation of at least one solid waste reduction and recycling coordinator to "perform the duties imposed pursuant to this chapter [Chapter 18.5, consisting of Pub. Resources Code, §§ 42920 – 42928] using existing resources," to implement the integrated waste management plan, and to serve as a liaison to other state agencies and coordinators. This is the only statutory description of the coordinator's duties.

Preexisting law authorizes each state agency to appoint a recycling coordinator to assist in implementing section 12159 of the Public Contract Code,⁵³ concerning purchasing recycled materials. However, there is nothing in the record to indicate that community colleges are within the purview of section 12159. Moreover, the test claim statute states: "Notwithstanding subdivision (b) of Section 12159 of the Public Contract Code, at least one solid waste reduction and recycling coordinator shall be designated by each state agency."⁵⁴

Prior law did not require designation of a solid waste reduction and recycling coordinator in community colleges.

Therefore, as a new requirement, the Commission finds that section 42920, subdivision (c) constitutes a new program or higher level of service because it requires designating one solid waste reduction and recycling coordinator per community college to perform new duties imposed by chapter 18.5 (Pub. Resources Code, §§ 42920 – 42928). These duties include: (1) implementing the community college's integrated waste management plan, and (2) acting as a liaison to other state agencies (as defined by section 40196.3) and coordinators. The requirement for these activities to be done "using existing resources" will be discussed under issue 3 below.

SOLID WASTE DIVERSION

Divert solid waste (Pub. Resources Code, §§ 42921 & 42922, subd. (i)): Public Resources Code section 42921 requires each community college to divert from landfill disposal or transformation facilities at least 25 percent of all solid waste it generates by January 1, 2002, through source reduction, recycling, and composting activities. Subdivision (b) requires the same entities to achieve at least a 50-percent diversion by January 1, 2004. (Subsequent sections authorize approval of time extensions or alternatives to the 50-percent requirement.) Public Resources Code section 42922, subdivision (i) requires a community college "that is granted an alternative requirement to this section shall continue to implement source reduction, recycling,

⁵³ Public Contract Code section 12159, subdivision (b).

⁵⁴ Public Resources Code section 42920, subdivision (c).

and composting programs, and shall report the status of those programs in the report required pursuant to Section 42926.”

Prior law did not specify a solid waste diversion requirement for community colleges.

Therefore, because it is new, the Commission finds that diverting at least 25 percent of all solid waste generated by a community college from landfill disposal or transformation facilities by January 1, 2002, through source reduction, recycling, and composting activities, is a new program or higher level of service. The Commission also finds that diverting at least 50 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2004, through source reduction, recycling, and composting, is a new program or higher level of service for community colleges.

Seek alternatives (Pub. Resources Code, § 42927): Subdivision (a) of this statute states:

If a state agency is unable to comply with the requirements of this chapter, the agency *shall* notify the board in writing, detailing the reasons for its inability to comply and *shall* request an alternative pursuant to Section 42922 or an extension pursuant to Section 42923. [Emphasis added.]

This section provides a sunset date of January 1, 2006. Prior law did not require a community college to notify the Board or to detail reasons for inability to comply with chapter 18.5. Nor did prior law require requesting alternative goals or time extensions.

DOF argues that the time extension activities do not constitute a state-mandated local program because the law allows, but does not require, community college campuses to request time extensions, and because the section stipulates that the colleges should identify the means for funding the programs. Regarding the activities related to alternatives to the 50-percent goal, DOF again argues that this activity is authorized but not required by the test claim legislation.

Claimants argue that activities related to time extensions to comply with the 25 percent reduction are state mandates by asserting that both the requirement to divert and the performance date are mandatory. If for an unforeseen reason this time limit cannot be achieved, claimants state it would become mandatory to obtain an extension so as not to violate the law. Claimants make the same arguments regarding alternatives to the 50 percent diversion goal. Claimants state that requiring identification of the means of financing the program as a condition of obtaining a time extension does not make the costs of the program non-reimbursable. Rather, it is assurance to the Board that the diversion program can be complied with if the extension is granted.

Taken by themselves, section 42922 regarding alternative diversion goals, and section 42923 regarding time extensions, do not appear to be mandates because they authorize but do not require the community colleges to request alternative goals or time extensions from the Board. Section 42927, however, requires the community college to notify the Board in writing, detailing the reasons for its inability to comply and require the community college to request an alternative pursuant to section 42922 or an extension pursuant to section 42923.

According to section 42927, the requirement to notify the Board and request an alternative goal or time extension is contingent on the community college's inability "to comply with the requirements of this chapter." This inability could be outside the control of the community college, a fact recognized in the statute itself. For example, section 42923, subdivision (c)(1), requires the Board to consider, in deciding whether to grant a time extension to the community

college, the following factors: "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 agency." Most of these factors are outside the college's control. Similarly, section 42922, subdivision (b) requires the Board to consider the following when determining whether to grant an alternative (other than 50-percent) diversion requirement: "waste disposal patterns and the types of waste disposed by the state agency or large state facility ... [which] may provide the board with any additional information [it] ... determines to be necessary to demonstrate to the board the need for the alternative requirement."

Because the inability to comply with the test claim statute's waste diversion goals may be outside the community college's control, the Commission finds that section 42927 is not within the discretion of the community college district. This section also uses the word "shall," which is mandatory,⁵⁵ and refers to chapter 18.5 as containing "requirements."

Section 42927 requires community colleges unable to comply with the deadlines or 50 percent diversion requirements in the test claim legislation to request a time extension or alternative diversion goals. Thus, the authorized activities of section 42922 and 42923 are incorporated into and made mandatory by section 42927, subdivision (a). Inasmuch as these requests are required if the community college is unable to comply with the goals or timelines in the test claim legislation, the Commission finds that section 42927, (and portions of 42922 and 42923 to be discussed below) is a new program or higher level of service.

Seek an alternative to the 50-percent requirement (Pub. Resources Code, § 42922, subs. (a) & (b)): Section 42922 authorizes seeking an alternative diversion requirement:

(a) On and after January 1, 2002, upon the request of a state agency or a large state facility, the board may establish a source reduction, recycling, and composting requirement that would be an alternative to the 50-percent requirement imposed pursuant to subdivision (b) of Section 42921, if the board holds a public hearing and makes ... findings based upon substantial evidence in the record:"

Before approving the alternative goal, the Board must hold a public hearing and make the following findings based on substantial evidence in the record: (1) The community college has made a good faith effort to effectively implement the source reduction, recycling, and composting measures described in its integrated waste management plan, and has demonstrated progress toward meeting the alternative requirement as described in its annual reports to the Board. (2) The community college has been unable to meet the 50-percent diversion requirement despite implementing the measures in its plan. (3) The alternative source reduction, recycling, and composting requirement represents the greatest diversion amount that the community college may reasonably and feasibly achieve.

Subdivision (b) of section 42922 states what the Board must consider in granting to a state agency an alternative to the 50-percent diversion requirement, such as "circumstances that support the request for an alternative requirement, such as waste disposal patterns and the types of waste disposed" by the community college. As explained above, although this subdivision

⁵⁵ Public Resources Code section 15.

reads as a permissive action "upon request," it is required pursuant to section 42927 if the community college is unable to comply with the 50-percent diversion requirement.

Subdivision (b) also authorizes the community college to provide additional information it deems necessary to the Board to demonstrate the need for the alternative requirement. Because this "additional information" is discretionary on the part of the community college, the Commission finds that this provision is not state mandated.

Prior law did not authorize or require a community college to request an alternative waste reduction requirement.

Therefore, because it is new, the Commission finds that if a community college is unable to comply with the 50-percent diversion requirement, it is a new program or higher level of service for it to (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; and (c) the alternative source reduction, recycling, and composting requirement represents the greatest diversion amount that the community college may reasonably and feasibly achieve.

The Commission also finds that subdivision (b) of section 42922 is a new program or higher level of service for a community college to 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 first (Pub. Resources Code, § 42922, subd. (c)): Subdivision (c) of section 42922 states that if a community college (i.e., state agency or large state facility)

...that requests an alternative source reduction, recycling, and composting requirement has not previously requested an extension pursuant to section 42923 [a time extension], the state agency or large state facility shall provide information to the board that explains why it has not requested an extension.

The Commission finds that providing this explanation to the Board is not a mandated new program or higher level of service because it is a result of the community college's discretion in first requesting the alternative to the 50-percent requirement, rather than first requesting the time extension pursuant to section 42923. The local agency's decision is discretionary, and does not result in finding state mandated costs.⁵⁶

Seek subsequent alternative requirements (Pub. Resources Code, § 42922 subds. (d) (e) (f) (g) (h) & (j)): Subdivision (d) of section 42922 authorizes a community college to seek subsequent alternative requirements:

(d) A state agency or a large state facility that has previously been granted an alternative source reduction, recycling, and composting requirement may request

⁵⁶ *Department of Finance v. Commission on State Mandates*, supra, 30 Cal. 4th 727, 742.

another alternative source reduction, recycling, and composting requirement. A state agency or a large state facility that requests another alternative requirement shall provide information to the board that demonstrates that the circumstances that supported the previous alternative source reduction, recycling, and composting requirement continue to exist, or shall provide information to the board that describes changes in those previous circumstances that support another alternative source reduction, recycling, and composting requirement.

The remainder of subdivision (d), and subdivisions (e), (f), (g), and (h) address the subsequent alternative requirement and impose conditions if the subsequent requirement is approved. Subdivision (j) states the section will sunset on January 1, 2006.

The Commission finds that seeking a subsequent alternative requirement (Pub. Resources Code, § 42922, subs. (d) (e) (f) (g) (h) & (j)) is not a mandated new program or higher level of service subject to article XIII B, section 6.

Section 42927, subdivision (a) states that requesting only one alternative requirement is a new requirement. It states that the community college unable to comply with the chapter 18.5 requirements "shall request *an* alternative pursuant to Section 42922 or *an* extension pursuant to Section 42923." [Emphasis added.]

Because this provision uses the singular article "an," and singular nouns "alternative" and "extension," it requires seeking only one alternative requirement for community colleges unable to comply with the requirements.

Claimants disagree. Claimants state that sections 42922, 42921 and 42923 make it clear that the "legislature foresaw the need to make ... adjustments to fit the needs of each new program and changing times. The intent ... was to provide flexibility to encourage districts to request extensions of time or alternatives to achieving the desired goal of reducing solid waste..." Claimants interpret section 42927 to mean, "when a state agency is unable to comply *either* with the 25% requirement of Section 42923 *or* the 50% requirement of Section 42924 (i.e., "...unable to comply with the requirements of this chapter"), the agency shall request *either* an alternative *or* an extension. [Emphasis in original.] This "either" – "or" interpretation is more in consonance with the provisions for multiple requests in both section 42921 and in section 42923." Claimants state that the Legislature did not intend for districts to be able only to request either a time extension or an alternative requirement.

The Commission agrees with the claimants' interpretation regarding legislative intent. However, a reimbursable state mandate does not arise merely because a local entity finds itself bearing an "additional cost" imposed by state law.⁵⁷ There must be a compulsion to expend revenue.⁵⁸ Section 42922 only requires a request for an alternative *or* a time extension for districts unable to comply with the requirements of chapter 18.5. (Pub. Resources Code, §§ 42920-42928). There is no compulsion to request both. Therefore, the Commission finds that section 42922 requires

⁵⁷ *County of Los Angeles v. State of California*, *supra*, 43 Cal. 3d 46, 55-57.

⁵⁸ *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal. App. 4th 1176, 1189 citing *City of Merced v. State of California* (1984) 153 Cal. App.3d 777, 780, 783, and *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal. 4th 727.

seeking only one alternative requirement for community colleges unable to comply with the requirements. Seeking a subsequent alternative requirement is at the discretion of the community college, which does not result in finding state mandated costs.⁵⁹

Seek a time extension (Pub. Resources Code, § 42923): Section 42923, subdivision (a), authorizes the Board to grant one or more single or multiyear time extensions from the January 1, 2002 requirement to divert at least 25 percent of generated solid waste (the requirement in section 42921, subdivision (a)) if specified conditions are met.

As explained above, although section 42923 is not a requirement in itself, it becomes one via section 42927, subdivision (a), which requires a community college to request a time extension if it is unable to comply with the statutory time or 50-percent diversion requirements.

Subdivision (a)(4) requires the Board to adopt written findings, based on substantial evidence in the record, that the community college is making a good faith effort to implement the source reduction, recycling, and composting programs identified in its integrated waste management plan; and the community college submits a plan of correction, as discussed below.

Subdivision (c) (1) requires the Board, when granting an extension, to consider information provided by the community college 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.

Subdivision (c)(2) authorizes the community college to provide the Board with any additional information it deems necessary to demonstrate to the Board the need for an extension. Because this additional information is discretionary, the Commission finds it is not state mandated.

Subdivisions (b) and (d) impose requirements on the Board. Subdivision (e) states that the section sunsets on January 1, 2006. The Commission finds that subdivisions (b), (d) and (e) do not impose a new program or higher level of service on community colleges.

Prior law did not require a community college to seek an extension of a deadline if it was unable to comply with waste diversion requirements.

Therefore, because it is new, the Commission finds that if a community college is unable to comply with the January 1, 2002 deadline to divert 25 percent of its solid waste, it is a new program or higher level of service to: (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; (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.

One of the conditions a community college must meet in order to be granted a time extension is in subdivision (a)(4)(B) of section 42923, which reads:

⁵⁹ *Ibid.*

(B) The state agency or the large state facility submits a plan of correction that demonstrates that the state agency or the large state facility will meet the requirements of Section 42921 [the 25 and 50 percent diversion requirements] before the time extension expires, includes the source reduction, recycling, or composting steps the state agency or the large state facility will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, 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.

This plan is a prerequisite to obtaining a time extension for community colleges unable to comply with the statutory requirements, and the time extension is a new program or higher level of service. Therefore, the Commission finds that developing, adopting and submitting to the Board this plan of correction, with the contents specified above, is also a new program or higher level of service for community colleges unable to comply with the statutory requirements.

Section 42927: A close reading of section 42927, subdivision (a), reveals that community colleges unable to comply with the statutes must request an alternative to the 50-percent requirement or request a time extension. Therefore, the Commission finds that it is a new program or higher level of service for a community college to either comply with the 50-percent diversion requirement, or request an alternative requirement, or request a time-extension, with all the details included in the request as specified above. Because the statute requires only one request for a community college unable to comply, the Commission finds that requesting both a time extension and an alternative goal would be discretionary.

REPORTS TO THE BOARD

Report to the Board (Pub. Resources Code, §§ 42926, subd. (a) & 42922, subd. (i)): Section 42926, subdivision (a), requires community colleges to:

... submit a report to the board summarizing its progress in reducing solid waste as required by Section 42921. The annual report shall be due on or before April 1, 2002, and on or before April 1 in each subsequent year. The information in this report shall encompass the previous calendar year.

Subdivision (b) specifies the report's minimum content. Subdivision (c) requires the Board to use the annual report, and any other information, in determining whether the agency's integrated waste management plan needs to be revised. This section does not contain a sunset provision, as do the other sections. Because subdivision (c) does not impose a requirement on a community college, the Commission finds it is not subject to article XIII B, section 6.

Prior law did not require community colleges to file an annual report summarizing their progress in reducing solid waste.

Therefore, because it is a new requirement, the Commission finds that section 42926, subdivisions (a) and (b), is a new program or higher level of service for a community college to submit annually, 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, the report 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, the report 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.

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.

Submit recycled material reports (Pub. Contract Code, § 12167.1): This section requires that "[I]nformation 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."

DOF and the Board dispute that this provision applies to community colleges. The Commission finds that it does apply to community colleges because Public Resources Code section 42926, discussed above, requires the annual reports, "[i]n addition to the information provided... pursuant to Section 12167.1 of the Public Contract Code..." This reference to the Public Contract Code indicates legislative intent that the annual reports required by both section 42926 of the Public Resources Code and section 12167.1 of the Public Contract Code be complied with and submitted to the Board by "state agencies," including community colleges.

Prior law did not require community colleges to annually report to the Board on quantities of recyclable materials collected for recycling. Therefore, the Commission finds that it is a new program or higher level of service for community colleges to annually report to the Board on quantities of recyclable materials collected for recycling.

In summary, the Commission finds that the following activities⁶⁰ are new programs or higher levels of service on community colleges within the meaning of article XIII B, section 6.

⁶⁰ Claimants also seeks reimbursement for developing, implementing and maintaining an accounting system to enter and track source reduction, recycling and composting activities, and the costs and proceeds from selling recyclables, and other accounting systems that will allow making annual reports and determining savings, if any, from source reduction, recycling and composting activities. Claimants contend that the reporting requirements in the test claim legislation, and the justifications required to obtain alternative goals impose substantial

- **Comply with the model integrated waste management plan (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan (February 2000)):** A community college must comply with the Board's model integrated waste management plan, which includes the activity of 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 solid waste generated by a community college 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 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,

reporting requirements not contemplated by the district's current accounting systems. However, these activities are not included in the test claim legislation and would therefore be more appropriately analyzed in the parameters and guidelines phase.

such as waste disposal patterns and the types of waste disposed by the community college.

- **Seek a time extension (Pub. Resources Code, §§ 42927 & 42923 subs. (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.

Issue 3: Does the test claim legislation 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, two criteria must apply. First, the activities must impose increased costs mandated by the state.⁶¹ Second, 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.

In the test claim, the claimants stated that they would incur costs in excess of \$1000 per annum,⁶² which is the standard under Government Code section 17564, subdivision (a).

In this test claim, section 42920, subdivision (c)'s use of "existing resources" language raises the issue of "costs mandated by the state" as defined in Government Code section 17514. Moreover, DOF and the Board raise two Government Code section 17556 issues that could also preclude a finding of "costs mandated by the state." They argue that the claimants have offsetting revenues resulting from the program, as well as fee authority to pay for the program.

Existing resources: Subdivision (c) of section 42920 requires designation of at least one solid waste reduction and recycling coordinator to "perform the duties imposed pursuant to this chapter using existing resources," (emphasis added) to implement the integrated waste management plan, and to serve as a liaison to other state agencies and coordinators. Given this statutory preference for using "existing resources," the issue is whether the activities of the solid waste reduction and recycling coordinator result in increased costs mandated by the state as defined by Government Code section 17514.

Article XIII B, section 6 of the California Constitution requires the state to provide a subvention of funds to reimburse local governments whenever the Legislature or a state agency mandates a new program or higher level of service that results in increased costs for the local governments. Government Code section 17514 was enacted to implement this constitutional provision. The principle of reimbursement was "enshrined in the Constitution to provide local entities with the

⁶¹ *Department of Finance v. Commission on State Mandates*, supra, 30 Cal. 4th 727, 740; Government Code section 17514.

⁶² Declaration of Phyllis Ayers, Santa Monica Community College District and declaration of Tom Finn, Lake Tahoe Community College District.

assurance that state mandates would not place additional burdens on their increasingly limited revenue resources."⁶³

Here, the Legislature attempts to limit claimants' reimbursement by inserting language in section 42920 requiring the community college's solid waste coordinator to perform the duties within existing resources. However the duties of the position, such as implementing the integrated waste management plan and serving as liaison to other state agencies and coordinators, are new activities. There is nothing in the record to suggest that the Legislature repealed other programs or appropriated money for these new activities, other than the Public Contract Code provisions discussed below. Therefore, based on the evidence in the record, the Commission finds that the solid waste reduction coordinator's new activities impose costs mandated by the state on community colleges within the meaning of article XIII B, section 6 and Government Code section 17514.

Offsetting revenues (Pub. Resources Code, § 42925 & Pub. Contract Code, §§ 12167 & 12167.1): Claimants pled Public Resources Code section 42925, of which subdivision (a) states:

(a) Any cost savings realized as a result of the state agency integrated waste management plan shall, to the extent feasible, be redirected to the agency's integrated waste management plan to fund plan implementation and administration costs, in accordance with Section 12167 and 12167.1 of the Public Contract Code. [Emphasis added.]

This section requires cost savings be spent on the community college's "plan implementation and administrative costs," meaning the source reduction, recycling, and composting activities in the plan, in addition to administrative costs, which could include the solid waste reduction and recycling coordinator discussed above.

Although these provisions raise the issue of cost savings in the test claim legislation, they do not preclude a reimbursable mandate. According to Government Code section 17556, subdivision (e), the Commission shall not find costs mandated by the state if:

(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

⁶³ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal. App. 4th 1264, 1282. Two cases have held legislative declarations similar to that in section 42920, subdivision (c) unenforceable. In *Carmel Valley Fire Protection District v. State of California*, *supra*, 190 Cal.App.3d 521, the court held that "Legislative disclaimers, findings and budget control language are no defense to reimbursement." The Carmel Valley court called such language "self serving" and "transparent attempts to do indirectly that which cannot lawfully be done directly." (*Id.* at p. 541). Similarly, in *Long Beach Unified School District v. State of California* (*supra*, 225 Cal.App.3d 155) 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." (*Id.* at p. 184).

mandate in an amount sufficient to fund the cost of the state mandate. [Emphasis added.]

Public Contract Code sections 12167 and 12167.1 (Stats. 1992, ch. 1116) require revenue received from a recycling plan to be deposited in the Integrated Waste Management Account in the Board. This recycling plan does not apply to community colleges. Rather, the Public Contract Code Provisions only apply to the extent that funds are to be "redirected in accordance" with them. After July 1, 1994, the test claim legislation authorizes the Board to spend the revenue upon appropriation⁶⁴ by the Legislature to offset recycling program costs. Annual revenue under \$2,000 is continuously appropriated⁶⁵ for expenditure by state agencies and institutions, whereas annual revenue over \$2,000 is available for expenditures upon appropriation by the Legislature.

DOF asserts that sections 12167 and 12167.1 of the Public Contract Code state that any revenue exceeding \$2,000 annually shall be available to state agencies to offset recycling program costs. DOF argues that these provisions do not apply to community colleges, which therefore should be able to keep all recycling program revenues.

The Board argues that section 42925 shows intent by the Legislature that cost savings be redirected to the agency or college to fund implementation and administration costs. The Board also states that the Public Contract Code provisions pled by claimants probably do not apply to community colleges, but even if they do, pursuant to Public Resources Code section 42925, cost savings and revenue generation that result from the program are to be directed back to the community college for funding implementation and administrative costs.

Claimants respond to DOF and the Board, stating that potential revenues do not preclude the existence of a reimbursable mandate. Claimants, referring to Government Code section 17556, subdivision (e), assert that as a matter of law, the test claim statutes do not include "offsetting savings" which result in no net costs. Claimants admit that the test claim statutes include "additional revenue that specifically was intended to fund the costs of the mandate"⁶⁶ in the form of revenue from selling recyclable materials, but argue there is no competent evidence before the Commission as to the amount of the expected revenue, except that revenue is limited to \$2,000 by the test claim legislation unless more revenue is appropriated by the Legislature. Claimants

⁶⁴ An appropriation is "an authorization from a specific fund to a specific agency or program to make expenditures/incur obligations for a specified purpose and period of time.

...Appropriations are made by the Legislature in the annual budget Act and in other legislation." (Governor's 2003-04 Budget, Glossary of Budget Terms, Appendix p. 2)

⁶⁵ A continuous appropriation is "an amount, specific or estimated, available each year under a permanent constitutional or statutory expenditure authorization that exists from year to year without further legislative action. The amount available may be a specific, recurring sum each year; all or a specified portion of the proceeds of specified revenues that have been dedicated permanently to a certain purpose; or whatever amount is required for the purpose as determined by formula—such as school apportionments." (Governor's 2003-04 Budget, Glossary of Budget Terms, Appendix p. 3)

⁶⁶ Government Code section 17556, subdivision (e).

state that the mandated duties are certain, but the costs of those duties and amount of revenues are unknown. Claimants further state that the costs of implementation will vary among districts and campuses, so it cannot be determined whether the revenue is sufficient. According to claimants, any revenues would be considered offsets to reimbursement, but would not preclude the existence of a mandate.

Further, claimants state that Public Resources Code section 42925 does not refer to savings of the state agency, but to costs savings realized as a result of the state agency's plan, including savings of community college campuses realized from the plan submitted by their respective districts. The savings are to be redirected to the agency's integrated waste management plan to fund plan implementation and costs in accordance with sections 12167 and 12167.1 of the Public Contract Code. Section 12167, claimants argue, refers to revenues (not cost savings) which must be deposited in an account controlled by the Board and, after July 1, 1994, may be spent upon appropriation by the Legislature to offset recycling program costs (not program costs). Section 12167.1, claimants argue, is a limited exception to section 12167, which continuously appropriates revenues not exceeding \$2,000 for expenditure by state agencies to offset recycling program costs. Revenues over \$2,000 are still subject to appropriation by the Legislature. Claimants restate the portion of the test claim that recognized the revenue sources and their limitations, noting that the Chancellor's Office's comments stated that the offsetting revenue was "unlikely to offset much of the costs."

The Commission finds that section 42925 and the Public Contract Code provisions do not preclude a finding of costs mandated by the state. Section 42925 states that redirection of cost savings shall be "in accordance with Sections 12167 and 12167.1 of the Public Contract Code." The plain language of section 42925 incorporates Public Contract Code sections 12167 and 12167.1, making them applicable to community colleges to the extent the statutes guide the "redirection" of funds.⁶⁷

Pursuant to section 12167, revenue is to be deposited into the Integrated Waste Management Account in the Integrated Waste Management Fund and may be spent by the Board, only on appropriation by the Legislature, to offset recycling program costs. Pursuant 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.

As mentioned above, according to Government Code section 17556, subdivision (e), the Commission shall not find costs mandated by the state if:

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.]

⁶⁷ So for example, the recycling plan mentioned in section 12167 does not apply to community colleges because it does not impact the redirection of funds.

In the recent case *Department of Finance v. Commission on State Mandates*,⁶⁸ the court found that costs incurred in complying with the test claim legislation did not entitle claimants to obtain reimbursement because the state already provided funds that may be used to cover the necessary expenses. However, the holding was limited to "the circumstances here presented," and the court found that the costs of the requirements at issue appeared "rather modest." Moreover, the court left open the possibility that:

... with regard to some programs, the increased compliance costs imposed by the state might become so great -- or funded program grants might become so diminished -- that funded program benefits would not cover compliance costs, or that expenditure of granted program funds on administrative costs might violate a spending limitation In those circumstances, a compulsory program participant likely would be able to establish the existence of a reimbursable mandate⁶⁹

There is nothing in the record to indicate that the revenue resulting from the test claim legislation (e.g., avoiding disposal costs and selling recyclable materials), or amounts appropriated to community colleges for the program in 1999-2000 through 2003-2004, would result in "no net costs" to community colleges, or would be "sufficient to fund the cost of the ... mandate." Indeed, the fact that only \$2,000 is continuously appropriated to community colleges suggests that the revenue is not sufficient, since both claimants have asserted more than \$2,000 in costs for this program. In years that the Legislature chooses to appropriate more than the \$2,000 (Pub. Contract Code, §12167.1), the appropriation would more fully offset the costs of the program, but there is no requirement for the Legislature to do so.

Therefore, the Commission finds that the revenues cited in Public Resources section 42925 and Public Contract Code sections 12167 and 12167.1 do not preclude the existence of a reimbursable state mandated program. Any revenues would be identified as offsets in the parameters and guidelines phase.

Fee authority: The Board and DOF assert that Government Code section 17556, subdivision (d), applies, which states the Commission shall not find costs mandated by the state if 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." The Board and DOF argue that community colleges have fee authority, pursuant to Education Code section 70902, sufficient to pay for the new program or higher level of service. The Board cites a legal opinion from the Community Colleges Chancellor's Office regarding optional student fees or charges, and argues that a fee for recycling or waste reduction services would be permissible.⁷⁰ The Board observes that such a fee would be nominal, if necessary at all, given the ability of recycling programs to recover costs through sale of recyclable materials, disposal cost avoidance and reuse of materials.

⁶⁸ *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal 4th 727, 747.

⁶⁹ *Id.* at pages 747-748.

⁷⁰ California Community Colleges Chancellor's Office, Legal Opinion M 00-41, December 19, 2000, page 1. This opinion was submitted with the Board's comments. The Chancellor's Office relies on Education Code section 70902, subdivision (a), (quoted below) for the existence of permissive or optional fee authority.

Claimants respond that, based on the legal opinion of the Chancellor's Office, students may not be charged for services the district is required to provide by state law.⁷¹ Students may only be required to pay a fee if a statute either requires it or authorizes a district to require it.⁷² Claimants believe the Board's reliance on Education Code section 70902, subdivision (a) is misplaced because the section is "permissive" only to the extent that the governing board "may initiate and carry on any program, activity, or may otherwise act in any manner" but limited by the phrase "that is not in conflict with or inconsistent with, or preempted by, any law and that is not in conflict with the purposes for which community college districts are established."⁷³ Claimants argue that charging students for an integrated waste management plan and all that it entails is directly in conflict with the purposes for which community college districts are established. Claimants also assert that calling the fees "optional" is unrealistic because they could become substantial and students would not likely "voluntarily" accept the additional levy.

In its February 2004 comments, the Board reiterated its fee authority argument, calling claimant's assertion that the fee is in conflict with the purposes of community colleges "groundless." According to the Board, the fee "to cover operational costs for appropriately managing solid waste does not in any way conflict with the purposes for which the districts are established." The Board also responded to claimant's assertion that students would not opt to pay for the program. Citing *Connell v. Superior Court* (1997) 59 Cal. App. 4th 382, the Board argues there is no reimbursement where a local agency has authority to levy fees sufficient to cover the costs of the state-mandated program. The issue is a question of law, and evidence as to the practicality or feasibility of collecting the fee "was irrelevant and injected improper factual questions into the inquiry." (*Id.* at p. 401.)

In their February 2004 comments, claimants distinguish this case from *Connell* by remarking that in *Connell*, the water districts had statutory fee authority. (*Id.* at p. 398.) In this claim, however, claimants point out there is no statute that authorizes levying service charges, fees, or assessments against students sufficient to pay for the integrated waste management program.

The Commission finds, as a matter of law,⁷⁴ that community colleges do not have fee authority to pay for the waste reduction and recycling activities in the test claim legislation.

The permissive fee authority statute upon which the Board relies reads as follows:

The governing board of each community college district shall establish, maintain, operate, and govern one or more community colleges in accordance with the law. In so doing, the governing board may initiate and carry on any program, activity, or may otherwise act in any manner that is not in conflict with the purposes for which community college districts are established.⁷⁵

⁷¹ *Id.* at page 15.

⁷² Education Code section 70902, subdivision (b) (9).

⁷³ Education Code section 70902, subdivision (a).

⁷⁴ As correctly pointed out by the Board, fee authority is a matter of law. *Connell v. Superior Court* (1997) 59 Cal. App. 4th 382, 401.

⁷⁵ Education Code, section 70902, subdivision (a).

More specific is the section's provision that states a community college governing board shall "Establish student fees as it is required to establish by law, and, in its discretion, fees as it is authorized to establish by law." (Ed. Code, § 70902, subd. (b)(9)).

The Commission bases its finding of no fee authority on the following. First, the test claim statutes do not provide fee authority for community colleges, nor for other "state agencies." Second, there is no other law that requires or authorizes community colleges to assess a waste management or recycling fee, so it cannot be mandatory or required.⁷⁶

As to the optional fee, which a student could decide not to pay, the Board cites the Chancellor's Office's legal opinion, which states:

On the other hand, if the fee is for materials, services, or privileges which will assist a student, but are not otherwise required for registration, enrollment, entry into class, or completion of the required classroom objectives of a course, the fee can be classified as optional in nature. Under the authority of the permissive code, [Ed. Code, § 70902, subd. (a)] a district may charge a fee which is optional in nature, provided that the fee is not in conflict or inconsistent with existing law, and is not inconsistent with the purposes for which community college districts are established.⁷⁷

The Commission does not rely on the Chancellor's Office legal opinion for its determination regarding fee authority. Although the Commission recognizes the Chancellor's Office expertise in community college fees, the opinion is an interpretive one. As such, it is entitled to less deference than a quasi-legislative rule (such as a duly adopted regulation, for example).⁷⁸

There is nothing in the record or legislative history that establishes the authority for community colleges to charge a mandatory or permissive fee to pay for the program in the test claim legislation. Had the Legislature intended community colleges to have fee authority, the legislature would have provided it for them as it has for cities and counties waste management activities.⁷⁹ Moreover, as stated above, Education Code section 70902, subdivision (b)(9) states that community colleges shall "[e]stablish student fees as it is required to establish by law, and, in its discretion, fees as it is authorized to establish by law." This provision controls with respect to fees because it is more specific than section 70902, subdivision (a).

A specific statutory provision relating to a particular subject, rather than a general statutory provision, will govern in respect to that subject, although the latter, standing

⁷⁶ Similar to Education Code section 70902, subdivision (b)(9), California Code of Regulations, title 5, section 51012, states that a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

⁷⁷ California Community Colleges Chancellor's Office, Legal Opinion M 00-41, December 19, 2000, page 1.

⁷⁸ *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 9-13.

⁷⁹ Public Resources Code section 41900 et seq.

alone, would be broad enough to include the subject to which the more particular provision relates.⁸⁰

Applying this rule, the specific fee statute of subdivision (b) prevails over any general, implied authority in subdivision (a) upon which the Board relies. For fee authority for this program to exist, therefore, it would need to be authorized or established by law pursuant to subdivision (b). Therefore, the Commission finds that community colleges do not have fee authority to preclude a finding of "costs mandated by the state."

Student center fee: The Board's February 2004 comments also mention Education Code section 76375 regarding an annual building and operating fee, subject to student body election, for a student body center. The Board states that a portion of this fee could and should include some provision for waste management, recycling and diversion programs.

Education Code section 76375 reads in pertinent part as follows:

76375. (a) The board of trustees of a community college district may establish an annual building and operating fee for the purpose of financing, constructing, enlarging, remodeling, refurbishing, and operating a student body center, which fee shall be required of all students attending a community college where the student body center is to be located. The fee shall be imposed by the board of trustees, at its option, only after a favorable vote of two-thirds of the students voting in an election held for that purpose at a community college, in the manner prescribed by the Chancellor of the California Community Colleges, and open to all regular students enrolled in credit classes at the community college. The election shall occur on a regularly scheduled schoolday and at least 20 percent of the students enrolled in credit classes as of October 1 of the school year during which the election is held must cast a ballot for the election to be declared valid. The annual building and operating fee shall not exceed one dollar (\$1) per credit hour up to a maximum of ten dollars (\$10) per student per fiscal year. The fee requirement shall not apply to students enrolled in the noncredit courses ... [nor] ... to a student who is a recipient of the benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or the General Assistance program. The fee authorized by this section shall be supplemental to all other fees charged to community college students. [¶]...[¶]

(d) The student government of a community college with an annual building and operating fee pursuant to this section shall determine the appropriate uses of the fee income and the student body center facility itself.

As a matter of law, this fee provision would not meet the "sufficiency" test of Government Code section 17556, subdivision (d). Because the fee is subject to a student election of two-thirds of voting students, it is uncertain whether it could be adopted. Second, even if it were adopted, its use is determined by the student government and is therefore outside the community college administration's control. The student government is not required to use any part of the fee for waste reduction or recycling. Moreover, the fee is capped at "one dollar (\$1) per credit hour up to a maximum of ten dollars (\$10) per student per fiscal year." There is nothing in the record regarding the sufficiency of this fee amount to fund the waste reduction and recycling program.

⁸⁰ *Praiser v. Biggs Unified School Dist.* (2001) 87 Cal.App.4th 398, 405.

If the community college's waste reduction and recycling efforts were focused outside the student center, for example, on waste generated in the classrooms or at construction sites, a portion of the student center fee would not apply to those efforts. As such, the fee is not sufficient to fund waste reduction and recycling outside the student center.

The Commission agrees with the Board's summary of *Connell v. Superior Court* (1997) 59 Cal. App. 4th 382, which precludes reimbursement where a local agency has fee authority sufficient for the costs of the state-mandated program. The issue is a question of law, and evidence as to the feasibility of collecting the fee "was irrelevant and injected improper factual questions into the inquiry." (*Id.* at p. 401.) However, *Connell* is distinguishable because it involved a water district arguing against the economic feasibility of charging a fee in a sufficient amount. The fee issues in this case were not contemplated by the *Connell* court: (1) whether the fee may be charged because of the two-thirds election requirement; (2) expenditures being outside the control of the local entity; and (3) the existence of a statutory fee cap, and (4) that if enacted, the fee would be limited to the student center rather than apply to the entire waste program. Therefore, the unique attributes of this fee distinguish it from the fee in *Connell*.

Therefore, the Commission finds that there are costs mandated by the state in spite of the fee authority in Education Code section 76375. Any revenue from these fees used to comply with the test claim legislation would be considered offsets,⁸¹ as with any other revenues that accrue to community colleges as discussed above.

Therefore, the Commission finds that the test claim legislation imposes costs mandated by the state pursuant to Government Code section 17514 and that the exceptions in Government Code section 17556 do not apply.

CONCLUSION

Based on the foregoing analysis, the Commission finds that the test claim legislation imposes a 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:

- **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 Board's 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

⁸¹ Any offsetting revenues would be identified in the parameters and guidelines phase.

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 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.

The Commission finds that all other statutes and executive orders in the test claim not mentioned above, including publications of the Board (except for the model plan), are not reimbursable state mandated programs within the meaning of article XIII B, section 6 and Government Code section 17514.

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April 21, 2004

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APR 23 2004

COMMISSION ON
 STATE MANDATES

Paula Higashi, Executive Director
 Commission on State Mandates
 980 Ninth Street, Suite 300
 Sacramento, CA 95814

RE: CSM 00-TC-07
 Test Claim of Lake Tahoe and Santa Monica Community College Districts
 Claimant's Proposed Parameters and Guidelines
Integrated Waste Management

Enclosed is the original and seven copies of the claimant's proposed parameters and guidelines for the above referenced test claim.

All parts, except Part IV: Reimbursable Activities, generally defer to the Commission boilerplate which has recently been changing too often for a claimant to accurately provide language which would not be substantially altered by commission staff. If you wish me to attempt those parts, let me know.

There are two attachments, the state model plan for Grossmont College and the annual reports for Contra Costa Community College District and its colleges, which may be helpful.

Sincerely,



Keith B. Petersen

C: Tom Donner, Vice-Chancellor, Santa Monica Community College District
 Jon Stephens, Vice-President, Lake Tahoe Community College
 Dr. Carol Berg, Consultant, Education Mandated Cost Network

Parameters and Guidelines Drafted By:
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Test Claim of Santa Monica and Lake Tahoe Community College Districts

DATED 4/21/2004

**CLAIMANT'S PROPOSED
PARAMETERS AND GUIDELINES**

Public Resource Code Sections 40148, 40196.3, 42920-28
Public Contract Code Sections 12167 and 12167.1
State Agency Model Integrated Waste Management Plan (February 2000)

CSM 00-TC-07

INTEGRATED WASTE MANAGEMENT

I. SUMMARY OF THE MANDATE

Per Statement of Decision

II. ELIGIBLE CLAIMANTS

Community college districts which 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.

IV. REIMBURSABLE ACTIVITIES

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

1. Policies and Procedures

Prepare and update as 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.

3. Plan Development and Approval

Completing and submitting to the Integrated Waste Management Board for each college in the district the state agency or large state facility information form, list of facilities, waste reduction and recycling program worksheets which describe program activities, promotional programs, and procurement activities, and other questionnaires. Responding to any Board reporting requirements during the approval process.

4. Program Coordinator

Appointing an employee for each college in the district as the waste reduction and recycling coordinator, and for the coordinator to administer and implement the integrated waste management program, and to act as a liaison to the state agencies and other coordinators.

5. Waste Diversion

Diverting at least 25% of all solid waste by January 1, 2002, and at least 50% by January 2004, and maintaining the required level of reduction, 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
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
- 6. Alternative Compliance
 - A. 25% Diversion Requirement

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

- 1. Notify the Board in writing, detailing the reasons for its inability to comply
- 2. Request an alternative to the deadline
- 3. Provide evidence that the college is making a good faith effort to implement the waste reduction program.
- 4. Provide information that describes the relevant circumstances that contributed to the request for extension
- 5. Submit a plan of correction that demonstrates that it will meet the requirements before the time extension expires.

- B. 50% Diversion Requirement

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

- 1. Notify the Board in writing, detailing the reasons for its inability to comply
- 2. Request an alternative to the 50% compliance requirement
- 3. Participate in a public hearing on its alternative requirement
- 4. Provide the Board with information as to:
 - (a) the college's good faith efforts to implement the waste reduction and progress toward meeting the alternative requirement;
 - (b) the college's inability to meet the 50% requirement despite implementing the measures in its plan;

- (c) how the alternative methods represent the greatest diversion amount that the college may reasonably and feasibly achieve; and,
- (d) relate to the Board the circumstances that support the request for an alternative requirement,

6 Accounting System

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.

7. Annual Report

Annually preparing and submitting a report to the board summarizing its progress in reducing solid waste which includes calculations of annual disposal reduction, information on the changes in waste generated or disposed of, the amounts of materials collected for recycling, a summary of progress made in implementing the integrated waste management plan, the extent to which the college intends to utilize programs or facilities established by the local agency for the disposal of solid waste, a summary of progress made in meeting the integrated waste management plan of correction, and other relevant compliance information.

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.

GROSSMONT
COLLEGE

State Agency Model Integrated Waste Management Plan

February 2000



STATE OF CALIFORNIA

**Gray Davis
Governor**

**Winston Hickox
Secretary, California Environmental Protection Agency**

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Executive Summary

Diversion is the process of reducing potential waste by means such as source reduction (reducing or eliminating the amount of materials used for any purpose before they become waste), recycling, and composting. AB 75 (Strom-Martin, Chapter 764, Statutes of 1999) added Sections 40148–42928 to the Public Resources Code (PRC). The legislation requires State agencies to meet waste diversion goals of 25 percent by 2002 and 50 percent by 2004 and to document their efforts in meeting these goals.

To disclose how they will meet these goals, PRC Section 42920 (b) (2) requires State agencies to submit an adopted integrated waste management plan (IWMP) to the California Integrated Waste Management Board (CIWMB) by July 15, 2000.

The Board is required by law to adopt a model integrated waste management plan that shall be available for use by State agencies in developing their plan. PRC Section 42920 (b) (3) requires that if a State agency has not submitted an adopted IWMP to the Board by January 1, 2001, or if the Board has disapproved the plan submitted by the agency, then the Board's model IWMP shall be implemented by the agency and become the agency's plan.

This document contains the following key sections:

- Instructions for completing the *State Agency Model Integrated Waste Management Plan*
- Forms, worksheet, and plan questions
- Appendices

You may prefer to complete the forms, worksheet, and plan questions on line and then print them out for the appropriate signature(s). Access them by going to the Board's Project Recycle Web page (www.ciwmb.ca.gov/ProjectRecycle/) and choosing the link entitled "New Requirements for State Agencies."

Two Board publications being distributed with this document are *Waste Reduction Policies and Procedures for State Agencies, Conducting a Diversion Study—A Guide for California Jurisdictions*.

Note: To further document their efforts in achieving the goals of 25 percent and 50 percent waste diversion, State agencies and large State facilities as defined in statute are required by PRC Section 42926 (a) to provide annual reports to the CIWMB beginning April 1, 2002.

Instructions for Completing the State Agency Model Integrated Waste Management Plan

AB 75 (Strom-Martin, Chapter 764, Statutes of 1999—see Appendix 2) added Sections 40148-42928 to the Public Resources Code (PRC). The legislation requires State agencies to meet waste diversion goals of 25 percent by 2002 and 50 percent by 2004 and to document their efforts in meeting these goals.

To satisfy the requirements of PRC Section 42920 (b) (2), each State agency must submit an adopted integrated waste management plan (IWMP) to the California Integrated Waste Management Board (CIWMB). The IWMP should specify an agency's plan for achieving mandated waste diversion goals of 25 percent by 2002 and 50 percent by 2004. (Diversion is the process of reducing potential waste by means such as source reduction [reducing or eliminating the amount of materials used for any purpose before they become waste], recycling, and composting.) This publication is provided to assist State agencies in preparing their plans.

All information called for in this document is required to be submitted to the Board. To complete the forms (Parts I-A, I-B, and II), worksheet (Part III), and plan questions (Part IV) on line, go to the Board's Project Recycle Web page at www.ciwmb.ca.gov/ProjectRecycle/ and select the link entitled "New Requirements for State Agencies." After completing Parts I-A-IV, you will still need to print them out and obtain the appropriate signature(s).

Completed plans should be submitted to the following address:

Public Education and Programs
Implementation Branch
ATTN: AB 75 Review Team
California Integrated Waste Management Board
8800 Cal Center Drive
Sacramento, CA 95826

"State Agencies"—An IWMP must be completed for each State agency, which is defined in Public Resources Code (PRC) Section 40196.3 as every State office, department, division, board, commission, or other agency of the State. Each State agency should aggregate data for all its applicable facilities, excluding large State facilities, described below.

"Large State Facilities"—PRC Section 40148 defines large State facilities as those campuses of the California State University and the California Community Colleges, prisons within the Department of Corrections, facilities of the State Department of Transportation, and facilities of other State agencies that the Board determines are primary campuses, prisons, or facilities.

The Board has determined that each of these large State facilities shall complete a separate integrated waste management plan, signed by the facility director. This IWMP must also be signed at the facility's State agency level by the chairman, commissioner, director, or president.

Example: The California Department of Corrections (CDC) has 33 prisons and numerous field offices. A separate IWMP must be completed and submitted for each of the 33 prisons, as well as one for CDC's headquarters and offices, as described above under "State Agencies." The department's director is responsible for approval of IWMPs for both the prisons and the agency headquarters and offices.

Modified IWMP—If a State agency has fewer than 200 total employees and generates less than 100 total tons of waste statewide per year, it may submit a modified IWMP. Agencies that meet this criteria must still complete "Part I-A: State Agency Information Form" and check the box indicating they are submitting a modified plan. In addition, the agency

must complete Part II and Part IV, questions 1, 5, 6, and 7, and submit that information to the CIWMB by July 15, 2000.

Part I-A: State Agency Information Form (page 4)

State agencies must submit this completed form.

Part I-B: Large State Facility Information Form (page 5)

Large State facilities must submit this completed form.

Part II: State Agency List of Facilities (page 6)

All State agencies and large State facilities must provide information on all their facilities using this form. This information should include the name and address of each facility; a contact person's name, phone number, and e-mail address; and the number of employees at the facility.

If you are using hard copy from this manual and have insufficient space, use additional sheets.

Part III: State Agency Waste Reduction and Recycling Program Worksheet (pages 8-12)

State agencies and large State facilities should use the following instructions to complete Part III.

You may find the Board's publication entitled *Conducting a Diversion Study—A Guide for California Jurisdictions* helpful in determining tonnages for program activities. Workshops will be conducted in March and April 2000 to help State agencies determine diversion rates and complete an IWMP. For information about these workshops, call (916) 255-2385.

You do not need to submit your analyses used in arriving at diversion and generation figures entered on the worksheet. However, you are responsible for providing documentation and records if a review is needed by the CIWMB to verify your figures.

Remember: When identifying programs within your IWMP, a total diversion amount

for all facility locations should equal or exceed .1 ton. You are not required to list any program activity that generates less than that amount, but you are encouraged to do so.

Diversion and disposal activities for all projects (e.g., construction, demolition, and park renovation) need to be included in the final calculation of total tonnage generated. The State agency with project authority is responsible for including these diversion and disposal tonnages, regardless of who performs the work (e.g., State agency, contractor, nonprofit organization).

Section 1: Program Activities, Rows 1-77, Pages 8-10

Columns B1, B2, B3, Rows 1-73, Pages 8-10

If your State agency or large State facility has programs other than those listed that are existing or are proposed for implementation, note them in the blank rows under the appropriate program activity areas in Column B1. Identify all your agency's existing programs with an "X" in Column B2. Identify the proposed programs with an "X" in Column B3.

Column C (Projected Tonnage, 2000), Rows 1-73, Pages 8-10

1. In Column C, Rows 1-73, enter the amount of material anticipated to be diverted, for every existing program activity at your State agency or large State facility.
2. Row 74, Page 10 (Total Tonnage Diverted): Total all rows and enter the sum.
3. Row 75, Page 10 (Total Tonnage Disposed): Enter the amount of waste that is projected for disposal in calendar year 2000 by your State agency or large State facility at a disposal facility, or that is being collected by a waste hauler for disposal. Use any available actual data in calculating this amount.

4. Row 76, Page 10 (Total Tonnage Generated): Add figures from Row 76 and Row 77 (total tonnage generated = total tonnage diverted + total tonnage disposed).
5. Row 77, Page 10 (Overall Diversion Percentage): Divide the number in Row 74 (Total Tonnage Diverted) by the number in Row 76 (Total Tonnage Generated). Multiply the result by 100.

Columns D, F, H, J, L, N (Proposed Tonnage for 2001–2006), Rows 1–73, Pages 8–10

The purpose of estimating proposed diversion tonnage is to help State agencies and large State facilities focus on the programs that will achieve the greatest amount of diversion, while using the least amount of energy and resources. The achievement of the 50 percent diversion goal, therefore, becomes more readily attainable.

In arriving at figures for these columns, take into account the information entered into previous columns: For example, in determining the proposed tonnage diverted for recycling of beverage containers in 2002 (Row 16, Column F), take into account the projected tonnage for 2000 and the proposed tonnage for 2001.

It is important to complete the proposed diversion tonnage through the calendar year 2006 to show which programs the State agency/large State facility will emphasize to meet the waste diversion goals of 25 percent by 2002 and 50 percent by 2004.

1. In Columns D, F, H, J, L, and N, Rows 1–73 (pages 8–10), provide proposed tonnages for each identified diversion program.
2. Row 74, Page 10 (Total Tonnage Diverted): For each of the six columns, total all rows and enter the sum.
3. Row 75, Page 10 (Total Tonnage Disposed): For each of the six

columns, subtract the figure in Row 74 (Total Tonnage Diverted) from the figure in Row 75, Column C (total projected tonnage disposed for 2000).

4. Row 76, Page 10 (Total Tonnage Generated): For the each of the six columns, add figures from Row 74 and Row 75 (total tonnage generated = total tonnage diverted + total tonnage disposed).
5. Row 77, Page 10 (Overall Diversion Percentage): Divide the number in Row 74 (Total Tonnage Diverted) by the number in Row 76 (Total Tonnage Generated). Multiply the result by 100.

Rows E, G, I, K, M, O (Actual Tonnage), Rows 1–73, Pages 8–10

As it becomes available, information from Rows E, G, I, K, M, and O is intended to be used in the required annual report updates. Having a format early in the process and using it at the appropriate time will enable a State agency or large State facility to easily provide needed information by April 1 of the required reporting years, commencing in 2002. Rows 74–77 on page 10 should be calculated as per steps 2–5 above.

Section 2: Promotional Programs, Rows 78–106, Page 11

Column B, Rows 78–106, Page 11
List additional existing or proposed promotional programs your agency has. Column C (Existing), and Columns D, F, H, J, L, N (Proposed), Rows 78–106, Page 11
Put an "X" in Column C if a promotional program exists in 2000. Put an "X" in Columns D, F, H, J, L, and/or N, if a promotional program is proposed for any year from 2001 through 2006.

Columns E, G, I, K, M, O (Implemented), Rows 78–106, Page 11

In future years, indicate whether the proposed program has been implemented by putting an "X" in the appropriate column.

Section 3: Procurement Activities, Rows 107–126, Page 12

Column B, Rows 119–126, Page 12
List additional existing or proposed procurement activities your agency has.

Column C (Existing) and Columns D, F, H, J, L, N (Proposed), Rows 107–126, Page 12
Put an "X" in Column C if procurement of recycled-content products exists for the year 2000. Put an "X" in Columns D, F, H, J, L, and/or N if procurement of recycled-content products is proposed.

Procurement activities should be coordinated through the State Agency Buy Recycled Campaign (SABRC). For more information on this program, see the SABRC Web page at www.ciwmb.ca.gov/StateAgency/, or contact Jerry Hart at (916) 255-4454 or jhart@ciwmb.ca.gov.

Columns E, G, I, K, M, O (Implemented), Rows 107–126, Page 12
In future years, indicate whether the proposed program has been implemented by putting an "X" in the appropriate column.

Part IV: State Agency Integrated Waste Management Plan Questions (pages 13,14)
State agencies and large State facilities should use this form to provide information regarding the integrated waste management plan. State agencies submitting a modified integrated waste management plan should fill out questions 1, 5, 6, and 7. The Board's publication entitled *Waste Reduction Policies and Procedures for State Agencies* (distributed with this document) provides suggestions for source reduction, recycling, composting, and other programs that can be implemented to reduce the waste stream. You may find information from this publication helpful in filling out Part IV.

State Agency Model Integrated Waste Management Plan
Part I-A: State Agency Information Form

State Agency Name: Grossmont College
Address: 8800 Grossmont College Drive
City: El Cajon, CA 92020

State Agency Director's Name: Dr. Mark Facer

Recycling Coordinator:

Name: Walter Sachau
Address: 8800 Grossmont College Drive
City: El Cajon ZIP Code: 92020
Telephone Number: (619) 644-7629 E-Mail Address: Walter.Sachau@gcccd.net
Fax Number: (619) 644-7981

Number of Employees: 856 (FTE) includes College and District Personnel on the
Grossmont College Campus.

Check this box if the State agency is submitting a modified integrated waste management plan, since the agency has less than 200 full-time employees and generates less than 100 tons of waste statewide, per year.

The signatures below serve to certify that this integrated waste management plan is consistent with and meets the requirements of PRC 42920 (b).

Signature of Chairman, Commissioner,
or Director

Date

Dr. Ted Martinez Jr.
Printed Name

President
Title

State Agency Model Integrated Waste Management Plan

Part I-B: Large State Facility Information Form

Facility: Grossmont College
Address: 8800 Grossmont College Drive
City: El Cajon **ZIP Code:** 92020
Facility Director: Dr. Mark Facer

Recycling Coordinator:

Name: Walter Sachau
Address: 8800 Grossmont College Drive
City: El Cajon **ZIP Code:** 92020
Telephone Number: (619) 644-7629 **E-Mail Address:** Walter.Sachau@gcccd.net
Fax Number: (619) 644-7981
Number of Employees: 856 (FTE) includes College and District Personnel on the
Grossmont College Campus.

The signatures below serve to certify that this integrated waste management plan is consistent with and meets the requirements of PRC 42920 (b).

Signature of District or Facility Director

Dr. Mark Facer
Printed Name

Date

Interim Dean of Administrative Services
Title

**Signature of Chairman, Commissioner,
Director, or President**

Dr. Ted Martinez Jr.
Printed Name

Date

President
Title

Part II: State Agency List of Facilities

State Agency or Large State Facility:

Cuyamaca Community College

No.	Facility Name and Mailing Address (List all facilities that are part of the State agency or large State facility.)	Contact			No. of Employees
		Name	Phone	E-Mail	
1	Grossmont College 8800 Grossmont College Drive El Cajon, CA 92020	Walter Sachau	(619) 644-7629	Walter.Sachau@gcccd.net	856 (FTE)
2					
3					
4					
5					
6					
Total Number of Employees (leave blank if information continues to side 2)					856 (FTE)

159

No.	Facility Name and Mailing Address (List all facilities that are part of the State agency or large State facility.)	Contact			No. of Employees
		Name	Phone	E-Mail	
7					
8					
9					
10					
11					
12					
13					
Total Number of Employees					856 (FTE)

Part III: State Agency Waste Reduction and Recycling Program Worksheet

A	B			C	D	E	F	G	H	I	J	K	L	M	N	O
	Section 1: Program Activities			2000	2001		2002		2003		2004		2005		2006	
	B1*	B2*	B3*	Projected Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage
1	Source Reduction															
2	Use of Reusable Cups															
3	Use of Electronic Forms															
4	Use of Electronic Media															
5	Double-Sided Copies			x	25	28	30		32		32		34		34	
6	Utilize Property Reutilization															
7	Utilize CalMAX															
8	Utilize a Food Exchange															
9	Salvage Yards															
10	Xeriscaping/Grass-cycling			x	170	150	150		150		140		140		140	
11	Other Source Reduction Programs															
12																
13																
14																
15	Recycling															
16	Beverage Containers			x	1.1	2	2									
17	Cardboard			X	18.3	19	19		21		21		22		22	
18	Glass															
19	Newspaper			x	1.16	1.2	1.2		1		1		1		1	
20	Office Paper			x	20.65	22	24		25		25		26		26	
21	Plastics				0	1	1		1		1		1		1	
22	Scrap Metal															
23	Other Materials															
24																
25																
26																

1: Add existing programs or those proposed for implementation, if not listed. B2: Insert "X" if program exists. B3: Insert "X" if program is proposed for implementation

A	B			C	D	E	F	G	H	I	J	K	L	M	N	O
	Section 1: Program Activities			2000	2001		2002		2003		2004		2005		2006	
	B1*	B2*	B3*	Projected Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage
7	Other Recycling Programs															
8	Special Collection Programs															
9	Clean-Up Events	x		1	1		1		1		1		1		1	
10																
11																
12	Composting															
13	Commercial Pick-Up of Green Waste		x	0	5		8		10		7		7		7	
14	Commercial Self-Haul of Green Waste															
15	Food Waste Composting															
16	Other Composting Programs															
17																
18																
19																
20																
21																
22																
23																
24																
25																
26																
27																
28	Special Waste															
29	Construction/Demolition Recycling		x	0	?		?		?		?		?		?	
30	Concrete/Rubble Reuse															
31	Concrete/Asphalt Recycling															
32	Rendering/Grease Recycling															

1: Add existing programs or those proposed for implementation, if not listed. B2: Insert "X" if program exists. B3: Insert "X" if program is proposed for implementation

A	B			C	D	E	F	G	H	I	J	K	L	M	N	O
	Section 1: Program Activities			2000	2001		2002		2003		2004		2005		2006	
	B1*	B2*	B3*	Projected Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage
53	Tires															
54	Use of Retreads															
55	Tire Reuse															
56	Tire Recycling															
57	Use of Rubberized Asphalt															
58	Use of Tire- Derived Products															
59	Collection Program															
60	Drop-Off at Landfills															
61	Used Oil/Antifreeze															
62	White and Brown Goods (Reuse/Recycling)															
63	Wood Waste															
64	Wood Waste Chipping for Mulch or Compost (Drop- Off)															
65	Brush/Wood Waste Chipping	x		1	1		3		3		3		3		3	
66	Other Special Waste															
67	Surplus Property		x	7	5		5		5		5		5		5	
68																
69																
70																
71																
72																
73																
74	Total Tonnage Diverted			238.2	235.2		244.2		249		236		240		240	
75	Total Tonnage Disposed			224	226.8		225.8		229		250		254		262	
76	Total Tonnage Generated			462.2	462		470		478		486		494		502	
77	Overall Diversion Percentage			51.5	51		52		52		48.6		49		47.8	

1: Add existing programs or those proposed for implementation, if not listed. B2: Insert "X" if program exists. B3: Insert "X" if program is proposed for implementation

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
	Section 2: Promotional Programs	2000	2001		2002		2003		2004		2005		2006	
		Existing	Proposed	Imple- mented	Proposed	Imple- mented	Proposed	Imple- mented	Proposed	Imple- mented	Proposed	Imple- mented	Proposed	Imple- mented
78	Web Page													
79	Newspaper Articles/Ads		X											
80	Brochures, Newsletters, Publications													
81	Fliers													
82	Office Paper Recycling Guide													
83	Fact Sheets													
84	New Employee Package													
85	Outreach (technical assistance, presentations, awards, fairs, field trips)													
86	Seminars													
87	Workshops													
88	Waste Information Exchange													
89	Recycled Goods Procurement Training													
90	Awards Program/Public Awareness													
91	Speakers (staff available for presentations)													
92	Technical Assistance													
93	College Curriculum													
94	Waste Audits													
95	Waste Evaluations/Survey													
96	Other Promotional Programs													
97	Student Earth Club	X												
98	E-mail Recycle - updates		X											
99	Recycle Signage		X											
100														
101														
102														
103														
104														
105														
106														
	Section 3:	2000	2001		2002		2003		2004		2005		2006	

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
	Procurement Activities	Existing	Proposed	Implemented	Proposed	Implemented	Proposed	Implemented	Proposed	Implemented	Proposed	Implemented	Proposed	Implemented
107	State Agency Buy Recycled Campaign (SABRC)—All procurement activities should be coordinated through SABRC.													
108	Department-Wide Recycled-Content Procurement (RCP) Policy													
109	Exceeding SABRC Goals													
110	Department-Wide Automated Procurement Tracking System													
111	Requiring Recycled-Content Product Certification for All Purchases								2004					
112	Annual Submittal of SABRC Report													
113	Staff Recycled-Content Procurement Training				2002									
114	Participating in Dept. of General Services Buy Recycled Task Force													
115	Proactively Working With RCP Suppliers													
116	Sharing Success Stories With SABRC													
117	Joint Purchase Pools													
118	Other Procurement Activities													
119														
120														
121														
122														
123														
124														
125														
126														

Part IV: State Agency Integrated Waste Management Plan Questions

State agencies and large State facilities should complete questions 1–6. State agencies submitting a modified IWMP should complete questions 1, 5, 6, and 7.

1. What is the mission statement of the State Agency/large State facility?

Provide educational leadership through learning opportunities that anticipate, prepare for, and meet the future challenges of a complex democracy and a global society.

2. Based on the "State Agency Waste Reduction and Recycling Program Worksheet" (Part III), briefly describe the basic components of the waste stream and where these components are generated.

Grossmont College generates the majority of its waste in the form of paper usage in the administration management and instruction of students. The campus in the Spring of 2000 had 856 (FTE) employees and a student enrollment of 5,695 full time plus 10,248 part time. The campus has a diverse landscape with lawns, trees, shrubs, floral gardens, native gardens, large parking lots, and many concrete walkways. The food service on campus is a source of waste needing improvements.

3. Based on the worksheet (Part III), what is currently being done to reduce waste?

*Waste is reduced by "source reduction".

*Double sided copies whenever possible.

*Electronic mail and teleconferencing.

*Paper recycle containers in high usage areas.

*Cardboard recycling that is bailed.

*Grass recycling mulching mowers.

*Renovation of the grass football field and replacing with an artificial surface.

*Pick-up of green materials for mulching at local landfill.

*Recycle of newspapers, books and magazines.

*Recycle aluminum cans by the campus and the custodial staff.

4. Based on the worksheet information provided in Part III, briefly describe the programs proposed for implementation to meet waste diversion goals of 25 and 50 percent. Please include a timeline as to when these programs will be implemented.

*Propose to increase the paper recycle containers to all classrooms and office spaces.

*Improve the sorting which improves the quality of the recycled products.

*Start plastic beverage recycling.

*Install hand dryers in the restrooms.

*Educate the students and staff on the benefits and need for recycling & trash diversion.

*Construct a recycle center for sorting of as many recyclables as possible.

*40 yard Dumpster for hauling green waste.

*40 yard Dumpster for Construction/Demolition Recycling

*Require contractors to recycle Construction & Demolition and give weigh tickets to college of recycled materials as part of their contract.

*Attempt to find Waste Hauler and Recycler at a reasonable expense that will give us weights and measures for every load of waste and recyclables for more accurate accounting.

*NOTE: Grossmont will be experiencing several major Construction & Demolition projects over the next 15 years. The C & D for these projects are not included in the projections. Thus, we expect the diversion rates to increase during those times and keep us above the 50% under AB75.

5. Does the State Agency/large State facility have a waste reduction policy? If so, what is it? See *Waste Reduction Policies and Procedures for State Agencies* for a sample waste reduction and recycling policy statement.

No. We want to meet and exceed the 50% waste reduction as called for in AB75.

6. Briefly describe what resources (staff and/or funds) the State agency/large State facility plans to commit toward implementing its integrated waste management plan, thus meeting the waste diversion goals outlined in Public Resources Code Section 42921.

*The Operations Department which handles the waste reduction is requesting a 1.0 FTE Classified Staff position to work 40 hours per week on hauling, sorting, developing, and advancing the campus waste reduction program.

*Waste Reduction is part of Grossmont Strategic Plan and will be address through the budget process for funds to purchase the containers and fund education of students and staff. No specific amounts of funds have been designated at this time.

*College established an Environment Trust Fund back in 1995 for advancing the waste reduction on campus. Funds generated have been used for recycle equipment and containers as well as a cardboard bailer.

7. This question applies only for State agencies submitting a modified IWMP: Briefly describe the waste diversion program activities currently in place.

N/A.

Appendix 1: Glossary of Terms

Cardboard – Paper product made of unbleached kraft fiber, with two heavy outer layers and a wavy inner layer to provide strength.

Composting – The biological decomposition of organic materials such as leaves, grass clippings, brush, and food waste into a soil amendment.

Disposal – Management of solid waste through landfilling, incineration, or other means at permitted solid waste facilities.

Diversion Rate – The amount of materials recycled as a percentage of the solid waste stream.

Glass – All products comprised primarily of glass materials, including, but not limited to, containers, windows, fiberglass insulation, reflective beads, and construction blocks.

Grasscycling – The practice of leaving grass clippings on the lawn while mowing, which allows the nutrients to return to the soil, and decreases water needs.

Ledger Paper – A paper category that includes most office paper, such as letterhead, computer paper, copier bond, and notebook paper.

Materials Exchange Programs – Programs in which two or more companies exchange materials that would otherwise be discarded. Programs may also be managed by organizations using electronic and/or catalog networks to match companies that want to exchange their materials.

Newspaper – A paper product including, but not limited to, legislative bills, all papers that come with old newspapers, and newsprint.

Office Paper – See “Ledger Paper.”

Recycled Content Products – A product which has been manufactured using pre-

consumer or postconsumer recycled material.

Recycling – The process by which materials otherwise destined for disposal are collected, remanufactured, and purchased.

Source Reduction – Any action undertaken by an individual or organization to eliminate or reduce the amount of materials before they enter the municipal solid waste stream. This action is intended to conserve resources, promote efficiency, and reduce pollution.

Special Waste – Solid wastes/recyclables that can require special handling and management, such as used motor oil, whole tires, white goods, mattresses, lead-acid batteries, furniture, and medical wastes.

Vermicomposting – The process whereby worms feed on slowly decomposing materials (e.g., vegetable scraps) in a controlled environment to produce a nutrient-rich soil amendment.

Waste Assessment – An on-site assessment of the waste stream and recycling potential of an individual business, industry, institution, or household.

Waste Audits – See “Waste Assessment.”

Waste Evaluation – See “Waste Assessment.”

Waste Generation – Section 18722(g)(2) of Title 14 of the California Code of Regulations provides the following equation for jurisdictions to use in computing waste generation. It applies to State agencies and large State facilities as well.

Expressed as an equation, the total solid waste generated by the jurisdiction shall be computed as follows:

$$GEN = DISP + DIVERT$$

where:

GEN = the total quantity of solid waste generated within the jurisdiction.

DISP = the total quantity of solid waste, generated within the jurisdiction, which is transformed or disposed in permitted solid waste facilities.

DIVERT = the total quantity of solid waste, generated within the jurisdiction, which is diverted from permitted solid waste transformation and disposal facilities, through existing source reduction, recycling, and composting programs.

Waste Stream – The total flow of solid waste generated by a business, industry, institution, household, or municipality [or in this case of this document, a State agency or large State facility].

Components of the waste stream are reduced by implementing source reduction, reuse, recycling, and composting techniques.

White Goods – Large appliances such as refrigerators, stoves, water heaters, washers, dryers, and air conditioners that are made of enameled metal.

Xeriscaping – The practice of landscaping with slow growing, drought-tolerant plants.

Sources

1. *Definitions*. California Integrated Waste Management Board. 1994. Publication #500-94-039.
2. *Establishing a Waste Reduction Program at Work, Participant's Manual*, California Integrated Waste Management Board. 1996. Publication #442-95-070.
3. *Landfill Mining Feasibility Study*, CalRecovery Incorporated. 1993.
4. *State Agency Buy Recycled Campaign*, 1999 manual. California Integrated Waste Management Board.
5. *Scrap Specifications Circular 1997: Guidelines for Nonferrous Scrap, Ferrous Scrap, Glass Cullet, Paper Stock, Plastic Scrap*, Institute of Scrap Recycling Industries, Inc. 1997.

State Agency Waste Management Annual Report for
 Contra Costa Community College District (464)
 2003 - Annual Report

*Contra
 Costa*

Annual Report Summary - (Printer Friendly Version)

Printed on 3/15/2004 11:23:50 AM

Part I

State Agency Name: Contra Costa Community College District

Address: 500 Court Street Martinez, CA 94553

Director: Thomas A. Beckett

Title: Facility Director

Recycling Coordinator: Jack Shaffer

Address: 500 Court Street Martinez, CA 94553

Work Phone: (925) 229-1000 Ext: 1280

Fax Number: (925) 335-9697

Email Address: jshaffer@4cd.net

Total Employees: 114

Total Visitors, Inmates,
 etc :

Part II

Verified	Contra Costa College District College Office 500 Court St. Martinez, CA 94553 Number of Employees: 114	Jack Shaffer 500 Court Street Martinez, CA 94553 Phone: (925) 229-1000 Ext: 1280 Fax: (925) 335-9697 Email: jshaffer@4cd.net
Total Employees: 114		

Part III Section 1

Summary of program information entered to date.

Diversion Calculations

Program	Existing	Planned/ Expanding	Tons
Business Source Reduction	X		1.800
Material Exchange	X		0.850
Beverage Containers	X		0.200
Cardboard	X		0.800
Glass	X		0.750
Newspaper	X		0.290
Office Paper (white)	X		5.000

Office Paper (mixed)	X	2.200
Commercial Pickup of Waste	X	0.500
Concrete/asphalt/rubble (C&D)	X	8.000

Total Tonnage Diverted 20.390

Total Tonnage Disposed 12.500

Total Tonnage Generated 32.890

Overall Diversion Percentage 62.0%
(Tonnage Diverted / Tonnage Generated)

Hazardous Materials (Programs not included in calculations)

Program	Existing	Planned/ Expanding	Tons
Electronic Waste	X		(1.400)

Part III Section 2

This section of the annual report presents the methods in which your agency informed both employees and customers served that a recycling program was being implemented. Below are identified the programs you reported were continued or implemented during 2003.

1. Web Page
2. Office Paper Recycling Guide

Part III Section 3

Procurement Activities Implemented in 2003

This section of the annual report presents your compliance with the State Agency Buy Recycled Campaign (SABRC). The activities identified below were reported as implemented or continued during 2003. (Note: Completing this section does not meet the SABRC reporting requirements (PCC Section 12162(b)).

1. Joint Purchase Pools

Part IV

1. **Is the mission statement of the State agency/large State facility the same as reported in the previous year?**
Yes

If No, what is the new mission statement?

2. **How has the waste stream (i.e. those materials disposed in landfills) changed since the Integrated Waste Management Plan was submitted? (Changes include kinds and quantities of materials)**

disposed in landfills.)

The waste stream has not changed since the IWMP was submitted.

3. Summarize what waste diversion programs were continued or newly implemented in 2003.

Waste diversion programs currently in place are: Source Reduction Programs, Recycling Programs, Organic Management Programs and for last year, used the asphalt removed for lot resurfacing for base.

4. How were the tonnages determined for the materials disposed and diverted? (e.g. waste assessments, per capita generation and extrapolation, actual disposal weights, or actual recycling weights)

For all categories, a comparison was made of the actual weights, as reported by the waste hauler pull tags, of the waste and recycling in 2002 as compared to 2003.

5. What types of activities are included in each of the reported programs? (The following link of category definitions may assist you in answering this question.)

Source Reduction: Business waste; bulletin boards, toner cartridges, reusable cups, electronic media, on-line forms, double sided copies, preventative maintenance.

Material Exchange; auctions, property reutilization, computers.

Recycling; beverage containers, cardboard, glass, plastic, newspaper, office paper, telephone books, use of existing asphalt as base for resurfaced parking lots.

Commercial pickup of green waste.

6. Has the State agency/large State facility adopted or changed its waste reduction policy?

No

If Yes, what is the new waste reduction policy?

7. What resources (staff and/or funds) did the State agency/large State facility commit toward implementing its Integrated Waste Management Plan in 2003 to help meet the waste diversion goals?

Part of a full time employee's time (approximately 2 hours per week) is devoted to the implementation of the IWMP.

Part IV Miscellaneous

8. The District is seeking a grant from the Department of Conservation, Division of Recycling to enhance our recycling of beverage containers at each of the three colleges in the district.

State Agency Waste Management Annual Report for
Los Medanos College (541)
2003 - Annual Report

Annual Report Summary - (Printer Friendly Version)

Printed on 3/15/2004 11:22:08 AM

Part I

State Agency Name: Los Medanos College
 Address: 2700 E. Leland Road Pittsburg, CA 94565
 Director: Charles C. Spence
 Title: Chancellor
 Recycling Coordinator: Jack Shaffer

Address: 500 Court Street Martinez, CA 94553
 Work Phone: (925) 229-1000 Ext: 1280
 Fax Number: (925) 335-9697
 Email Address: jshaffer@4cd.net
 Total Employees: 246
 Total Vistors, Inmates, etc : 10,119

Part II

Verified	Los Medanos College 2700 E. Leland Road Pittsburg, CA 94565 Number of Employees: 246	Jack Shaffer 500 Court Street Martinez, CA 94553 Phone: (925) 229-1000 Ext: 1280 Fax: (925) 335-9697 Email: jshaffer@4cd.net
Total Employees: 246		

Part III Section 1

Summary of program information entered to date.

Diversion Calculations

Program	Existing	Planned/ Expanding	Tons
Business Source Reduction	X		12.600
Material Exchange	X		18.000
Beverage Containers	X		1.600
Cardboard	X		6.300
Glass	X		1.000
Newspaper	X		1.900
Office Paper (white)	X		24.900

Office Paper (mixed)	X	5.800
Plastics	X	0.525
Scrap Metal	X	1.800
Xeriscapng, grasscycling	X	6.700
On-site composting/mulching	X	7.000
Self-haul greenwaste	X	2.000
Commercial Pickup of Waste	X	2.000
Tires	X	1.000
White/brown goods	X	1.000
Wood waste	X	4.000

Total Tonnage Diverted 98.125

Total Tonnage Disposed 168.300

Total Tonnage Generated 266.425

Overall Diversion Percentage 36.8%
(Tonnage Diverted / Tonnage Generated)

Hazardous Materials (Programs not included in calculations)

Program	Existing	Planned/ Expanding	Tons
Electronic Waste	X		(4.000)
Batteries	X		(0.700)
Used Oil/Antifreeze	X		(0.700)
Other Hazardous Waste	X		(0.500)

Part III Section 2

This section of the annual report presents the methods in which your agency informed both employees and customers served that a recycling program was being implemented. Below are identified the programs you reported were continued or implemented during 2003.

1. Web Page
2. Office Paper Recycling Guide
3. Waste Evaluations/Survey

Part III Section 3

Procurement Activities Implemented in 2003

This section of the annual report presents your compliance with the State Agency

Buy Recycled Campaign (SABRC). The activities identified below were reported as implemented or continued during 2003. (Note: Completing this section does not meet the SABRC reporting requirements (PCC Section 12162(b)).

1. Joint Purchase Pools

Part IV

1. **Is the mission statement of the State agency/large State facility the same as reported in the previous year?**

Yes

If No, what is the new mission statement?

2. **How has the waste stream (i.e. those materials disposed in landfills) changed since the Integrated Waste Management Plan was submitted? (Changes include kinds and quantities of materials disposed in landfills.)**

The waste stream for Los Medanos College has not changed since the IWMP was submitted.

3. **Summarize what waste diversion programs were continued or newly implemented in 2003.**

Source Reduction Programs, Recycling Programs, Organic Management Program, Special Waste Materials Program.

4. **How were the tonnages determined for the materials disposed and diverted? (e.g. waste assessments, per capita generation and extrapolation, actual disposal weights, or actual recycling weights)**

For all categories, a comparison was made of the actual weights (as reported on the waste hauler pull tags) of waste generated in 2002 as compared to 2003.

5. **What types of activities are included in each of the reported programs? (The following link of category definitions may assist you in answering this question.)**

Source Reduction: Business Waste; bulletin boards, toner cartridges, reusable cups, reusable boxes, electronic media, online forms, double sided copies, preventative maintenance.

Material Exchange; property reutilization, computers, used book buyback, auto fleet sale.

Recycling: beverage containers, cardboard, glass, newspaper, office paper (white and mixed), plastic, scrap metal telephone books.

Organic Management: xeriscaping/grasscycling, on site mulching, commercial greenwaste pickup.

Special Waste Materials; white/brown goods, brush wood chipping for mulch, wood waste, pallets.

6. **Has the State agency/large State facility adopted or changed its waste reduction policy?**

No

If Yes, what is the new waste reduction policy?

- 7. What resources (staff and/or funds) did the State agency/large State facility commit toward implementing its Integrated Waste Management Plan in 2003 to help meet the waste diversion goals?**

Part of a full time employss's time (approximately 4 hours per week) is devoted to the implementation of the IWMP.

State Agency Waste Management Annual Report for
Diablo Valley College (540)
 2003 - Annual Report

Annual Report Summary - (Printer Friendly Version)

Printed on 3/15/2004 11:20:37 AM

Part I

State Agency Name: Diablo Valley College
 Address: 321 Golf Club Road Pleasant Hill, CA 94523
 Director: Charles C. Spence
 Title: Chancellor
 Recycling Coordinator: Jack Shaffer

Address: 500 Court Street Martinez, CA 94553
 Work Phone: (925) 229-1000 Ext: 1280
 Fax Number: (925) 335-9697
 Email Address: jshaffer@4cd.net
 Total Employees: 664
 Total Visitors, inmates, etc : 24,461

Part II

Verified	Diablo Valley College 321 Golf Club Rd. Pleasant Hill, CA 94523 Number of Employees: 649	Jack Shaffer 500 Court Street Martinez, CA 94553 Phone: (925) 229-1000 Ext: 1280 Fax: (925) 335-9697 Email: jshaffer@4cd.net
Verified	San Ramon Facility 3150 Crow Canyon Road San Ramon, CA 94583 Number of Employees: 15	Jack Shaffer 500 Court Street Martinez, CA 94553 Phone: (925) 229-1000 Ext: 1280 Fax: (925) 335-9697 Email: jshaffer@4cd.net
Total Employees: 664		

Part III Section 1

Summary of program information entered to date.

Diversion Calculations

Program	Existing	Planned/ Expanding	Tons
Business Source Reduction	X		8.400
Material Exchange	X		9.600
Beverage Containers	X		2.300
Cardboard	X		11.600

Glass	X	2.400
Newspaper	X	5.200
Office Paper (white)	X	11.400
Office Paper (mixed)	X	5.400
Plastics	X	0.820
Xeriscaping, grasscycling	X	78.000
On-site composting/mulching	X	14.800
Commercial Pickup of Waste	X	9.200
White/brown goods	X	1.200
Wood waste	X	12.000
Concrete/asphalt/rubble (C&D)	X	40.000

Total Tonnage Diverted 212.320

Total Tonnage Disposed 279.000

Total Tonnage Generated 491.320

Overall Diversion Percentage 43.2%
 (Tonnage Diverted / Tonnage Generated)

Hazardous Materials (Programs not included in calculations)

Program	Existing Planned/ Expanding	Tons
Electronic Waste	X	(1.700)
Used Oil/Antifreeze	X	(1.600)
Paint	X	(0.800)
Other Hazardous Waste	X	(18.000)

Part III Section 2

This section of the annual report presents the methods in which your agency informed both employees and customers served that a recycling program was being implemented. Below are identified the programs you reported were continued or implemented during 2003.

1. Web Page
2. Fliers
3. Office Paper Recycling Guide
4. Waste Evaluations/Survey

Part III Section 3

Procurement Activities Implemented in 2003

This section of the annual report presents your compliance with the State Agency Buy Recycled Campaign (SABRC). The activities identified below were reported as implemented or continued during 2003. (Note: Completing this section does not meet the SABRC reporting requirements (PCC Section 12162 (b)).

No Data on File For Part III Section 3**Part IV**

1. **Is the mission statement of the State agency/large State facility the same as reported in the previous year?**

Yes

If No, what is the new mission statement?

2. **How has the waste stream (i.e. those materials disposed in landfills) changed since the Integrated Waste Management Plan was submitted? (Changes include kinds and quantities of materials disposed in landfills.)**

The waste stream has not changed since the IWMP was submitted

3. **Summarize what waste diversion programs were continued or newly implemented in 2003.**

Source Reduction Programs, Recycling Programs, Organic Management Programs and Special Waste Materials Programs were continued.

4. **How were the tonnages determined for the materials disposed and diverted? (e.g. waste assessments, per capita generation and extrapolation, actual disposal weights, or actual recycling weights)**

For all of the waste categories a comparison was made of the actual weights, as reported from the waste hauler pull tags, of waste generated in 2002 as compared to 2003.

5. **What types of activities are included in each of the reported programs? (The following link of category definitions may assist you in answering this question.)**

Source Reduction: Business Waste; bulletin boards, toner cartridges, reusable cups, reusable boxes, electronic media, online forms, double-sided copies, preventative maintenance

Material Exchange: donation of old used furniture and computers, used book buy backs and sale of fleet autos.

Recycling: beverage containers, cardboard, glass, newspaper, office paper (white and mixed), scrap metal, telephone books, concrete/asphalt from the resurfacing of our parking lots was used as the new base material.

Organic Management: xeriscaping/grass recycling, on site mulching, commercial green waste pickup.

6. **Has the State agency/large State facility adopted or changed its waste reduction policy?**

No

If Yes, what is the new waste reduction policy?

7. **What resources (staff and/or funds) did the State agency/large State facility commit toward implementing its Integrated Waste Management Plan in 2003 to help meet the waste diversion goals?**

Part of a full time employee's time (approx. 4 hours per week) is devoted to the implementation of the IWMP.

**State Agency Waste Management Annual Report for
Contra Costa Community College (539)
2003 - Annual Report**

Annual Report Summary - (Printer Friendly Version)

Printed on 3/15/2004 10:30:52 AM

Part I

State Agency Name: Contra Costa Community College
 Address: 2600 Mission Bell Drive San Pablo, CA 94806
 Director: Charles C. Spence
 Title: Chancelor
 Recycling Coordinator: Jack Shaffer

Address: 500 Court Street Martinez, CA 94553
 Work Phone: (925) 229-1000 Ext: 1280
 Fax Number: (925) 335-9697
 Email Address: jshaffer@4cd.net
 Total Employees: 246
 Total Vistors, inmates, 10,637
 etc :

Part II

Verified	Contra Costa Community College 2600 Mission Bell Dr. San Pablo, CA 94806 Number of Employees: 246	Jack Shaffer 500 Court Street Martinez, CA 94553 Phone: (925) 229-1000 Ext: 1280 Fax: (925) 335-9697 Email: jshaffer@4cd.net
Total Employees: 246		

Part III Section 1

Summary of program information entered to date.

Diversion Calculations

Program	Existing	Planned/ Expanding	Tons
Business Source Reduction	X		4.200
Material Exchange	X		5.000
Beverage Containers	X		1.700
Cardboard	X		6.800
Glass	X		1.300
Newspaper	X		2.000
Office Paper (white)	X		24.400

Office Paper (mixed)	X	12.700
Plastics	X	0.040
Scrap Metal	X	2.000
Xeriscaping, grasscycling	X	10.000
On-site composting/mulching	X	4.000
Self-haul greenwaste	X	6.000
Commercial Pickup of Waste	X	2.000
Tires	X	0.200
White/brown goods	X	0.500
Scrap Metal	X	2.000
Wood waste	X	5.800

Total Tonnage Diverted 90.640

Total Tonnage Disposed 147.900

Total Tonnage Generated 238.540

Overall Diversion Percentage 38.0%
(Tonnage Diverted / Tonnage Generated)

Hazardous Materials (Programs not included in calculations)

Program	Existing	Planned/ Expanding	Tons
Electronic Waste	X		(0.800)
Used Oil/Antifreeze	X		(1.400)
Paint	X		(0.800)
Other Hazardous Waste	X		(1.600)

Part III Section 2

This section of the annual report presents the methods in which your agency informed both employees and customers served that a recycling program was being implemented. Below are identified the programs you reported were continued or implemented during 2003.

1. Web Page
2. Office Paper Recycling Guide
3. Waste Evaluations/Survey

Part III Section 3

Procurement Activities Implemented in 2003

This section of the annual report presents your compliance with the State Agency Buy Recycled Campaign (SABRC). The activities identified below were reported as implemented or continued during 2003. (Note: Completing this section does not meet the SABRC reporting requirements (PCC Section 12162(b)).

1. Joint Purchase Pools

Part IV

1. **Is the mission statement of the State agency/large State facility the same as reported in the previous year?**

Yes

If No, what is the new mission statement?

2. **How has the waste stream (i.e. those materials disposed in landfills) changed since the Integrated Waste Management Plan was submitted? (Changes include kinds and quantities of materials disposed in landfills.)**

The waste stream for Conyra Costa College has not changed since the IWMP was submitted.

3. **Summarize what waste diversion programs were continued or newly implemented in 2003.**

Waste diversion programs currently in place are: Source Reduction Programs, Recycling Programs, Organic Management Programs, Special Waste Materials Programs, Hazardous Materials Disposal Programs

4. **How were the tonnages determined for the materials disposed and diverted? (e.g. waste assessments, per capita generation and extrapolation, actual disposal weights, or actual recycling weights)**

For all categories, a comparison was made of the actual weight (as reported on the waste hauler pull tags) of waste, recycling, green waste and hazardous materials disposal generated in 2002 as compared to 2003.

5. **What types of activities are included in each of the reported programs? (The following link of category definitions may assist you in answering this question.)**

Source Reduction: Business waste; bulletin boards, toner cartridges, reusable cups, reusable boxes, electronic media, online forms, double-sided copies, preventative maintenance.

Material exchange: auctions, computers, used book buy back, auto fleet sale.

Recycling: beverage containers, cardboard, glass, plastic, newspaper, office paper, scrap metal, telephone books.

Organic Management: xeriscaping/grasscycling, onsite mulching, self haul green waste, commercial greenwaste pickup.

Special Waste MAterials: white/ brown goods, repair and reuse, recycling, scrap metal from auto and welding shpos, wood waste; brush/wood chipping for mulch, wood pallets - recycle

6. **Has the State agency/large State facility adopted or changed its waste reduction policy?**

No

If Yes, what is the new waste reduction policy?

7. **What resources (staff and/or funds) did the State agency/large State facility commit toward implementing its Integrated Waste Management Plan in 2003 to help meet the waste diversion goals?**

Part of a full time employee's time (approximately 4 hours per week) is devoted to the implementation of the IWMP.

California Integrated Waste Management Board



Terry Tamminen
Secretary for
Environmental
Protection

Linda Moulton-Patterson, Chair
1001 I Street • Sacramento, California 95814 • (916) 341-6000
Mailing Address: P. O. Box 4025, Sacramento, CA 95812-4025
www.ciwmb.ca.gov



Arnold Schwarzenegger
Governor

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JUN 18 2004

COMMISSION ON
STATE MANDATES

VIA FACSIMILE: (916) 445-0278
Via U.S. Mail

June 17, 2004

Paula Higashi, Executive Director
Commission On State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: Comments on Proposed Parameters and Guidelines
Integrated Waste Management, 00-TC-07
Santa Monica and South Lake Tahoe Community College Districts, Co-Claimants

Dear Ms. Higashi:

The California Integrated Waste Management Board (IWMB) respectfully submits the following comments in response to the claimant's proposed Parameters and Guidelines (Ps & Gs) for the above referenced test claim.

As a preliminary matter, in reviewing the test claim along with the *Guide to the State Mandate Process* dated December 2003, the IWMB believes the proposed Ps & Gs do not comply with the requirements as set forth in the *Guide* and the governing regulations. Specifically, the claimants did not fully address the requirements in the following subsections of 2 CCR 1183.1(a):

- Subsection (4), which would identify a "description of the specific costs and types of costs that are reimbursable, including one-time costs and on-going costs, and a description of the most reasonable methods of complying with the mandate."
- Subsection (5), which would identify "supporting data for the claim including reference to required source documents, record keeping, and allowable overhead costs."
- Subsection (6), which would include "a signed section indicating that the person that will be submitting reimbursement claim(s) to the State Controller is so authorized."
- Subsection (9), which would address the fact that the parameters and guidelines "must allow for any offsetting savings to the same program experienced as a result of the same statute(s) ... found to contain a mandate."

California Environmental Protection Agency

Printed on Recycled Paper

The IWMB respectfully disagrees with the Commission's determination that the proposed Ps & Gs for this test claim are complete; in fact the claimant's proposal is grossly inadequate. The full burden of demonstrating reimbursable costs and all offsetting savings must be placed on the claimant. It is inappropriate for the IWMB to take the claimant's burden of proof. This test claim 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 operations in place at the particular Community College. The IWMB can provide some examples of items to consider, but it cannot anticipate the particulars of every type of program imaginable under the various Integrated Waste Management Plans or know the waste management/recycling operations of every Community College. At this point, since the Commission has accepted the claimant's inadequate proposal, the IWMB recommends a pre-hearing conference on the Ps & Gs drafted by Commission staff.

In addition, IWMB has the following comments on the proposed Ps & Gs.

III. PERIOD OF REIMBURSEMENT - The period of reimbursement being proposed by the claimant would begin July 1999. The statute was not signed by the Governor until October 1999 and did not go into effect until January 1, 2000. To ask for reimbursement before the effective date of the mandate would not be appropriate. In fact, some cases may show savings greater than the overall costs claimed.

IV. REIMBURSABLE ACTIVITIES - As stated above, offsetting savings are not identified in the proposal for any of the activities claimed. It must be noted that some cost savings may be so great that there will be an overage to be allocated to other activities being claimed for reimbursement.

Section 1183.1(a)(7) states that "claimants should use an allocation formula or uniform allowance as the basis for reimbursement." It is CIWMB's view that this is neither reasonable nor possible. Because each campus operates in significantly different ways, and the programs chosen to comply will vary significantly, the Ps& Gs should provide appropriate tools to assure that all costs and cost savings are identified. IWMB has provided two examples in Exhibit A, which demonstrate how offsetting savings may be realized for grasscycling and form reduction programs. These examples might provide a model for this issue to be addressed for the other identified programs.

Under Part 2 - PROMOTIONAL PROGRAMS, the outline provided lists many possible activities that could promote recycling programs. It is critical for this exercise to note that *none* of the listed activities in this Part is required as part of the mandate. The IWMB asks in the Plan and the Annual Report if any of these activities have been done or are planned; time spent answering the questions could be claimed, but not any of the activities themselves.

Under Part 3 - PROCUREMENT ACTIVITIES, IWMB has the same comment noted under Part 2. Note that items E. (recycled content certification) and F. (annual SABRC report) appear to mandate an activity. However, IWMB has made a legal determination that these activities are

Paula Higashi, Executive Director

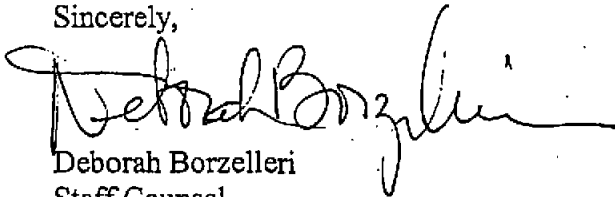
June 17, 2004

Page Two

not applicable to Community Colleges, and therefore has *never* required this information of Community Colleges. The format of the annual report allows for a response of "no program applies." Thus, any time spent answering the questions could be claimed, but not any of the activities themselves.

Should you have any questions or need additional information regarding IWMB's response, please do not hesitate to contact me directly at (916) 341-6056.

Sincerely,



Deborah Borzelleri
Staff Counsel

cc: Mailing List

Grasscycling

Grasscycling is the contemporary term for the old practice of returning lawn clippings to the lawn during mowing. By using this process studies have shown that up to 50 percent of mowing time can be saved, that the fertilization needs of the average lawn can be reduced by up to 25 percent, and that some water savings can be achieved.

Factors to consider include but are not limited to:

- Total acres of turf
- Total acres of turf collected for disposal
- Total acres of turf grasscycled
- Total staff hours used to mow turf (this would need to be broken down to show the hours used to collect and dispose of turf compared with hours used to grasscycle)
- Classification and duty statement of staff person mowing the lawn
- Total hourly rate of staff person
- Time sheets denoting the time spent on given activity
- Total amount of grass clippings (either by weight or by acre) disposed in a trash can versus placed on native soil as a mulch material

Once this information is collected. A review would need to be completed to determine the savings achieved through the grasscycling method. To accurately calculate the savings the following additional information would be needed:

- Total staff hours saved (hourly rate savings),
- Total tons of material not disposed in a trash can
- Avoided disposal cost or landfill fee for non-disposal of grass clippings
- Total water savings achieved (this would be reviewed by comparing water meter readings for the campus and deducting any expansions of the campus due to buildout.)
- Total fertilizer reduction achieved. (This may require claimant to review several past years to show purchases of fertilizer made before grasscycling was implemented.)
- Total acres where clippings were placed on native (exposed) soil.
 - This reduces the amount of weeds grown which reduces the amount of time needed for weed maintenance (picking or cutting), chemical spraying, purchase of supplies to achieve the cutting or spraying
 - Reduced training costs required for the applicator of chemical sprays required by the State of California.

Form Reduction

School registration is one area that can contribute significantly to waste reduction goals. Factors and data to be considered should include but not be limited to:

- Registration of first time students likely requires more information than registration of continuing students
- Possible use of electronic forms and online class schedules
- Student population registering in current year
- Current total printing of school catalog and registration forms
- Current number of students registering on-line versus using paper
- Total catalogs and registration forms printed prior to electronic registration
- Total Student population registering prior to electronic registration (need to set a base or a total student to paper forms ratio)
- Total number of catalogs not used in current year
- Total number of catalogs not used in past year
- Total pages of current catalog
- Total pages of catalog prior to electronic registration
- Total pages of registration form prior to electronic registration
- Other identified forms/processes used in registration process
- Classifications of all persons that handle the forms with regards to storage, and delivery to appropriate persons, administrative staff needed to process the forms appropriately
- Warehousing costs of forms required to be stored as necessary, both short term and long term
- The term of which the forms are to be kept
- Cost of updating forms
- Cost of printing the form
- Cost savings from not needing to warehouse the forms on or off site
- Cost of handling the forms once on the campus including:
 - Classification(s) and hourly rate of staff person that would work the warehouse to receive the forms for storage once delivered from the shipper
 - Timesheets reflecting total time spent receiving forms
 - Classification(s) and hourly rate of staff person that would work the warehouse to deliver the forms to administrative office area, mail services, etc.
 - Timesheets reflecting total time spent delivering forms to appropriate destinations
 - Administrative staff classifications of persons that would handle and process paper form(s)
 - Time spent per form to enter it into the system
 - Time spent to review (if any) electronically submitted form(s)

- Time spent to address questions and concerns of paper form
- Time spent to address questions and concerns of electronic form
- Mail cost per registration form
 - Before electronic forms were developed
 - After electronic forms were developed
- Total paper forms collected and disposed before electronic form
- Total paper forms collected and disposed after electronic form
- Total paper forms collected and recycled before electronic form
- Total paper forms collected and recycled after electronic form
- Total waste disposed during registration prior to electronic forms
- Total waste disposed during registration after electronic forms
- Need to compare the different disposal rates to determine savings from disposal under new system
- Total paper forms recycled after appropriate records retention period has been reached
- Total paper properly destroyed or shredded
- Savings from avoided disposal cost for the recycling of shredded paper



STEVE WESTLY
California State Controller

July 6, 2004

Ms. Nancy Patton
Assistant Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RECEIVED

JUL 12 2004

COMMISSION ON
STATE MANDATES

RE: PROPOSED PARAMETERS AND GUIDELINES
INTEGRATED WASTE MANAGEMENT, 00-TC-07
STATUTES 1992, CHAPTER 1116
STATUTES 1999, CHAPTER 764

Dear Ms. Patton:

We have reviewed the proposed Parameters and Guidelines (P's & G's) submitted by SixTen and Associates on behalf of Santa Monica and Lake Tahoe Community College Districts for the above referenced subject matter. Our recommendations for changes to the proposed P's & G's are attached; additions are underlined, deletions have a strike-through. Some sections of the proposed P's & G's are left open for the Commission's boilerplate language and summary.

We recommend that these changes be taken into consideration for further clarification of the reimbursable components. If you have any questions, please contact Ginny Brummels, Manager of the Local Reimbursements Section, at (916) 324-0256.

Sincerely,

A handwritten signature in black ink that reads "John A. Korach".

JOHN A. KORACH, Chief
Division of Accounting and Reporting

Enclosure

JAK:glb

cc: Interested parties

**COMMENTS ON PARAMETERS AND GUIDELINES
INTEGRATED WASTE MANAGEMENT 00-TC-07
STATUTES OF 1992, CHAPTER 1116**

Section I. SUMMARY OF THE MANDATE

Add appropriate language from the adopted Statement of Decision.

Section III. PERIOD OF REIMBURSEMENT

Government Code (GC) 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 on or after July 1, 1999, for compliance with the mandate are reimbursable.

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 \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.

This language was taken from the Statement of Decision and the Commission's boilerplate. We recommend the Commission add to the above any additional boilerplate language as necessary.

Section IV. REIMBURSABLE ACTIVITIES

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

1. Policies and Procedures

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

The Commission did not specifically find these costs to be reimbursable but has found that when a community college chooses to develop its own integrated waste management plan, it is exercising its discretion to do so since it can be automatically governed by the model integrated waste management plan. Since the model plan contains procedures for implementing the integrated waste management plan under the direction of an approved solid waste and recycling coordinator, the additional policies and procedures costs are at the discretion of the community college and should not be reimbursable.

~~2. 1.~~ Staff Training

One time training of district staff on the requirements and implementation of the district Board's model integrated waste management plan. Training is limited to staff that are directly involved with the implementation of the plan. The scope of the training that is subject to reimbursement is limited to the Board's model plan. Training beyond the Board's model plan is at the college's discretion and is not reimbursable.

Renumber this section 1 due to the proposed deletion of the Policies and Procedures section. Training should be limited to one-time training of personnel directly involved with this program and limited in scope based on the Board's model integrated waste management plan.

~~3. 2.~~ Plan Development and Approval Compliance With the Model Integrated Waste Management Plan

~~Completing and submitting to the Integrated Waste Management Board for each college in the district the state agency or large state facility information form, list of facilities, waste reduction and recycling program worksheets which describe program activities, promotional programs, and procurement activities, and other questionnaires. Responding to any Board reporting requirements during the approval process.~~

A community college must comply with the Integrated Waste Management Board's 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 activities;
- (3) State agency waste reduction and recycling program worksheet, including the sections on program activities, promotional program, and procurement activities; and
- (4) State agency integrated waste management plan questions.

Renumber this section 2. The revision above is to correlate to the approved activities in the Commission's Statement of Decision and to provide for a clear outline of the activities.

4. 3. Program Coordinator

Renumber this section 3.

5. 4. Waste Diversion

Diverting at least 25% of all solid waste by January 1, 2002, and at least 50% by January 2004, and maintaining the required level of reduction, according to the state model plan which includes, but is not limited to, the following methods:

PART 1. PROGRAM ACTIVITIES

A. Source Reduction

Other source reduction programs

A. Recycling

- 5. Officer paper

PART 2: PROMOTIONAL PROGRAMS

D. Outreach

- 6. Speakers (staff available for presentations)

Minor changes above to match the activities to the model plan.

PART 3: PROCUREMENT ACTIVITIES

6. 5. Alternative Compliance

Renumber this section to 5.

NOTE ON THE ALTERNATIVE COMPLIANCE:

The Commission found that it is a new program or higher level of service for a community college to either comply with the 50-percent diversion requirement or request an alternative requirement or request a time extension. The Commission found that requesting both a time extension and an alternative goal would be discretionary. Therefore, only one request for either an alternative compliance or a time extension is reimbursable.

The note above is to clarify the alternative compliance component approved in the Statement of Decision.

7. Annual Report

Annually, beginning on April 1, 2002, and by April 1 of each subsequent year, preparing and submitting a report to the Board summarizing its progress in reducing solid waste which includes: (1) calculations of annual disposal reduction, (2) information on the changes in waste generated or disposed of, (3) the amounts of materials collected for recycling, (4) a summary of progress made in implementing the integrated waste management plan, (5) the extent to which the college intends to utilize programs or facilities established by the local agency for the handling, diversion, and disposal of solid waste.; (6) 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 GC section 42921, subdivision (b), and complying with the college's plan of correction, before the expiration of the time extension. (7) For a community college that has been granted an alternative source reduction, recycling, and composting requirement by the Board pursuant to GC 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. ~~a summary of progress made in meeting the integrated waste management plan of correction, and other relevant compliance information.~~

Revision above is to clarify the reporting requirement based on the Statement of Decision.

V. CLAIM PREPARATION AND SUBMISSION

We recommend the Commission use the boilerplate language for the rest of the document.

PROOF OF SERVICE BY MAIL

CSM - 00-TC-07

I, the undersigned, declare as follows:

I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of 18 years and not a party to the within action. My place of employment and business address is 3301 C Street, Suite 500, Sacramento, California 95816.

On July 8, 2004, I served the attached recommendation of the State Controller's Office by placing a true copy thereof enclosed in a sealed envelope addressed to each of the persons named below at the addresses shown and by depositing said envelopes in the United States mail at Sacramento, California, with postage hereon fully prepaid.

Ms. Harmeet Barkschat
Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Dr. Carol Berg
Education Mandated Cost Network.
1121 L Street, Suite 1060
Sacramento, CA 95814

Ms. Deborah Borzelleri
CA Integrated Waste Mgmt Board (E-10)
Legal Office
1001 I Street, 23rd Floor
P.O. Box 4025
Sacramento, CA 95812-4025

Mr. Mark Brummond
California Community Colleges
Chancellor's Office (G-01)
1102 Q Street, Suite 300
Sacramento, CA 95814-6549

Mr. Allan Burdick
Maximus
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Mr. Bob Cambell
Department of Finance (A-15)
915 L Street, Suite 1190
Sacramento, CA 95814

Ms. Annette Chinn
Cost Recovery Systems
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Folsom, CA 95630

Mr. Keith Gmeinder
Department of Finance (A-15)
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Sacramento, CA 95814

Mr. Michael Havey
State Controller's Office (B-08)
Division of Accounting & Reporting
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Sacramento, CA 95816

Ms. Beth Hunter
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Rancho Cucamonga, CA 91730

Mr. Jim Jagers
Centration, Inc.
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Gold River, CA 95670

Mr. Louis R. Mauro
Attorney General's Office
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P.O. Box 944255
Sacramento, CA 95814

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Santa Monica Community College District
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Santa Monica, CA 90405-1628

Mr. Paul Minney
Spector, Middleton, Young & Minney, LLP
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Sacramento, CA 95825

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

MCS Education Services
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Ms. Cindy Sconce
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Mr. Gerald Shelton
CA Department of Education (E-08)
Fiscal & Administrative Services Division
1430 N Street, Suite 2213
Sacramento, CA 95814

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

Mr. Steve Smith
Steve Smith Enterprises, Inc.
4633 Whitney Avenue, Suite A
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Mr. Jim Spano
State Controller's Office (B-08)
Division of Audits
300 Capitol Mall, Suite 518
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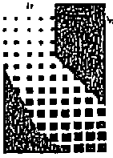
Mr. Jon Stephens
South Lake Tahoe Community College District
One College Drive
South Lake Tahoe, CA 96150

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 8, 2004, at Sacramento, California.


Glenn O. Holderbein

California Integrated Waste Management Board



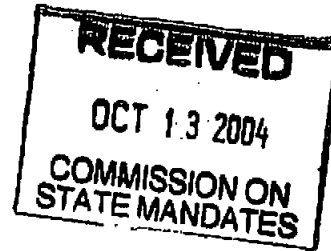
Terry Tamminen
Secretary for
Environmental
Protection

Linda Moulton-Patterson, Chair
1001 I Street • Sacramento, California 95814 • (916) 341-6000
Mailing Address: P. O. Box 4025, Sacramento, CA 95812-4025
www.ciwmb.ca.gov



Arnold Schwarzenegger
Governor

VIA FACSIMILE: (916) 445-0278
Via U.S. Mail



October 8, 2004

Paula Higashi, Executive Director
Commission On State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: Additional Comments on Proposed Parameters and Guidelines
Integrated Waste Management, 00-TC-07
Santa Monica and South Lake Tahoe Community College Districts, Co-Claimants

Dear Ms. Higashi:

The California Integrated Waste Management Board (IWMB) respectfully submits the following additional comments regarding the proposed Parameters and Guidelines (Ps & Gs) for the above referenced test claim.

First, it is IWMB's firmly held position that any programs implemented as a result of the test claim statute will inevitably result in cost savings to claimants. The basis for this statement is that diversion by definition results in avoided disposal, and the avoided costs related to disposal. IWMB believes there will most likely be *net* cost savings as well, however, the claimant is the only entity in a position to make that determination.

Because of the irrefutable fact that some cost savings will be realized as a result of implementing diversion programs, IWMB recommends that the Ps & Gs and the State Controller's Office (SCO) *require* information on cost savings in any claim submitted. IWMB has offered to the Commission a costs/savings worksheet that may be used as guidance for collecting relevant information. We understand that SCO's current claim summary includes an area for the claimant to enter information regarding "Cost Reduction." IWMB recommends that SCO develop a costs/savings worksheet form that would be required for any claim made under the test claim statute. In addition, IWMB staff expertise is available as needed regarding cost or savings related to diversion programs.

California Environmental Protection Agency

 Printed on Recycled Paper

Paula Higashi, Executive Director

October 8, 2004

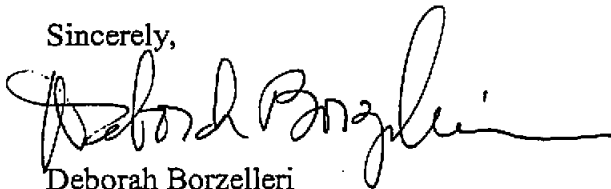
Page Two

Second, IWMB staff notes that the current process allows both direct and indirect costs to be claimed for reimbursement; we believe that an equitable process would conversely require both direct and indirect cost *savings* be figured into the calculation.

Lastly, IWMB would like to point out that the reporting period under the test claim statute is based on a calendar year, but that mandate claims are made based on the fiscal year. Therefore, in the interest of simplifying the claims process, we recommend claimants collect information on a semi-annual basis.

Should you have any questions or need additional information regarding IWMB's response, please do not hesitate to contact me directly at (916) 341-6056.

Sincerely,



Deborah Borzelleri
Staff Counsel

cc: Mailing List Dated September 30, 2004

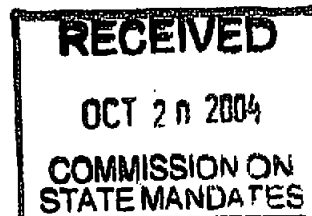
SixTen and Associates

Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President
3252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
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E-Mail: Kbpsixten@aol.com

October 18, 2004



Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: CSM 00-TC-07
Test Claim of Lake Tahoe and Santa Monica Community College Districts
Claimant's Proposed Parameters and Guidelines
Integrated Waste Management

I am responding on behalf of the claimants to the letters of the California Integrated Waste Management Board dated June 17, 2004 and October 8, 2004, and the State Controller's letter of July 6, 2004.

Offsetting Savings

The CIWMB asserts, without specific facts in support, that it is "irrefutable" that some cost savings will be realized as a result of implementing diversion programs, because "avoided disposal" means avoided costs. Since the CIWMB has not provided any facts in support of this assertion, we have to evaluate it based on what seems apparent and reasonable. It does seem apparent that if the districts were previously paying for "disposal," any reduced amount would be a reduction in cost. However, it would appear reasonable to anticipate that there could be some additional labor involved in segregating disposables and recycling collection, among other new costs. Despite the focus by the CIWMB on disposal reduction, it must be remembered that this is just one component of the mandate. There are staff administration, plan reporting, and plan operation activities to be considered.

Any and all cost savings are still a question of fact. The CIWMB has already concluded that each college will implement the state waste management plan in various ways given the scope and flexibility of the state model. The CIWMB stated that "the subject matter requires a comprehensive analysis of economic life cycles for waste streams chosen by the potential claimants, which could only be based on the specific operation in-place at the

particular Community College." Therefore, it is reasonable to expect that each college could experience a variety of savings from implementing the plan as well as a variety of costs to operate the plan.

However, there is no algorithm on the record which substantiates any assertion that the offsetting savings will exceed the new costs. Therefore, there is no basis to believe that the alleged, but still unidentified and thus refutable savings, are sufficient to offset the entire mandate. Even so, what the state agencies call "offsetting savings," that is Government Code section 17556, is the subject matter of the test claim. The test claim has already been adjudicated by the Commission. The Commission did not find cost savings in an amount sufficient to preclude mandate reimbursement. Now, at the parameters and guideline stage, it is appropriate to identify sources of other government funding and local income which may reduce the cost of the mandate.

The CIWMB states it is available to provide its expertise. CIWMB staff attending the prehearing conference strongly represented their collective expertise in waste management programs and *community college operations* as well. Indeed, CIWMB provided for the prehearing two questionnaires which they suggest claimants should use to evaluate their disposal reduction costs. However, disposal costs are just one part of the mandate. The test claim has been in process for four years, at least the same period of time as the CIWMB has been responsible for oversight of the mandated program. It is late in process for these program experts to assert pervasive costs savings without statistical support. The questionnaires may be helpful, but have not been tested by any college for utility and relevance to actual operations, nor have any of the other activities been included for which the colleges will have the burden of cost reporting been included.

The CIWMB also presented a summary worksheet to measure program cost savings. Good intentions aside, the summary schedule as is would violate Government Code section 17565. Further, current state mandated accounting and financial reporting procedures for colleges do not include the cost accounting systems and data needed to generate the amounts needed for the summary worksheet. Therefore, if the worksheet becomes a part of the annual claim, the cost accounting, record keeping, and data collection effort would generate an increased workload specific to the mandate and thus claimable as costs on the annual Mandate Reimbursement Process claim. So, unless the state agencies have the information to provide a reliable calculation of these costs, it will be necessary to continue to rely upon the claimants to calculate their costs and savings and report them properly on their annual claims; a responsibility the state has delegated to schools and colleges since 1978 for more than fifty different mandate programs.

Given the interest of the CIWMB to assist the Commission in its development of reliable and representative cost reporting for this mandate, perhaps the best solution at this juncture is to have the CIWMB continue to develop worksheets which they can distribute to colleges as a work product of the CIWMB and not forms mandated by the Commission

or as forms generated by the State Controller. It is understood that developing these helpful schedules will be difficult, as the CIWMB has already pointed out: "The IWVMG can provide some examples of items to consider, but it cannot anticipate the particulars of every type of program imaginable under the various Integrated Waste Management Plans or know the waste management/recycling operation of every Community College." If it will be difficult for the CIWMB to develop any form of statewide applicability, it seems somewhat pointless for the burden to be shifted to the State Controller, or the claimants, as is the recommendation of the CIWMB.

Indirect Cost Savings

The CIWMB asserts, again without foundation, that there will be *indirect cost savings*. That concept does not exist in government financial reporting nor do current college state mandated financial reporting requirements generate this type of information. On the other hand, standard parameters and guidelines provide for methods to calculate *indirect costs*, if that is what the CIWMB intended to address.

Promotional Programs

The CIWMB asserts that promotional programs are not a required part of the mandate. This is a test claim issue. The Commission on State Mandates Statement of Decision includes the entire scope of the state model plan, and implementing promotional programs is part of the plan, with equal standing to all other components. The mandate is not limited to disposal reduction, which is the focus of the CIWMB contributions to this process.

The State Controller needs to clarify whether their excised presentation of the waste diversion activities language in their letter of July 6, 2004 is intended to delete specific activities not listed by them but included in the proposed parameters and guidelines. If so, there is no foundation (no exception made in the Statement of Decision) to pick and choose activities from the state plan. Further, their proposal to limit reimbursement of speakers to "staff available for presentation" is similarly unfounded, micro-manages the ability of the colleges to implement the mandate, and presumes that the necessary skills can be found in district staff

Procurement Programs

The CIWMB states that it has made the "legal determination" that these activities are not required of community colleges. That issue belonged to the test claim adjudication. However, the parameters and guidelines should exclude reimbursement for those activities if the CIWMB can provide proof of that determination in the manner and form prescribed by the Commission regulations.

Reporting Period

The CIWMB recommends that claimants *collect* information on a semiannual basis. The standard annual claiming process in place for twenty-five years requires claimants to *report costs annually on a fiscal year basis*. As to the actual *collection* of the data in support of the mandate, that process could be monthly, weekly, or daily, depending on the nature of the cost data needed to support the claim. The cost of data collection and reporting is within the scope of the Mandate Reimbursement Process claim, and not this mandate.

Compliance with Title 2, CCR, 1183.1(a)

The CIWMB asserts that the claimant's proposed parameters and guidelines do not comply with Commission regulations. The parameters and guidelines document was prepared and submitted in the form established for this process, and was not rejected by the Commission staff.

Policy and Procedures

The SCO states that since the Commission did not specifically find these costs to be reimbursable, the policies and procedures activities are discretionary. The claimant asserts that planning to implement a new program, especially one of this scope, is implicit and reasonable, and need not be specified, nor has that been the standard for the parameters and guidelines these past twenty-five years. As a matter of common sense and experience, I believe the Commissioners could anticipate these types of costs in their own organizations should they be tasked with a similar new program. For example, it seems unlikely that the CIWMB started their oversight of this program or developed the state model plan without some form of planning. Or, that the state agencies which are included in this same waste management reduction mandate implemented their plan without some policy and procedures in place.

Staff Training

While the claimant believes staff training is another implicit cost of any bureaucracy implementing a state mandated program, the Commission has in recent years been treating training as an activity which needs to be discovered and separately approved, which is why the claimant proposed training as a distinct *activity* rather than a cost item. Surely, state agencies train their staff to implement new programs?

The SCO proposes to limit training as a one-time event limited to relevant staff and the scope of the mandate, all of which is confusing cautionary surplusage. Obviously, claimants would have no reason to report training costs for staff on subject matter unrelated to the mandate. But, to limit training to a "one-time" event is inappropriate. It

is reasonable to anticipate staff turnover (even state agencies have staff turnover). It is reasonable to anticipate the need for training when the waste management plan changes (we already know that different target disposal goals are required, which will require different methods to accomplish). This focus of the state agencies on training costs as a discrete activity is akin to counting pencils; local agencies have similar budget constraints as the state agencies and do not utilize staff time and supplies capriciously.

Alternative Compliance

Contrary to the SCO's conclusion, there is no foundation to conclude that an alternative goal is discretionary. This method of compliance is within the scope of the state plan.

CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information or belief.

Sincerely,



Keith B. Petersen

- ©: Tom Donner, Vice-Chancellor, Santa Monica Community College District
- Jon Stephens, Vice-President, Lake Tahoe Community College
- Dr. Carol Berg, Consultant, Education Mandated Cost Network

DECLARATION OF SERVICE

RE: Integrated Waste Management CSM 00-TC-07
CLAIMANT: Lake Tahoe Community College District and
Santa Monica Community College District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of October 18, 2004 , addressed as follows:

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

AND per mailing list attached

FAX: (916) 445-0278

U.S. MAIL: I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

OTHER SERVICE: I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

_____(Describe)

FACSIMILE TRANSMISSION: On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

PERSONAL SERVICE: By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 10/18/04 , at San Diego, California.


Diane Bramwell

Commission on State Mandates

Original List Date: 3/20/2001
Last Updated: 7/23/2004
List Print Date: 09/30/2004
Claim Number: 00-TC-07
Issue: Integrated Waste Management

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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COMMISSION ON STATE MANDATES

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SACRAMENTO, CA 95814
PHONE: (916) 823-3582
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February 14, 2005

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: Draft Staff Analysis, Proposed Parameters and Guidelines, and Hearing Date
Integrated Waste Management, 00-TC-07
Santa Monica and South 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; Statutes 1992, Chapter 1116
Manuals of the California Integrated Waste Management Board

Dear Mr. Petersen:

The draft staff analysis and proposed parameters and guidelines are enclosed for your review.

Written Comments

Any party or interested party may file written comments on the draft staff analysis and proposed parameters and guidelines by **February 28, 2005**. The Commission's regulations require comments filed with the Commission to be simultaneously served on the parties and interested parties and to be accompanied by a proof of service. To request an extension of time to file comments, please refer to section 1183.01, subdivision (c), of the Commission's regulations.

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. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c), of the Commission's regulations.

Mr. Keith Petersen

Page 2

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 on the above, please contact Eric Feller at (916) 323-8221.

Sincerely,



NANCY PATTON
Assistant Executive Director

Enc. Draft Staff Analysis
cc. Mailing List (current mailing list attached)

MAILED: FILED:
DATE: 2/14/05 INITIAL: VS
WORKING BINDER: _____

**DRAFT STAFF ANALYSIS
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 South Lake Tahoe Community College Districts, Co-claimants

EXECUTIVE SUMMARY

The Executive Summary will be included in the Final Staff Analysis.

STAFF ANALYSIS

Claimants

Santa Monica and South Lake Tahoe Community College Districts

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

Summary of the Mandate

On March 25, 2004, the Commission adopted its Statement of Decision¹ 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' proposal² and the comments received.³ 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.⁴ The claimants submitted a rebuttal to state agency comments on October 18, 2004.⁵ Staff made non-substantive, technical changes 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

¹ Exhibit A.

² Exhibit B.

³ Exhibits C, D, E, and F.

⁴ Exhibit E.

⁵ Exhibit F.

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

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."⁶ 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.⁷ 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. In fact, the instructions for completing the model plan indicates that "workshops [were] conducted in March and April 2000 to help State agencies⁸ determine diversion rates and complete [a plan]."⁹ 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.

⁶ Exhibit D, page ____.

⁷ Exhibit F, page ____.

⁸ As noted 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).

⁹ Exhibit C, page ____.

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.

The SCO recommends¹⁰ 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, 2004.¹¹ 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, 2004,¹² 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 42926.¹³

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.

¹⁰ Exhibit D, page ____.

¹¹ Exhibit C, page ____.

¹² Exhibit F, page ____.

¹³ Exhibit A, (page 26 of Statement of Decision).

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.

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 2000,¹⁴ 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 or preparing the required annual reports is reimbursable because this was 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 for achieving compliance with the model plan. Therefore, this activity was retained in the proposed parameters and guidelines, as proposed by the claimants.

¹⁴ <<http://www.ciwmb.ca.gov/Agendas/agenda.asp?RecID=235#AG2425>> as of February 1, 2005.

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.

Given the requirement to track cost savings (§ 42925) and the requirement to include information on tonnage diverted in the annual reports (§ 42926), staff finds that the accounting system is a reasonable method of implementing the test claim statute,¹⁵ and retained it 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 and Reimbursements

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."¹⁶ 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, 2004,¹⁷ 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.¹⁸ 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.

¹⁵ California Code of Regulations, title 2, section 1183.1, subdivision (a)(4).

¹⁶ Exhibit C, pages ____.

¹⁷ Exhibit E.

¹⁸ Exhibit E, page ____.

- *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 noted below.¹⁹

Staff Findings

Subsequently mandated costs: Claimants raised 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.

The plain meaning of this provision applies to the community college's "costs" prior to the test claim statute. Thus, the identified "costs" in the Board's AB 75 program worksheet, to the extent incurred by community colleges, are reimbursable regardless of the college's activities prior to the test claim statute. Claimants, therefore, are not required to show costs savings from any programs engaged in prior to the test claim statute.

Staff cannot require claimants to submit this cost savings worksheet as recommended by the Board. Only the activities expressly stated in the Statement of Decision are required. The cost savings worksheet is not mentioned in the Statement of Decision or the test claim statute, nor is it reasonably necessary to comply with the mandate.

Finally, Government Code section 17517.5, as added by Statutes 2004, chapter 890, defines "cost savings authorized by the state" to mean "any decreased costs that a ... [community college] realizes as a result of any statute enacted or any executive order adopted that permits or requires the discontinuance of or a reduction in the level of service of an existing program that was mandated before January 1, 1975." The test claim statute that initiated the program was enacted in 2000, so there is no evidence of discontinuance or reduction in service levels based on section 17517.5.

Staff notes that the Commission adopted its Statement of Decision finding that the test claim statutes and executive order require specific new activities, which impose increased costs mandated by the state. Accordingly, the Commission can only identify sources of savings and other reimbursements that could be offset from the reimbursement claims.

Reduced costs: In its October 2004 comments, the Board stated that there will be avoided disposal costs that likely would result in net savings to claimants.

Subdivision (a) of section 42925 of the test claim statute states:

¹⁹ Exh. F, pages ____
Exhibit

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 12167²⁰ and 12167.1²¹ of the Public Contract Code.

In spite of the Board's assertions, there is no direct evidence in the record that reduced disposal costs will necessarily occur as a result of this program, or occur in an amount sufficient to offset the costs of the program. Rather, as reflected in the Statement of Decision, the record contains evidence of community colleges incurring increased costs due to the test claim statutes.

Requiring community colleges to redirect their cost savings in the manner required by section 42925 merely reduces the costs claimed, which is covered by the boilerplate language under Section VII, Offsetting Savings and Reimbursements. Section 42925 was enacted as part of the test claim legislation. Therefore, staff finds that claimants must comply with section 42925 by redirecting cost savings (if they occur), or revenues to the integrated waste management plan to fund plan implementation and administration costs in accordance with Public Contract Code sections 12167 and 12167.1.

Student center fee: Education Code section 76375 authorizes community colleges to charge a 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

²⁰ 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.

²¹ 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.

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 an offset to the extent the revenues from it are applied to the test claim statutes or executive order.²²

Based on Public Contract Code sections 12167 and 12167.1, and Education Code section 76375, subdivision (a), staff finds that the offsets 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 building operating fee imposed pursuant to Education Code section 76375, subdivision (a).

Staff Recommendation

Staff recommends that the Commission adopt the proposed parameters and guidelines, beginning on page 12.

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

²² See Statement of Decision, Exhibit A, page ____.

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 South 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. (1)): 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

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)

3. Plan Development and Approval

1. ~~Completeing 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 A, 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. ~~Xerisoaping/grass cycling~~
10. ~~Other programs~~

~~B. Recycling~~

1. ~~Beverage containers~~
2. ~~Cardboard~~
3. ~~Glass~~
4. ~~Newspaper~~
5. ~~Office 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~~

6. Alternative Compliance

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 subds. (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.

B7. 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, subds. (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;
 - (bii) 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.

68. Accounting System

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.

79. Annual Report

Annually preparing and submitting, by April 1, 2002, and by April 1 each subsequent year, a report to the 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. calculations of annual disposal reduction;
- b. information on the changes in waste generated or disposed of due to increases or

decreases in employees, economics, or other factors;

- c. the amounts of materials collected for recycling, a summary of progress made in implementing the integrated waste management plan;
- d. 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.);
- e. 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;
- f. 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.

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

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 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:

1. 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.

State Agency Model Integrated Waste Management Plan

February 2000



STATE OF CALIFORNIA

Gray Davis
Governor

Winston Hickox
Secretary, California Environmental Protection Agency

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Executive Summary

Diversion is the process of reducing potential waste by means such as source reduction (reducing or eliminating the amount of materials used for any purpose before they become waste), recycling, and composting. AB 75 (Strom-Martin, Chapter 764, Statutes of 1999) added Sections 40148-42928 to the Public Resources Code (PRC). The legislation requires State agencies to meet waste diversion goals of 25 percent by 2002 and 50 percent by 2004 and to document their efforts in meeting these goals.

To disclose how they will meet these goals, PRC Section 42920 (b) (2) requires State agencies to submit an adopted integrated waste management plan (IWMP) to the California Integrated Waste Management Board (CIWMB) by July 15, 2000.

The Board is required by law to adopt a model integrated waste management plan that shall be available for use by State agencies in developing their plan. PRC Section 42920 (b) (3) requires that if a State agency has not submitted an adopted IWMP to the Board by January 1, 2001, or if the Board has disapproved the plan submitted by the agency, then the Board's model IWMP shall be implemented by the agency and become the agency's plan.

This document contains the following key sections:

- Instructions for completing the *State Agency Model Integrated Waste Management Plan*
- Forms, worksheet, and plan questions
- Appendices

You may prefer to complete the forms, worksheet, and plan questions on line and then print them out for the appropriate signature(s). Access them by going to the Board's Project Recycle Web page (www.ciwmb.ca.gov/ProjectRecycle/) and choosing the link entitled "New Requirements for State Agencies."

Two Board publications being distributed with this document are *Waste Reduction Pollutes and Procedures for State Agencies Conducting a Diversion Study - A Guide for California Jurisdictions*.

Note: To further document their efforts in achieving the goals of 25 percent and 50 percent waste diversion, State agencies and large State facilities as defined in statute are required by PRC Section 42926 (a) to provide annual reports to the CIWMB beginning April 1, 2002.

Instructions for Completing the State Agency Model Integrated Waste Management Plan

AB 75 (Strom-Martin, Chapter 764, Statutes of 1999—see Appendix 2) added Sections 40148-42928 to the Public Resources Code (PRC). The legislation requires State agencies to meet waste diversion goals of 25 percent by 2002 and 50 percent by 2004 and to document their efforts in meeting these goals.

To satisfy the requirements of PRC Section 42920 (b) (2), each State agency must submit an adopted integrated waste management plan (IWMP) to the California Integrated Waste Management Board (CIWMB). The IWMP should specify an agency's plan for achieving mandated waste diversion goals of 25 percent by 2002 and 50 percent by 2004. (Diversion is the process of reducing potential waste by means such as source reduction (reducing or eliminating the amount of materials used for any purpose before they become waste), recycling, and composting.) This publication is provided to assist State agencies in preparing their plans.

All information called for in this document is required to be submitted to the Board. To complete the forms (Parts I-A, I-B, and II), worksheet (Part III), and plan questions (Part IV) on line, go to the Board's Project Recycle Web page at www.ciwmb.ca.gov/ProjectRecycle/ and select the link entitled "New Requirements for State Agencies." After completing Parts I-A-IV, you will still need to print them out and obtain the appropriate signature(s).

Completed plans should be submitted to the following address:

Public Education and Programs Implementation
Branch
ATTN: AB 75 Review Team
California Integrated Waste Management Board
8800 Cal Center Drive
Sacramento, CA 95826

"State Agencies"—An IWMP must be completed for each State agency, which is defined in Public Resources Code (PRC) Section 40196.3 as every State office, department, division, board, commission, or other agency of the State. Each

State agency should aggregate data for all its applicable facilities, excluding large State facilities, described below.

"Large State Facilities"—PRC Section 40148 defines large State facilities as those campuses of the California State University and the California Community Colleges, prisons within the Department of Corrections, facilities of the State Department of Transportation, and facilities of other State agencies that the Board determines are primary campuses, prisons, or facilities.

The Board has determined that each of these large State facilities shall complete a separate integrated waste management plan, signed by the facility director. This IWMP must also be signed at the facility's State agency level by the chairman, commissioner, director, or president.

Example: The California Department of Corrections (CDC) has 33 prisons and numerous field offices. A separate IWMP must be completed and submitted for each of the 33 prisons, as well as one for CDC's headquarters and offices, as described above under "State Agencies." The department's director is responsible for approval of IWMPs for both the prisons and the agency headquarters and offices.

Modified IWMP.—If a State agency has fewer than 200 total employees and generates less than 100 total tons of waste statewide per year, it may submit a modified IWMP. Agencies that meet this criteria must still complete "Part I-A: State Agency Information Form" and check the box indicating they are submitting a modified plan. In addition, the agency must complete Part II and Part IV, questions 1, 5, 6, and 7, and submit that information to the CIWMB by July 15, 2000.

Part I-A: State Agency Information Form (page 4)

State agencies must submit this completed form.

Part I-B: Large State Facility Information Form (page 5)

Large State facilities must submit this completed form.

Part II: State Agency List of Facilities (page 6)

All State agencies and large State facilities must provide information on all their facilities using this form. This information should include the name and address of each facility; a contact person's name, phone number, and e-mail address; and the number of employees at the facility.

If you are using hard copy from this manual and have insufficient space, use additional sheets.

Part III: State Agency Waste Reduction and Recycling Program Worksheet (pages 8-12)

State agencies and large State facilities should use the following instructions to complete Part III.

You may find the Board's publication entitled *Conducting a Diversion Study - A Guide for California Jurisdictions* helpful in determining tonnages for program activities. Workshops will be conducted in March and April 2000 to help State agencies determine diversion rates and complete an IWMP. For information about these workshops, call (916) 255-2355.

You do not need to submit your analyses used in arriving at diversion and generation figures entered on the worksheet. However, you are responsible for providing documentation and records if a review is needed by the CTRMB to verify your figures.

Remember: When identifying programs within your IWMP, a total diversion amount for all facility locations should equal or exceed 1 ton. You are not required to list any program activity that generates less than that amount, but you are encouraged to do so.

Diversion and disposal activities for all projects (e.g., construction, demolition, and park renovation) need to be included in the final calculation of total tonnage generated. The State agency with project authority is responsible for including these diversion and disposal tonnages, regardless of who performs the work (e.g., State agency, contractor, nonprofit organization).

Section 1: Program Activities, Rows 1-77

Pages 8-10

Columns B1, B2, B3, Rows 1-73, Pages 8-10

If your State agency or large State facility has programs other than those listed that are existing

or are proposed for implementation, note them in the blank rows under the appropriate program activity areas in Column B1. Identify all your agency's existing programs with an "X" in Column B2. Identify the proposed programs with an "X" in Column B3.

Column C (Projected Tonnage, 2000), Rows 1-73, Pages 8-10

1. In Column C, Rows 1-73, enter the amount of material anticipated to be diverted, for every existing program activity at your State agency or large State facility.

2. Row 74, Page 10 (Total Tonnage Diverted): Total all rows and enter the sum.

3. Row 75, Page 10 (Total Tonnage Disposed): Enter the amount of waste that is projected for disposal in calendar year 2000 by your State agency or large State facility at a disposal facility, or that is being collected by a waste hauler for disposal. Use any available actual data in calculating this amount.

4. Row 76, Page 10 (Total Tonnage Generated): Add figures from Row 76 and Row 77 (total tonnage generated = total tonnage diverted + total tonnage disposed).

5. Row 77, Page 10 (Overall Diversion Percentage): Divide the number in Row 74 (Total Tonnage Diverted) by the number in Row 76 (Total Tonnage Generated). Multiply the result by 100.

Columns D, F, H, J, L, N (Proposed Tonnage for 2001-2006), Rows 1-73, Pages 8-10

The purpose of estimating proposed diversion tonnage is to help State agencies and large State facilities focus on the programs that will achieve the greatest amount of diversion, while using the least amount of energy and resources. The achievement of the 50 percent diversion goal, therefore, becomes more readily attainable.

In arriving at figures for these columns, take into account the information entered into previous columns. For example, in determining the proposed tonnage diverted for recycling of beverage containers in 2002 (Row 16, Column F), take into account the projected tonnage for 2000 and the proposed tonnage for 2001.

It is important to complete the proposed diversion tonnage through the calendar year 2006 to show which programs the State agency/large State facility will emphasize to meet the waste diversion goals of 25 percent by 2002 and 50 percent by 2004.

1. In Columns D, F, H, J, L, and N, Rows 1-73 (pages 8-10), provide proposed tonnages for each identified diversion program.
2. Row 74, Page 10 (Total Tonnage Diverted): For each of the six columns, total all rows and enter the sum.
3. Row 75, Page 10 (Total Tonnage Disposed): For each of the six columns, subtract the figure in Row 74 (Total Tonnage Diverted) from the figure in Row 75, Column C (total projected tonnage disposed for 2000).
4. Row 76, Page 10 (Total Tonnage Generated): For each of the six columns, add figures from Row 74 and Row 75 (total tonnage generated = total tonnage diverted + total tonnage disposed).
5. Row 77, Page 10 (Overall Diversion Percentage): Divide the number in Row 74 (Total Tonnage Diverted) by the number in Row 76 (Total Tonnage Generated). Multiply the result by 100.

Rows E, G, I, K, M, O (Actual Tonnage), Rows 1-73, Pages 8-10

As it becomes available, information from Rows E, G, I, K, M, and O is intended to be used in the required annual report updates. Having a format early in the process and using it at the appropriate time will enable a State agency or large State facility to easily provide needed information by April 1 of the required reporting years, commencing in 2002. Rows 74-77 on page 10 should be calculated as per steps 2-5 above.

Section 2: Promotional Programs, Rows 78-106, Page 11

Column B, Rows 78-106, Page 11

List additional existing or proposed promotional programs your agency has.

Column C (Existing), and Columns D, F, H, J, L, N (Proposed), Rows 78-106, Page 11

Put an "X" in Column C if a promotional program exists in 2000. Put an "X" in Columns D, F, H, J, L, and/or N, if a promotional program is proposed for any year from 2001 through 2006.

Columns E, G, I, K, M, O (Implemented), Rows 78-106, Page 11

In future years, indicate whether the proposed program has been implemented by putting an "X" in the appropriate column.

Section 3: Procurement Activities,

Rows 107-126, Page 12

Column B, Rows 119-126, Page 12

List additional existing or proposed procurement activities your agency has.

Column C (Existing) and Columns D, F, H, J, L, N (Proposed), Rows 107-126, Page 12

Put an "X" in Column C if procurement of recycled-content products exists for the year 2000.

Put an "X" in Columns D, F, H, J, L, and/or N if procurement of recycled-content products is proposed. Procurement activities should be

coordinated through the State Agency Buy Recycled Campaign (SABRC). For more information on this program, see the SABRC Web page at www.ciwmb.ca.gov/StateAgency/, or contact Jerry Hart at (916) 255-4454 or jhart@ciwmb.ca.gov.

Columns E, G, I, K, M, O (Implemented), Rows 107-126, Page 12

In future years, indicate whether the proposed program has been implemented by putting an "X" in the appropriate column.

Part IV: State Agency Integrated Waste Management Plan Questions (pages 13,14)

State agencies and large State facilities should use this form to provide information regarding the integrated waste management plan. State agencies submitting a modified integrated waste management plan should fill out questions 1, 5, 6, and 7. The Board's publication entitled *Waste Reduction Policies and Procedures for State Agencies* (distributed with this document) provides suggestions for source reduction, recycling, composting, and other programs that can be implemented to reduce the waste stream. You may find information from this publication helpful in filling out Part IV.

State Agency Model Integrated Waste Management Plan
Part I-A: State Agency Information Form

State Agency Name: _____

Address: _____

City: _____ ZIP Code: _____

State Agency Director's Name: _____

Recycling Coordinator: _____

Name: _____

Address: _____

City: _____ ZIP Code: _____

Telephone Number: _____ E-Mail Address: _____

Fax Number: _____

Number of Employees: _____

Check this box if the State agency is submitting a modified integrated waste management plan, since the agency has less than 200 full-time employees and generates less than 100 tons of waste statewide, per year.

The signatures below serve to certify that this integrated waste management plan is consistent with and meets the requirements of PRC 42920 (b).

Signature of Chairman, Commissioner, or Director Date

Printed Name Title

State Agency Model Integrated Waste Management Plan

Part I-B: Large State Facility Information Form

Facility: _____

Address: _____

City: _____ ZIP Code: _____

Facility Director: _____

Recycling Coordinator:

Name: _____

Address: _____

City: _____ ZIP Code: _____

Telephone Number: (_____) _____ E-Mail Address: _____

Fax Number: (_____) _____

Number of Employees: _____

The signatures below serve to certify that this integrated waste management plan is consistent with and meets the requirements of PRC 42920 (b).

Signature of District or Facility Director

Date

Printed Name

Title

Signature of Chairman, Commissioner,
Director, or President

Date

Printed Name

Title

Part II: State Agency List of Facilities

State Agency or Large State Facility: _____

No.	Facility Name and Mailing Address <small>(List all facilities that are part of the State Agency or Large State Facility)</small>	Contact			No. of Employees
		Name	Phone	E-Mail	
1					
2					
3					
4					
5					
6					
Total Number of Employees					

Name	Address	City	State	Zip	Telephone	Total Number of Employees
7						
8						
9						
10						
11						
12						
13						

Part III. State Agency Waste Reduction and Recycling Program Worksheet

A	B			C	D	E	F	G	H	I	J	K	L	M	N	O
	Section I Program Activities			2000	2001		2002		2003		2004		2005		2006	
	B1	B2	B3	Projected Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage
1	Source Reduction															
2	Use of Reusable Cups															
3	Use of Electronic Forms															
4	Use of Electronic Media															
5	Double-Sided Copies															
6	Utilize Property Reutilization															
7	Utilize CalMAX															
8	Utilize a Food Exchange															
9	Salvage Yards															
10	Xeriscaping/Grass-cycling															
25	Other Source Reduction Programs															
12																
13																
14																
15	Recycling															
16	Beverage Containers															
17	Cardboard															
18	Glass															
19	Newspaper															
20	Office Paper															
21	Plastics															
22	Scrap Metal															
23	Other Materials															
24																
25																
26																

*B1: Add existing programs or those proposed for implementation, if not listed. B2: Insert 'X' if program exists. B3: Insert 'X' if program is proposed for implementation.

	Section 1 Program Activities			2000	2001		2002		2003		2004		2005		2006	
	B1	B2*	B3*	Projected Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage
27	Other Recycling Programs															
28	Special Collection Programs															
29	Clean-Up Events															
30																
31																
32	Composting															
33	Commercial Pick-Up of Green Waste															
34	Commercial Self-Haul of Green Waste															
35	Food Waste Composting															
36	Other Composting Programs															
37																
3																
3																
4																
41																
42																
43																
44																
45																
46																
47																
48	Special Waste															
49	Construction/Demolition Recycling															
50	Concrete/Rubble Reuse															
51	Concrete/Asphalt Recycling															
52	Rendering/Grease Recycling															

*B1: Add existing programs or those proposed for implementation; if not listed. B2: Insert "X" if program exists. B3: Insert "X" if program is proposed for implementation.

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A	Section 1 Program/Activity			C	D	E	F	G	H		I		J		K		L		M		N		O	
	B1	B2	B3						2000	2001		2002		2003		2004		2005		2006				
				Projected Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage		
53	Tires																							
54	Use of Retreads																							
55	Tire Reuse																							
56	Tire Recycling																							
57	Use of Rubberized Asphalt																							
58	Use of Tire-Derived Products																							
59	Collection Program																							
60	Drop-Off at Landfills																							
61	Used Oil/Antifreeze																							
62	White and Brown Goods (Reuse/Recycling)																							
63	Wood Waste																							
64	Wood Waste Chipping for Mulch or Compost (Drop-Off)																							
65	Brush/Wood Waste Chipping																							
66	Other Special Waste																							
67																								
68																								
69																								
70																								
71																								
72																								
73																								
74	Total Tonnage Diverted																							
75	Total Tonnage Disposed																							
76	Total Tonnage Generated																							
77	Overall Diversion Percentage																							

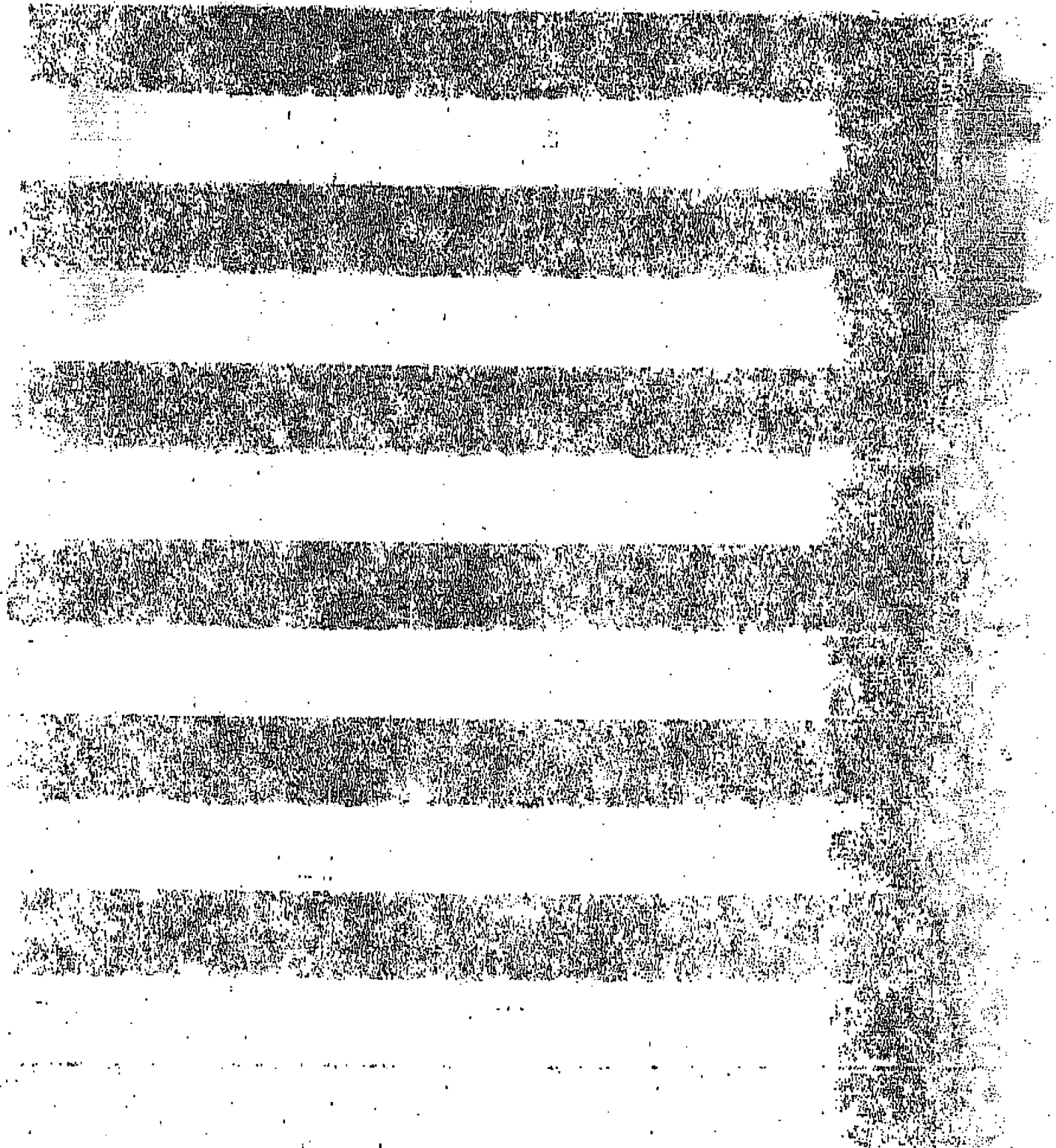
*B1: Add existing programs or those proposed for implementation, if not listed. B2: Insert "X" if program exists. B3: Insert "X" if program is proposed for implementation.

	Section 22 Promotional Program	2000	2001		2002		2003		2004		2005		2006	
		Existing	Proposed	Implemented	Proposed	Implemented	Proposed	Implemented	Proposed	Implemented	Proposed	Implemented	Proposed	Implemented
78	Web Page													
79	Newspaper Articles/Ads													
80	Brochures, Newsletters, Publications													
81	Fliers													
82	Office Paper Recycling Guide													
83	Fact Sheets													
84	New Employee Package													
85	Outreach (technical assistance, presentations, awards, fairs, field trips)													
86	Seminars													
87	Workshops													
88	Waste Information Exchange													
89	Recycled Goods Procurement Training													
90	Awards Program/Public Awareness													
91	Speakers (staff available for presentations)													
92	Technical Assistance													
93	College Curriculum													
94	Waste Audits													
95	Waste Evaluations/Survey													
96	Other Promotional Programs													
97														
98														
99														
100														
101														
102														
103														
104														
105														
106														

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A	B	C	D	E	F	G	H	I	J	K	L	M	O	
	Section 3 Procurement Activities	2000	2001		2002		2003		2004		2005		2006	
		Existing	Proposed	Imple- mented	Proposed	Imple- mented	Proposed	Imple- mented	Proposed	Imple- mented	Proposed	Imple- mented	Proposed	Imple- mented
107	State Agency Buy Recycled Campaign (SABRC)—All procurement activities should be coordinated through SABRC.													
108	Department-Wide Recycled-Content Procurement (RCP) Policy													
109	Exceeding SABRC Goals													
110	Department-Wide Automated Procurement Tracking System													
111	Requiring Recycled-Content Product Certification for All Purchases													
112	Annual Submittal of SABRC Report													
113	Staff Recycled-Content Procurement Training													
114	Participating in Dept. of General Services Buy Recycled Task Force													
115	Proactively Working With RCP Suppliers													
116	Sharing Success Stories With SABRC													
117	Joint Purchase Pools													
118	Other Procurement Activities													
119														
120														
121														
122														
123														
124														
125														
126														

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Appendix 1: Glossary of Terms

Cardboard – Paper product made of unbleached kraft fiber, with two heavy outer layers and a wavy inner layer to provide strength.

Composting – The biological decomposition of organic materials such as leaves, grass clippings, brush, and food waste into a soil amendment.

Disposal – Management of solid waste through landfilling, incineration, or other means at permitted solid waste facilities.

Diversion Rate – The amount of materials recycled as a percentage of the solid waste stream.

Glass – All products comprised primarily of glass materials, including, but not limited to, containers, windows, fiberglass insulation, reflective beads, and construction blocks.

Grasscycling – The practice of leaving grass clippings on the lawn while mowing, which allows the nutrients to return to the soil, and decreases water needs.

Ledger Paper – A paper category that includes most office paper, such as letterhead, computer paper, copier bond, and notebook paper.

Materials Exchange Programs – Programs in which two or more companies exchange materials that would otherwise be discarded. Programs may also be managed by organizations using electronic and/or catalog networks to match companies that want to exchange their materials.

Newspaper – A paper product including, but not limited to, legislative bills, all papers that come with old newspapers, and newsprint.

Office Paper – See “Ledger Paper.”

Recycled Content Products – A product which has been manufactured using pre-consumer or postconsumer recycled material.

Recycling – The process by which materials otherwise destined for disposal are collected, remanufactured, and purchased.

Source Reduction – Any action undertaken by an individual or organization to eliminate or reduce the amount of materials before they enter the

municipal solid waste stream. This action is intended to conserve resources, promote efficiency, and reduce pollution.

Special Waste – Solid wastes/recyclables that can require special handling and management, such as used motor oil, whole tires, white goods, mattresses, lead-acid batteries, furniture, and medical wastes.

Vermicomposting – The process whereby worms feed on slowly decomposing materials (e.g., vegetable scraps) in a controlled environment to produce a nutrient-rich soil amendment.

Waste Assessment – An on-site assessment of the waste stream and recycling potential of an individual business, industry, institution, or household.

Waste Audits – See “Waste Assessment.”

Waste Evaluation – See “Waste Assessment.”

Waste Generation – Section 18722(g)(2) of Title 14 of the California Code of Regulations provides the following equation for jurisdictions to use in computing waste generation. It applies to State agencies and large State facilities as well.

Expressed as an equation, the total solid waste generated by the jurisdiction shall be computed as follows:

$$GEN = DISP + DIVERT$$

where:

GEN = the total quantity of solid waste generated within the jurisdiction.

DISP = the total quantity of solid waste, generated within the jurisdiction, which is transformed or disposed in permitted solid waste facilities.

DIVERT = the total quantity of solid waste, generated within the jurisdiction, which is diverted from permitted solid waste transformation and disposal facilities, through existing source reduction, recycling, and composting programs.

Waste Stream – The total flow of solid waste generated by a business, industry, institution, household, or municipality [or in this case of this

document, a State agency or large State facility]. Components of the waste stream are reduced by implementing source reduction, reuse, recycling, and composting techniques.

White Goods – Large appliances such as refrigerators, stoves, water heaters, washers, dryers, and air conditioners that are made of enameled metal.

Xeriscaping – The practice of landscaping with slow growing, drought-tolerant plants.

Sources

1. *Definitions*. California Integrated Waste Management Board. 1994. Publication #500-94-039.
2. *Establishing a Waste Reduction Program at Work, Participant's Manual*. California Integrated Waste Management Board. 1996. Publication #442-95-070.
3. *Landfill Mining Feasibility Study*. CalRecovery Incorporated. 1993.
4. *State Agency Buy Recycled Campaign, 1999 manual*. California Integrated Waste Management Board.
5. *Scrap Specifications Circular 1997: Guidelines for Nonferrous Scrap, Ferrous Scrap, Glass Gullet, Paper Stock, Plastic Scrap*. Institute of Scrap Recycling Industries, Inc. 1997.

Commission on State Mandates

Original List Date: 3/20/2001
Last Updated: 2/14/2005
List Print Date: 02/14/2005
Claim Number: 00-TC-07
Issue: Integrated Waste Management

Mailing Information: Draft Staff Analysis

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Terry Tamminen
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Environmental
Protection

California Integrated Waste Management Board

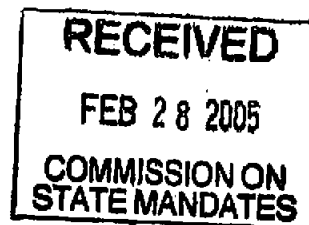
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Arnold Schwarzenegger
Governor

VIA FACSIMILE: (916) 445-0278
Via U.S. Mail

February 28, 2005



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Commission On State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: Comments on Draft Staff Analysis, Proposed Parameters and Guidelines
Integrated Waste Management, 00-TC-07
Santa Monica and South Lake Tahoe Community College Districts, Co-Claimants

Dear Ms. Higashi:

The California Integrated Waste Management Board (IWMB) respectfully submits the following comments on the Draft Staff Analysis, Proposed Parameters and Guidelines (Ps & Gs) for the above referenced test claim.

The Board's primary concern with the Draft Staff Analysis (Analysis) is that it continues to fail to address significant offsetting cost savings that can and have been realized with implementation of the test claim statute. In previous comments to the Commission, the IWMB has noted that offsetting cost savings could be so great that no real costs are incurred by claimants, and in its latest comments offered a worksheet as a tool to identify cost savings. In each instance, the Commission staff has discounted the information.

At the early stages of the test claim process, Commission staff indicated that the timing was inappropriate, i.e., the information should be brought back at the Ps and Gs phase. Now at the Ps and Gs phase, page 9 of the Analysis, Commission staff has determined that Government Code section 17565 bars an analysis of cost savings information for periods of time prior to passage of the test claim statute, and that claimants cannot be required to submit a cost savings worksheet for any point in time because such information is not required in the Statement of Decision, the test claim statute, nor is it reasonably necessary to comply with the mandate. IWMB respectfully

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points out that cost savings information, though presented at the time, was not allowed into the Statement of Decision.

The Analysis asserts that the worksheet violates Government Code section 17565, which prohibits reimbursement for voluntary activities that were implemented prior to the test claim statute. It states, "[t]hus, the identified 'costs' in the Board's AB 75 program worksheet, to the extent incurred by community colleges, are reimbursable regardless of the college's activities prior to the test claim statute. Claimants, therefore, are not required to show costs savings from any programs engaged in prior to the test claim statute."

It appears to IWMB that the Analysis misconstrued the applicability of Government Code section 17565 to the cost savings worksheet. IWMB intended the worksheet to identify regular activities engaged in by the college prior to the test claim statute, rather than activities that could be claimed as reimbursable, and then identify how those non-reimbursable activities subsequently cost less by implementing the programs mandated. This concept appears to be consistent with other parts of the analysis as well as the proposed Ps and Gs.

On page 10 of the Analysis, Commission staff maintains that evidence in the Statement of Decision record supports only the fact that the community colleges are incurring increased costs due to the test claim statutes, and that "there is no direct evidence in the record that reduced disposal costs will necessarily occur as a result of this program."

In the interest of clarifying our previously submitted comments, IWMB hereby submits relevant statutory provisions and evidence to support its position regarding 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 41780 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 the test claim statute, the most obvious and significant cost savings will be avoided disposal costs. Attachment 1 identifies actual diversion realized for 117 Community Colleges and District Offices as reported for 2003 at 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. The worksheet IWMB staff offered to the Commission could be used to identify this type of cost savings.

As noted in previous comments, IWMB does not claim that in every instance these types of cost savings will offset costs to implement diversion programs. However, IWMB reiterates that *every* claimant will realize some disposal cost savings if it implements *any* diversion program as part of the mandate. The Annual Report that must be submitted as part of the mandate already requires a calculation of annual disposal reduction as well as changes in waste generated or

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disposed (see Page 20). It cannot be a significant burden to at a minimum identify the cost savings associated with these disposal figures.

IWMB contends that identifying cost savings should be more clearly and thoroughly addressed in the Ps and Gs, particularly for this test claim, because the potential for such savings are so significant. The cost savings worksheet is offered as a tool rather than a required "form," but IWMB maintains that every claimant should be required to provide information related to cost savings, in whatever format is deemed appropriate. IWMB argues that such information is necessary for the Commission and the State Controller's Office to carry out their fiscal responsibilities.

IWMB offers the following specific comments on the Ps and Gs, in support of the previous argument:

Page 15. IV. REIMBURSABLE ACTIVITIES:

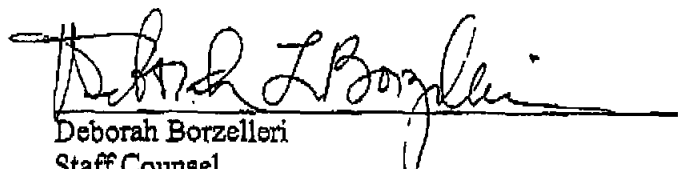
Modify the second sentence to read: "Actual costs are those costs actually incurred to implement the mandated activities *after the test claim statute was enacted*, and that would not otherwise occur if the mandate was not in place."

Page 23. VII. OFFSETTING SAVINGS AND REIMBURSEMENTS:

Add the following text after the first sentence: "*Claimant 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.*"

Should you have any questions or need additional information regarding IWMB's response, please do not hesitate to contact me directly at (916) 341-6056.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and complete to the best of my personal knowledge, information and belief.


Deborah Borzelleri
Staff Counsel

2/28/05
Date

Attachment

cc: Mailing List Dated February 14, 2005

117 Community Colleges - Tonnage Reported for 2003

Diversion Rate Table	
Category	Tons
Diversion	66,620.20
Disposal	42,227.50
Generation	108,847.70
Diversion %	61.20%
Pounds Per Person Per Day	0.3

Existing Programs	
Source Reduction	% of Diversion
Source Reduction	
Business Source Reduction	4.79%
Material Exchange	2.60%
Salvage Yards	0.27%
Other Sources	0.03%
Recycling	
Beverage Containers	0.59%
Cardboard	3.29%
Glass	0.31%
Newspaper	0.49%
Office Paper (white)	0.92%
Office Paper (mixed)	6.20%
Plastics	0.19%
Scrap Metal	2.46%
Special Collection Events	0.06%
Other Materials	0.10%
Composting	
Xeriscaping, grasscycling	23.84%
On-site composting/mulching	4.67%
Self-haul greenwaste	2.59%

2003 Generation Summary
(values under 1% are not shown)



■	Source Reduction: 7.7%
□	Recycling: 14.6%
■	Composting: 34.4%
■	Special Waste: 36.0%
■	Facility Recovery: 7.2%

Programs Proposed or Planned for Expansion	
Source Reduction	Business Source Reduction, Material Exchange, Other Sources, Salvage Yards
Recycling	Beverage Containers, Cardboard, Glass, Newspaper, Office Paper (mixed), Office Paper (white), Other Materials, Plastics, Scrap Metal, Special Collection Events
Composting	Commercial pickup of compostables, Food waste composting, On-site composting/mulching, Other composting, Xeriscaping, grasscycling
Special Waste	Ash, Concrete/asphalt/rubble (C&D), Other special waste, Rendering, Scrap Metal, Sludge (sewage/Industrial), Tires, White/brown goods, Wood waste
Facility Recovery	Alternative Daily Cover, MRF, Other facility recovery
Transformation	Biomass, Other Transformation, Tires, Waste To Energy
Hazardous	Batteries, Electronic Waste, Other

Organizational Category Diversion Profile Page

Commercial pickup of compostables	2.98%
Food waste composting	0.10%
Other composting	0.26%
Special Waste	
Ash	0.01%
Sludge (sewage/Industrial)	0.06%
Tires	0.12%
White/brown goods	0.05%
Scrap Metal	1.47%
Wood waste	2.16%
Concrete/asphalt/rubble (C&D)	28.72%
Rendering	0.22%
Other special waste	3.16%
Facility Recovery	
MRF	6.18%
Alternative Daily Cover	1.06%
Transformation	
Biomass	0.03%
Tires	0.01%

Material	Hazardous Waste, Paint, Universal Waste, Used Oil/Antifreeze
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Last updated: August 19, 2004

State Agency Waste Management <http://www.ciwmb.ca.gov/StateAgency/>
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PROOF OF SERVICE BY CERTIFIED MAIL

I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of eighteen years and not a party to the within action; my business address is P.O. Box 4025, 1001 I Street, Sacramento, California, 95812-4025

On February 28, 2005, I served a true copy of the attached Letter dates February 28, 2005 signed by Deborah Borzelleri, Staff Counsel in a postpaid, envelope, addressed to the parties hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and contents in the United States Mail marked certified at Sacramento, California.

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96 Cal.App.4th 1153

96 Cal.App.4th 1153, 118 Cal.Rptr.2d 15, 2 Cal. Daily Op. Serv. 2418, 2002 Daily Journal D.A.R. 2937

(Cite as: 96 Cal.App.4th 1153)

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HEL DORADO PALM SPRINGS, LTD., Plaintiff and
Appellant,

v.

CITY OF PALM SPRINGS et al., Defendants and
Respondents; EL DORADO MOBILE
COUNTRY CLUB HOMEOWNERS
ASSOCIATION, Intervener and Respondent.
No. E029198.Court of Appeal, Fourth District, Division 2,
California.

Mar. 14, 2002.

SUMMARY

The owner of a mobilehome park filed a petition for a writ of mandate to compel a city's approval, without certain conditions imposed by the city council, of its application for a subdivision map, which plaintiff had submitted to facilitate conversion of its park to a resident-owned condominium mobilehome park. The city council had imposed three conditions: retention of rent control for the residents until completion of sale of a certain proportion of the lots; determination of a lot sale price by an appraisal firm, at plaintiff's expense; and financial assistance to park tenants to facilitate their purchase of lots. The trial court entered judgment denying plaintiff's petition. (Superior Court of Riverside County, No. INC019351, Lawrence W. Fry, Judge.)

The Court of Appeal reversed the judgment and remanded to the trial court for further proceedings, with directions to require the city council to promptly determine the sole issue of whether plaintiff's application complied with Gov. Code, § 66427.5, which governs conditions applicable to a conversion of a mobilehome park to resident ownership. The court held that the city council exceeded its authority in imposing the three specified conditions, and that the scope of the city council's hearing on plaintiff's application was limited to the issue of compliance with Gov. Code, § 66427.5, subd. (d) (conditions for avoidance of economic displacement of tenants). The court further held that the city's reliance on Gov. Code, § 66427.4, subd. (c) (mitigation of adverse impact of mobilehome park conversion on displaced residents), to justify these conditions was misplaced, since Gov. Code, § 66427.4, clearly applies only when a mobilehome park is converted to a wholly

different use. (Opinion by Hollenhorst, Acting P. J., with McKinster and Ward, JJ., concurring.) *1154

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d, 1e, 1f) Mobilehomes, Trailers, and Parks § 3--Regulation--Conversion of Rental Park to Resident Ownership--Conditions Applicable at Time of Application for Subdivision Map.

A city council exceeded its authority in imposing three specified conditions (retention of rent control, determination of lot sale price by appraisal firm, and financial assistance to park tenants) before it would approve an application for a subdivision map filed by the owner of a mobilehome park to facilitate conversion of its park to a resident-owned condominium mobilehome park. The scope of the city council's hearing on plaintiff's application was limited to the issue of compliance with Gov. Code, § 66427.5, subd. (d) (conditions for avoidance of economic displacement of tenants). Further, the city's reliance on Gov. Code, § 66427.4, subd. (c) (mitigation of adverse impact of mobilehome park conversion on displaced residents), to justify imposition of the conditions was misplaced, since Gov. Code, § 66427.4, applies only when a mobilehome park is converted to a wholly different use. Further, Gov. Code, § 66427.5, applies to all subdivisions to be created from the conversion of a rental mobilehome park to resident ownership, begins to apply when the first subdivided unit is sold, and requires neither disclosure of the tentative purchase price at the time the map application is filed nor resident consent to the conversion. Finally, since the city council denied plaintiff's application in a timely manner, it was not deemed approved, and could not be approved until the council considered plaintiff's compliance with Gov. Code, § 66427.5, subd. (d).

[See 4 Witkin, Summary of Cal. Law (9th ed. 1987) Witkin, Summary (9th ed) Real Property, § § 308, 309; Friedman et al., Cal. Practice Guide: Landlord-Tenant (The Rutter Group 2001) ¶ ¶ 11:198.7, 11:198.8, 11:198.9; West's Key Number Digest, Zoning and Planning ¶ 382.6.]

(2) Statutes § 30--Construction--Language--Plain Meaning Rule.

When interpreting a statute, a court must avoid if

possible repeals by implication, give effect and significance to every word and phrase of a statute, and construe every statute 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. The plain and commonsense meaning of the statutory language controls its interpretation. If the court can reasonably harmonize two statutes dealing with the same subject, then it must give *1155 concurrent effect to both, even if one is specific and the other general. A court must look first to the language of the statute, beginning with the words themselves, because they generally provide the most reliable indicator of legislative intent. If the language is clear and unambiguous the court's inquiry ends. There is no need for judicial construction and a court may not indulge in it. If there is no ambiguity in the language, the court presumes the Legislature meant what it said and the plain meaning of the statute governs.

(3a, 3b) Mobilehomes, Trailers, and Parks § 3-- Regulation--Conversion of Rental Park to Resident Ownership--Rent Control Phaseout Provisions.

The rent control phaseout provisions of Gov. Code, § 66427.5, subd. (d) (conditions imposed on subdivider converting mobilehome park to resident ownership for avoidance of economic displacement of tenants), do not apply as soon as a tentative subdivision map application is filed. Conversion occurs on the date that the first subdivided unit is sold. Hence, if conversion fails and no units are ever sold, Gov. Code, § 66427.5, cannot be used to evade a local rent control ordinance.

(4) Statutes § 42--Construction--Aids--Legislative History--Ambiguity.

Only when the language of a statute is susceptible to more than one reasonable construction is it appropriate to turn to extrinsic aids, including the legislative history of the measure, to ascertain its meaning. However, it is proper to consider legislative history when it buttresses the interpretation of the plain meaning of a statute, even when the statute is unambiguous.

(5) Statutes § 42--Construction--Aids--Legislative Counsel's Analysis.

When interpreting a statute, it is proper for a court to consider the Legislative Counsel's analysis of a bill as evidence of legislative intent, although it is not controlling. While an opinion of the Legislative Counsel is entitled to respect, its weight depends on the reasons given in its support.

(6) Statutes § 46--Construction--Presumptions--

Legislative Intent--Deletion of Provision in Bill.

Deletion of a provision in a bill is persuasive evidence that the Legislature did not intend to adopt it, and the final statute should not be construed to include the omitted provision.

(7) Statutes § 42--Construction--Aids--Individual Opinions of Legislators or Staff.

Individual opinions of legislators or staff members *1156 merely reflect their individual opinions and are not probative of the collegial intent of the Legislature at the time the bill was passed. Material showing the motive or understanding of an individual legislator, including the bill's author, his or her staff, or other interested persons, is generally not considered when interpreting a statute because such materials are generally not evidence of the Legislature's collective intent. A postenactment statement by a person who was not even a member of the Legislature, apart from its inadmissibility, is entitled to virtually no weight.

COUNSEL

O'Melveny & Myers, James W. Colbert III, Matthew W. Close; Gilchrist & Rutter, Richard H. Close and Thomas W. Casparian for Plaintiff and Appellant.

The Gibbs Law Firm and Timothy J. Gibbs for Associates' Group for Affordable Housing, Inc., Cedarhill Estates Homeowners Association, Apache Mobilehome Park Association, and Glenview Mobile Lodge Owners Association as Amici Curiae on behalf of Plaintiff and Appellant.

Burke, Williams & Sorensen, William W. Wynder and Anthony R. Taylor for Defendants and Respondents.

Charles A. Prawdzik; McFadden and Associates and Robert J. McFadden for Intervener and Respondent.

HOLLENHORST, Acting P. J.

Appellant El Dorado Palm Springs, Ltd. (El Dorado), is the owner of a 377-unit mobilehome park in Palm Springs. On September 28, 2000, it filed a petition for writ of mandate to compel approval by respondent City of Palm Springs (City) of its application for a tentative subdivision map. The application, which was initially filed in 1993, sought to subdivide the units within the mobilehome park as the requisite first step in converting the park from a rental mobilehome park to a resident-owned park. Upon subdivision, the parcels would be sold to the current mobilehome owners, or others, to complete

the conversion. The application was finally accepted as complete in 1999. *1157

The Palm Springs Planning Commission approved the application for subdivision subject to a number of conditions, and it recommended that the Palm Springs City Council (City Council) approve the application. After several delays, the City Council conditionally approved the application after adding three further conditions.

El Dorado contends that the City Council lacked the authority to impose the three further conditions. The three conditions generally require (1) the use of a "Map Act Rent Date," defined as the date of the close of escrow of not less than 120 lots; (2) the use of a sale price established by a specified appraisal firm, the appraisal costs to be paid by El Dorado; and (3) financial assistance to all residents in the park to facilitate their purchase of the lots underlying their mobilehomes. The total amount of the required assistance would exceed \$1 million.

The first condition is especially significant because the selected date would determine when the mobilehome park would cease to be subject to the rent control ordinance of the City. After the map's effective date, the rent control phaseout provisions of Government Code section 66427.5, subdivision (d) would become applicable. [FN1]

FN1 Unless otherwise indicated, all further statutory references are to the Government Code.

On September 28, 2000, El Dorado filed its petition for writ of mandate to compel approval of the subdivision map without the three further conditions. On October 5, 2000, El Dorado filed a "motion" for a peremptory writ of mandate pursuant to Code of Civil Procedure section 1094. The motion alleged that the facts were undisputed and the only issue was an issue of law, i.e., whether the City Council had the power to impose the three further conditions. Further, the motion alleged that El Dorado's application was approved by operation of law because of the City Council's failure to act on the application within certain statutory time limits.

After hearing, the trial court denied the motion for a writ of mandate. El Dorado appeals.

Issues

(1a) El Dorado contends the trial court erred in denying its motion because the City's imposition of

the three further conditions exceeded the City's authority. El Dorado argues that its application for subdivision is governed by section 66427.5. It relies on subdivision (d) of that section, which states, in part, that the scope of the City Council's hearing is limited *1158 to the issue of compliance with the requirements of that section. Second, El Dorado renews its argument that its application was deemed approved because the City Council failed to act within the statutory time. There being no factual dispute, we agree with El Dorado that these questions are questions of law subject to our independent review. (County Mobilehome Positive Action Com., Inc. v. County of San Diego (1998) 62 Cal.App.4th 727, 733 [73 Cal.Rptr.2d 409].)

The City justifies its imposition of further conditions by relying on section 66427.4, subdivision (c), which authorizes the City Council to "require the subdivider to take steps to mitigate any adverse impact of the conversion on the ability of displaced mobilehome park residents to find adequate space in a mobilehome park." The City argues that this section requires it to impose reasonable conditions of approval and that it did so in a timely manner.

The issue presented by these arguments is whether section 66427.4 or section 66427.5 is applicable to the proposed conversion of the mobilehome park from a rental mobilehome park to a resident-owned park. In resolving this question, El Dorado contends that the words of the statutes are dispositive, while respondents rely on the legislative history of the 1991 and 1995 amendments to these sections.

Intervener El Dorado Mobile Country Club Homeowners Association (Association) was granted leave to intervene as the representative of the homeowners and tenants living in the mobilehome park. [FN2] It relies on extensive legislative history to argue that section 66427.5 applies only to resident-owned parks, i.e., parks more than 50 percent owned by residents. Accordingly, it argues that El Dorado's application was properly processed under section 66427.4, and the conditions of approval were properly imposed. The Association further contends that a park owner must disclose the proposed purchase price to comply with section 66427.5, and the park owner cannot force conversion on unwilling tenant/purchasers, particularly if the conversion is designed to avoid a local rent control ordinance. The Association also agrees with the City that there was no deemed approval of El Dorado's application.

FN2 It should be noted that the homeowners

association is not an entity established pursuant to a declaration of conditions, covenants and restrictions. Instead, it is simply the representative of persons who rent mobilehome spaces in the park.

Amici curiae are organizations involved in the conversion of mobilehome parks to resident ownership. They agree with El Dorado that El Dorado's application is governed by section 66427.5. They argue that the section *1159 applies to all conversions of mobilehome parks to resident ownership, no matter who initiates the conversion process. Further, they argue that conversion occurs when the first subdivided unit is sold. The import of this argument is that the City's rent control ordinance would cease to control rents in the mobilehome park as soon as the first sale occurred.

El Dorado and the tenants have a long history of litigation and mutual distrust. [FN3] Thus, despite certain statutory incentives for the purchase of mobilehome parks by nonprofit organizations, [FN4] the mobilehome owners here oppose the conversion, contending that they do not have enough information to decide whether to purchase or not, and the proposed conversion is merely a sham to avoid the City's rent control ordinance. Thus, although the Legislature enacted the Mobilehome Park Purchase Fund to provide supplemental funding to encourage and assist mobilehome park residents to purchase the mobilehome parks and convert them to resident ownership (Health & Saf. Code, § 50780, subd. (a)), this appears to be the first case in which the park owner has attempted to convert a park to resident ownership despite the opposition of the park residents.

FN3 By order filed August 16, 2001, we took judicial notice of our records of the prior litigation, including case Nos. E011072, E010773, E011103, E011126, E011682, and E017518. See also El Dorado Palm Springs, Ltd. v. Rent Review Com. (1991) 230 Cal.App.3d 335 [281 Cal.Rptr. 327].

FN4 See, e.g., Health and Safety Code section 50780 et seq. (Mobilehome Park Purchase Fund); and Revenue and Taxation Code section 23701v (exemption from corporation tax law for nonprofit organization formed to purchase mobilehome park to convert it to condominium interests). Amicus Associates

Group for Affordable Housing, Inc., describes itself as a "non-profit corporation which was formed to ... assist[] in achieving the goal of resident ownership of mobilehome parks by acting as subdivider or, in some cases, holding parks for the benefit of residents until the park can be 'converted' and sold to the residents."

The Statutory Scheme

The Mobilehome Residency Law (Civ. Code, § 798 et seq.) governs tenancies in mobilehome parks, but many other statutes regulate or affect mobilehome parks, their tenancies, and their sale or conversion. (See, e.g., Mobilehomes-Manufactured Housing Act of 1980 [Health & Saf. Code, § 18000 et seq.]; Mobilehome Parks Act [Health & Saf. Code, § 18200 et seq.]; Mobilehome Park Purchase Fund [Health & Saf. Code, § 50780 et seq.], and general provisions relating to sale of subdivided property [Bus. & Prof. Code, § 11000 et seq.].)

The focus here is on the Subdivision Map Act (§ 66410 et seq.) because the mobilehome park owner is seeking to subdivide its park into individual parcels in order to sell the 377 individual mobilehome sites to the persons *1160 who now rent those sites, or others, in order to convert the mobilehome park to a resident-owned condominium mobilehome park. Under section 66424 a "subdivision" includes the division of a parcel for a condominium project, as defined in the Davis-Stirling Common Interest Development Act (Civ. Code, § 1350 et seq.; see Civ. Code, § 1351, subd. (f)). Thus, El Dorado was required to file a tentative subdivision map with the City, and the City had to approve the tentative subdivision map. (§ 66426.)

The sections at issue here, 66427.4 and 66427.5, are part of a general article relating to subdivision maps. (§ 66425 et seq.) They deal with the conversion of mobilehome parks to other uses and conversion to a condominium form of resident ownership. Sections 66427.1 and 66427.2 deal with the more general subject of conversion of residential real property into condominiums. Section 66428 provides for the waiver of the requirement of filing tentative and parcel maps in certain situations. Section 66428.1 provides that, in the case of conversion of a mobilehome park, the requirement for a parcel map or a tentative and final map may be waived when two-thirds of the owners of mobilehomes in the park sign a petition indicating their intent to purchase the mobilehome park for purposes of converting it to residential ownership.

After the subdivision is approved by local government, the Department of Real Estate regulates the marketing and sale of the individual units in the park. (Bus. & Prof. Code, § 11010 et seq.) It is illegal to sell subdivided property before obtaining a public report from the Real Estate Commissioner. (Bus. & Prof. Code, § 11018.2.)

Interpretation of the Statutes

1. *General Principles of Statutory Construction.*

(2) The statutory context is important because "we must avoid if possible repeals by implication, give effect and significance to every word and phrase of a statute, and construe every statute 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.'" [Citations.] (*N. T. Hill Inc. v. City of Fresno* (1999) 72 Cal.App.4th 977, 990 [85 Cal.Rptr.2d 562].)

El Dorado relies on the second principle of statutory construction stated in *N. T. Hill*: "[T]he 'plain and commonsense' meaning of the statutory language controls. [Citation.]" (*N. T. Hill Inc. v. City of Fresno, supra*, 72 Cal.App.4th 977, 988.) In the case cited in *N. T. Hill*, our Supreme Court also applied another relevant principle of statutory construction: "If we can *1161 reasonably harmonize '[t]wo statutes dealing with the same subject,' then we must give 'concurrent effect' to both, 'even though one is specific and the other general. [Citations.]" [Citation.]" (*Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478 [66 Cal.Rptr.2d 319, 940 P.2d 906].)

As our Supreme Court has said in another recent case: "As with any statutory construction inquiry, we must look first to the language of the statute. 'To determine legislative intent, a court begins with the words of the statute, because they generally provide the most reliable indicator of legislative intent.' [Citation.] If it is clear and unambiguous our inquiry ends. There is no need for judicial construction and a court may not indulge in it. [Citation.] 'If there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs.' [Citation.]" (*Diamond Multimedia Systems, Inc. v. Superior Court* (1999) 19 Cal.4th 1036, 1047 [80 Cal.Rptr.2d 828, 968 P.2d 539].)

2. *Section 66427.4.*

(1b) We first examine section 66427.4. [FN5] It applies to "conversion of a mobilehome park to another use." Conversely, it would not apply to

conversion of a mobilehome park when the property's use as a mobilehome park is unchanged. The section would only apply if the mobilehome park was being converted to a shopping center or another different use of the property. In that situation, there would be "displaced mobilehome park residents" who would need to find "adequate space in a mobilehome park" for their mobilehomes and themselves. Thus, an impact report is required. [FN6]

FN5 Section 66427.4 states: "(a) *At the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a mobilehome park to another use, the subdivider shall also file a report on the impact of the conversion upon the displaced residents of the mobilehome park to be converted. In determining the impact of the conversion on displaced mobilehome park residents, the report shall address the availability of adequate replacement space in mobilehome parks. [¶]* (b) *The subdivider shall make a copy of the report available to each resident of the mobilehome park at least 15 days prior to the hearing on the map by the advisory agency or, if there is no advisory agency, by the legislative body. [¶]* (c) *The legislative body, or an advisory agency which is authorized by local ordinance to approve, conditionally approve, or disapprove the map, may require the subdivider to take steps to mitigate any adverse impact of the conversion on the ability of displaced mobilehome park residents to find adequate space in a mobilehome park. [¶]* (d) *This section establishes a minimum standard for local regulation of conversions of mobilehome parks into other uses and shall not prevent a local agency from enacting more stringent measures. [¶]* (e) *This section shall not be applicable to a subdivision which is created from the conversion of a rental mobilehome park to resident ownership.*" (Italics added.)

FN6 *Amici curiae* differentiate between a tenant relocation report, which is allegedly required under section 66427.4, and a tenant impact report, which is allegedly required under section 66427.5. However, section 66427.4 uses the term "a report on the impact of the conversion upon the displaced residents of the mobilehome park to be converted." (§ 66427.4, subd. (a).) Section 66427.5 requires a "report on the impact of

the conversion upon residents of the mobilehome park to be converted to resident owned subdivided interest." (§ 66427.5, subd. (b).) The statutory language does not support the distinction urged by amici curiae.

Our conclusion that section 66427.4 applies only when a mobilehome park is converted to other land uses is fortified by the plain language of *1162 subdivision (e): "This section shall not be applicable to a subdivision which is created from the conversion of a rental mobilehome park to resident ownership."

The City argues that section 66427.4 applies to landlord-initiated conversions while section 66427.5 applies to resident-initiated conversions. The problem with this argument is that the statute does not make this distinction, and such an interpretation is specifically foreclosed by subdivision (e). As El Dorado points out, both statutes use the term "subdivider," and that term is specifically defined by the Subdivision Map Act to mean the person or entity "who proposes to divide ... real property into a subdivision for himself or for others" (§ 66423.) We agree with El Dorado: "There is simply no basis for arguing that 'subdivider' means 'resident organization' in Section 66427.5 and 'park owner' in Section 66427.4." The City agrees that the owner is the subdivider under the Subdivision Map Act.

The Association argues that section 66427.5 applies only to resident-owned parks, while section 66427.4 applies to all other changes in use. It relies on the legislative history. Although we discuss the legislative history of section 66427.5 below, we conclude that we do not need to resort to the legislative history in the interpretation of section 66427.4 because the language of section 66427.4, subdivision (e) is clear and dispositive.

The problem with the Association's contention that section 66427.4 applies is that a change in form of ownership is not a change in use. After the change of ownership, the mobilehome park will remain a mobilehome park. Since section 66427.4 applies to changes in use, it is inapplicable here. As noted above, this conclusion is specifically confirmed by subdivision (e).

In other words, the respondents' arguments simply ignore subdivision (e) of section 66427.4 and attempt to write it out of the statute, contrary to the well-established rules of statutory interpretation discussed above.

Although not argued by the City or the Association, a contrary argument could be constructed by application of the definition of "change of use" in the Mobilehome Residency Law. (Civ. Code, § 798 et seq.) That statute defines "change of use" to include "a change of the park or any portion thereof to a condominium, stock cooperative, planned unit development, or *1163 any form of ownership wherein spaces within the park are to be sold." [FN7] (Civ. Code, § 798.10.) However, we decline to apply that broad definition to the Subdivision Map Act, as the Mobilehome Residency Law specifically states: "Unless the provisions or context otherwise requires, the following definitions shall govern the construction of this chapter." (Civ. Code, § 798.1.) [FN8]

FN7 The section also defines "change of use" more conventionally: "'Change of use' means a use of the park for a purpose other than the rental, or the holding out for rent, of two or more mobilehome sites to accommodate mobilehomes used for human habitation, and does not mean the adoption, amendment, or repeal of a park rule or regulation."

FN8 Indeed, it appears from the legislative history that subdivision (e) was added to foreclose just such an argument.

Instead, we harmonize sections 66427.4 and 66427.5 by applying section 66427.4 to changes of use which displace the existing park residents and require relocation of the mobilehomes because the subdivider is converting the property to a nonmobilehome park use. Under this interpretation, section 66427.5 applies to subdivisions created to convert a rental mobilehome park to a resident-owned mobilehome park.

We therefore conclude that section 66427.4 does not support the Association's argument, and it is inapplicable to justify the three further conditions imposed on El Dorado by the City. The plain meaning of section 66427.4 is that it applies only when a mobilehome park is converted to other land uses, thus requiring the residents and their mobilehomes to be relocated.

3. Section 66427.5.

Section 66427.5 applies to "the conversion of a rental mobilehome park to resident ownership" [FN9] As the portions emphasized in the footnote

indicate, the City Council, in acting on El Dorado's application for approval *1164 of the tentative subdivision map, only had the power to determine if El Dorado had complied with the requirements of the section. (§ 66427.5, subd. (d).) It therefore had no power to impose the three further mitigating conditions on El Dorado.

FN9 Section 66427.5 states: "At the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a rental mobilehome park to resident ownership, the subdivider shall avoid the economic displacement of all nonpurchasing residents in the following manner: [¶] (a) The subdivider shall offer each existing tenant an option to either purchase his or her condominium or subdivided unit, which is to be created by the conversion of the park to resident ownership, or to continue residency as a tenant. [¶] (b) The subdivider shall file a report on the impact of the conversion upon residents of the mobilehome park to be converted to resident owned subdivided interest. [¶] (c) The subdivider shall make a copy of the report available to each resident of the mobilehome park at least 15 days prior to the hearing on the map by the advisory agency or, if there is no advisory agency, by the legislative body. [¶] (d) The subdivider shall be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance to approve, conditionally approve, or disapprove the map. *The scope of the hearing shall be limited to the issue of compliance with this section.* The subdivider shall be required to avoid the economic displacement of all nonpurchasing residents in accordance with the following: [¶] (1) As to nonpurchasing residents who are not lower income households, as defined in Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent to market levels, as defined in an appraisal conducted in accordance with nationally recognized professional appraisal standards, in equal annual increases over a four-year period. [¶] (2) As to nonpurchasing residents who are lower income households, as defined in Section 50079.5 of the Health and Safety

Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent by an amount equal to the average monthly increase in rent in the four years immediately preceding the conversion, except that in no event shall the monthly rent be increased by an amount greater than the average monthly percentage increase in the Consumer Price Index for the most recently reported period." (Italics added.)

The City and the Association rely on the only published case interpreting section 66427.5. In Donohue v. Santa Paula West Mobile Home Park (1996) 47 Cal.App.4th 1168 [55 Cal.Rptr.2d 282], the court held that "section 66427.5 applies only after a rental park is converted to resident ownership." (*Donohue*, at p. 1173, italics added.)

In *Donohue*, the mobilehome park residents had tried in 1991 to convert the mobilehome park from a rental park to residential ownership. (*Donohue v. Santa Paula West Mobile Home Park, supra*, 47 Cal.App.4th 1168, 1173.) A tentative subdivision map was filed with the City of Santa Paula in June 1992, but the conversion failed because the owners were unable to obtain the necessary financing. (*Ibid.*) In November 1992, the city voters adopted an initiative rent control ordinance applicable to mobilehome park space rents. In 1994, the park owner raised rents by 12 percent, contending that "rents at the Park were controlled by section 66427.5 rather than the initiative because a tentative map to convert the Park had been filed." (*Donohue*, at p. 1173.)

The trial court found that section 66427.5 applies "whenever a subdivider files a tentative map to convert a rental park to resident ownership, even if the conversion does not occur." (*Donohue v. Santa Paula West Mobile Home Park, supra*, 47 Cal.App.4th 1168, 1172.) The appellate court disagreed, holding that section 66427.5 applies only after a rental park is converted to resident ownership.

The appellate court was concerned about the possibility of using section 66427.5 to evade local rent control provisions: "Under respondents' theory, section 66427.5 applies as soon as a subdivider files a tentative map to convert to resident ownership, regardless of whether conversion actually *1165 occurs.... [I]f respondents are correct, every park owner could purchase a lifetime exemption from

local rent control for the cost of filing a tentative map, even if park residents have no ability to purchase and even if local government disapproves the tentative map. Park residents could then be economically displaced by unregulated rent increases. This is the very circumstance section 66427.5 was enacted to prevent." (*Donohue v. Santa Paula West Mobile Home Park, supra*, 47 Cal.App.4th 1168, 1175.)

We are equally concerned about the use of the section to avoid local rent control, especially since the section does not state when the rent control phaseout in section 66427.5, subdivision (d) becomes applicable, and it provides no time limits for the completion of the conversion. The City is also concerned that there could be an abuse of the conversion process: "Under the argument of *Amicus*, Appellant could simply purchase one of the newly created subdivided units, price of [sic] the remaining units at prohibitively expensive amounts, and obtain for himself a 'life time exemption' from Palm Springs Rent Control ordinances." The City argues that it imposed the date of conversion requirement because it did not believe that the sale of a single subdivided unit should allow the park owner to escape the requirements of its rent control ordinance.

At oral argument, the City argued that the three further conditions it imposed were designed to prevent an abuse of the conversion process by a developer who was engaged in a sham or fraudulent transaction which was intended to avoid the rent control ordinance. The problem with the argument is that section 66427.5, subdivision (d) provides that "The scope of the hearing shall be limited to the issue of compliance with this section." Thus, the City lacks authority to investigate or impose additional conditions to prevent sham or fraudulent transactions at the time it approves the tentative or parcel map. Although the lack of such authority may be a legislative oversight, and although it might be desirable for the Legislature to broaden the City's authority, it has not done so. We therefore agree with appellant that the argument that the Legislature should have done more to prevent partial conversions or sham transactions is a legislative issue, not a legal one. In any event, as noted below, *Donohue* illustrates the point that the courts will not apply section 66427.5 to sham or failed transactions, or to avoid a local rent control ordinance.

(3a) We agree with *Donohue* that the rent control phaseout provisions of section 66427.5, subdivision (d) do not apply as soon as a tentative map

application is filed. As *Donohue* states, subdivision (d) cannot apply to avoid the economic displacement of nonpurchasing residents before there are any *1166 such residents, nor would it make any sense to allow an increase from preconversion rents before there was a conversion. (*Donohue v. Santa Paula West Mobile Home Park, supra*, 47 Cal.App.4th 1168, 1175-1176.)

Section 66427.5 applies after a rental mobilehome park is converted to resident ownership. (*Donohue v. Santa Paula West Mobile Home Park, supra*, 47 Cal.App.4th 1168, 1173.) As discussed further below, conversion occurs on the date that the first subdivided unit is sold. If, as in *Donohue*, conversion fails and no units are ever sold, section 66427.5 cannot be used to evade a local rent control ordinance. We also agree with *Donohue* that the section may not be used to justify preemption of a local rent control ordinance if the conversion is unsuccessful. [FN10] However, in the normal situation in which conversion proceeds in accordance with the statutory requirements, section 66427.5 becomes applicable to protect nonpurchasing residents as soon as the first unit is sold.

FN10 As respondents point out, the statute does not specifically protect against sham or failed transactions in which a single unit is sold, but no others, and the park owner then claims a local rent control ordinance is preempted by section 66427.5, subdivision (d). However, as *Donohue* illustrates, the courts will not apply section 66427.5 to sham or unsuccessful conversions.

As discussed below, the legislative purpose was to avoid economic displacement of nonpurchasing residents. Section 66427.5, subdivision (a) carries out this purpose by requiring the subdivider to offer each existing tenant the option to either purchase their subdivided unit or to remain as a tenant. Under subdivision (b), the subdivider must give each resident a copy of the report detailing the impact of the conversion upon residents. Finally, the subdivider "shall be required to avoid the economic displacement of all nonpurchasing residents" by increasing rents to market levels over a four-year phaseout period. These steps must necessarily be taken as part of the conversion process.

(1c) Since section 66427.5 applies to the conversion of a rental mobilehome park to resident ownership, and since that section limits the power of the City Council to a determination of whether the subdivider

has complied with the provisions of the section, we agree with El Dorado that the City Council lacked the authority to condition approval on imposition of the three further mitigation conditions described above.

The Legislative History

The *Donohue* court did not consider the legislative history, relying instead on the language of the statute itself to determine legislative intent. (**1167 Donohue v. Santa Paula West Mobile Home Park, supra*, 47 Cal.App.4th 1168, 1174-1175.) Here, the parties discuss the legislative history in some detail, and respondents contend that the legislative history supports their interpretation of the statute.

(4) Initially, we are faced with the question of whether we should examine the legislative history at all: "Only when the language of a statute is susceptible to more than one reasonable construction is it appropriate to turn to extrinsic aids, including the legislative history of the measure, to ascertain its meaning. [Citation.]" (*Diamond Multimedia Systems, Inc. v. Superior Court, supra*, 19 Cal.4th 1036, 1055.)

Although we have not found any such ambiguity as to section 66427.4, the City and the Association contend that section 66427.5 is ambiguous and inapplicable, and they rely heavily on the legislative history of the 1991 and 1995 amendments to that section. Although we find little ambiguity, it is proper to consider legislative history "where it buttresses our interpretation of the plain meaning of a statute. [Citation.]" (*Jenkins v. County of Los Angeles* (1999) 74 Cal.App.4th 524, 530 [88 Cal.Rptr.2d 149], citing *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1120 [81 Cal.Rptr.2d 471, 969 P.2d 564].) Accordingly, we will briefly review the legislative history of section 66427.5. [FN11]

FN11 The City filed a legislative history of the 1991 and 1995 legislation prepared by Legislative Intent Service with the trial court. Unless otherwise indicated, we refer to our record for the legislative history discussed in this section.

1. The 1991 enactment of Section 66427.5.

(1d) Section 66427.5 was added in 1991. (Stats. 1991, ch. 745, § 2, p. 3324.) At that time, the introductory phrase of section 66427.5 read: "At the time of filing a tentative or parcel map for a subdivision to be created using financing or funds provided pursuant to Chapter 11 (commencing with Section 50780) of Part 2 of Division 31 of the Health

and Safety Code, the subdivider shall avoid the economic displacement of all nonpurchasing residents in the following manner"

The Association maintains that the section applied only to conversion of mobilehome parks by resident organizations who were using financing from the Mobilehome Park Purchase Fund. It cites the third reading analysis prepared by the Office of Senate Floor Analyses: "This bill amends Subdivision Map Act requirements relating to conversion of a mobilehome park by a resident organization and amends displacement requirements for Mobilehome Park Purchase Fund." This analysis by the Office of Senate Floor *1168 Analyses is relevant to the issue of legislative intent. (*Southland Mechanical Constructors Corp. v. Nixen* (1981) 119 Cal.App.3d 417 [173 Cal.Rptr. 917].)

The Legislative Counsel's Digest of the final Assembly Bill No. 1863 states: "This bill would require subdividers to offer each existing tenant an option to purchase his or her condominium unit, which is to be created by the conversion of the park into condominium interests or to continue residency as a tenant. In the event the tenant elects to continue residency in a condominium conversion made pursuant to the Mobilehome Park Purchase program, administered by the Department of Housing and Community Development, a procedure would be applicable requiring the subdivider to avoid the economic displacement of all nonpurchasing residents of these parks. The bill would set the allowable rate of increase in monthly rent for nonpurchasing residents of these parks, specifying alternative procedures for nonpurchasing residents who are, or are not, lower income households, as defined." (Legis. Counsel's Dig., Assem. Bill No. 1863 (1991-1992 Reg. Sess.) 4 Stats. 1991, Summary Dig., p. 311.)

(5) It is proper for us to consider the Legislative Counsel's analysis of a bill as evidence of legislative intent, although it is not controlling. (*People v. Turner* (1995) 40 Cal.App.4th 733, 741 [47 Cal.Rptr.2d 42]; *Stewart v. Board of Medical Quality Assurance* (1978) 80 Cal.App.3d 172 [143 Cal.Rptr. 641].) As our Supreme Court has observed: "While an opinion of the Legislative Counsel is entitled to respect, its weight depends on the reasons given in its support." (*Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 238 [45 Cal.Rptr.2d 207, 902 P.2d 225].)

(3b) From these and other provisions it is clear that

the bill was designed, among other things, to provide economic displacement protections to nonpurchasing owners when the condominium conversion was made pursuant to the mobilehome park purchase program. The bill also amended Health and Safety Code section 50786, which is part of the purchase program. The purchase program itself contains a declaration of legislative intent: "[I]t is the intent of the Legislature, in enacting this chapter, to encourage and facilitate the conversion of mobilehome parks to resident ownership or ownership by qualified nonprofit housing sponsors or by local public entities, to protect low-income mobilehome park residents from both physical and economic displacement, to obtain a high level of private and other public financing for mobilehome park conversions, and to help establish acceptance for resident-owned, nonprofit-owned, and government-owned *1169 mobilehome parks in the private market." (Health & Saf. Code, § 50780, subd. (b).)

It is therefore evident that, under the law in effect prior to 1995, section 66427.5 referred to mobilehome park conversions made by residents or nonprofit organizations under the Mobile Home Purchase Fund. [FN12] El Dorado does not disagree with this analysis, but rather contends that the system changed with the 1995 enactment of Senate Bill No. 310. We therefore turn to that subject.

FN12 The Legislative Counsel's Digest of Senate Bill No. 310, enacted in 1995, describes the existing law in this regard as follows: "Existing law regulates mobilehome parks in various capacities, including requiring a subdivider, at the time of filing a tentative or parcel map for a subdivision to be created using financing or funds from a specified source, to avoid the economic displacement of nonpurchasing residents, as specified, and file a report, as specified, regarding the impact of the conversion upon the displaced residents of the mobilehome park to be converted. Existing law also requires a subdivider to offer each existing tenant the option to purchase his or her condominium unit, which is to be created by conversion of a mobilehome park into condominium units." (Legis. Counsel's Dig., Sen. Bill No. 310 (1995-1996 Reg. Sess.) Stats. 1995, ch. 256.)

2. *The 1995 Amendment to Section 66427.5.*
Senate Bill No. 310, enacted in 1995, amended

section 66427.5. First, it replaced the introductory phrase quoted above with a new introductory phrase: "At the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a rental mobilehome park to resident ownership, the subdivider shall avoid the economic displacement of all nonpurchasing residents in the following manner: ..." (Stats 1995, ch. 256, § 5.) It also added a new subdivision. (a), relating to options to tenants to purchase, a new subdivision (b), requiring an impact report, and the introductory provisions of subdivision (d), relating to a hearing to establish compliance with the section.

El Dorado contends that these changes were intended to apply the mitigation provisions to all mobilehome park subdivisions, thereby making the law uniform and eliminating the previous distinctions between tenant-sponsored and owner-sponsored conversions.

El Dorado cites portions of the legislative history in support of its argument. First, it cites the Legislative Counsel's Digest for the bill. Immediately following the paragraph describing existing law quoted in footnote 12, *ante*, the digest states: "This bill would replace the reference to subdivisions from the specified funding source with a reference to subdivisions created from the conversion of a rental mobilehome park to resident ownership, and would add further requirements for avoiding economic displacement of nonpurchasing residents, including requiring that the subdivider be *1170. subject to a hearing on the matter, as specified." (Legis. Counsel's Dig., Sen. Bill No. 310 (1995-1996 Reg. Sess.) Stats. 1995, ch. 256.)

Second, El Dorado cites the Assembly Committee report on Senate Bill No. 310: "This bill: [¶] ... [¶] [d]eletes the reference to MPROP [Mobilehome Park Resident Ownership Program] with respect to the statutory mitigation scheme ... *thereby making these mitigation provisions applicable to all mobilehome park conversions.*" (Assem. Com. on Housing and Community Development, Rep. on Sen. Bill No. 310 (1995-1996 Reg. Sess.) as amended June 13, 1995, italics added.)

Third, El Dorado cites an analysis prepared by the Office of Senate Floor Analyses, prepared for the Senate Rules Committee: "The bill deletes the reference to the Mobilehome Park Resident Ownership Program with respect to the statutory mitigation scheme, thereby making these mitigation provisions applicable to all subdivided mobilehome

park conversions." (Sen. Rules Com., Off. of Sen. Floor Analyses, Analysis of Sen. Bill No. 310 (1995-1996 Reg. Sess.) as amended June 13, 1995.)

Other portions of the legislative history in our record support El Dorado's position. A report for the Senate Housing and Land Use Committee: "Existing law requires a subdivider to avoid economic displacement of nonpurchasing residents when Mobilehome Park Purchase Funds are used to convert a mobilehome park. The law limits rent increases that the subdivider can charge nonpurchasing residents that remain in the park. Senate Bill 310 requires all subdividers to mitigate the economic displacement of all nonpurchasing residents by allowing payment of rent increases in five annual payments." [FN13] (Sen. Com. on Housing and Land Use, Rep. on Sen. Bill No. 310 (1995-1996 Reg. Sess.) Mar. 16, 1995, italics omitted.)

FN13 As enacted, the section provides for equal annual increases over a four-year period. (§ 66427.5, subd. (d)(1).)

A bill analysis prepared by the Senate Select Committee on Mobilehomes states: "SB 310 would establish the 1992 section [§ 66427.5], apart from conversion of the park to other types of subdivided uses, as the sole means for local government to determine mitigation requirements for all conversions of parks to resident-owned subdivided interests, not just those financed by MPROP." (Sen. Select Com. on Mobile and Manufactured Homes, Analysis of Sen. Bill No. 310 (1995-1996 Reg. Sess.) as amended June 13, 1995.)

The City makes a contrary argument by pointing to the deletion, in the legislative process, of a proposed subdivision (e) to section 66427.5: "This *1171 section establishes a statewide standard for regulation of the conversion of mobilehome parks to residential ownership uses. No local agency shall enact more stringent measures pertaining to regulation of the conversion of mobilehome parks to residential ownership uses." [FN14] This deletion allowed the bill to obtain the support of the League of California Cities.

FN14 Subdivision (e) was first added in the Senate by a March 27, 1995, amendment. It was in the Senate bill as passed, but was deleted by an Assembly amendment on June 13, 1995, and section 66427.4, subdivision (e) was added. The Assembly made "numerous substantive and technical

changes; however, the intent remains the same." The Senate concurred in the Assembly amendments.

(6) The City relies on the well-established rule that deletion of a provision is persuasive evidence that the Legislature did not intend to adopt it, and the final statute should not be construed to include the omitted provision. (Beverly v. Anderson (1999) 76 Cal.App.4th 480, 485-486 [90 Cal.Rptr.2d 545].)

(1e) We do not find the City's argument persuasive. At the time subdivision (e) was deleted from section 66427.5, subdivision (e) was added to section 66427.4: "This section shall not be applicable to a subdivision which is created from the conversion of a rental mobilehome park to resident ownership." It therefore appears that the Legislature merely expressed the same thought in a different way. It made it clear that section 66427.4, which allows local government to impose additional mitigation provisions, was inapplicable instead of stating that section 66427.5 was applicable. [FN15] As El Dorado points out, the analysis in the *Beverly* case turned on whether other language was inserted that was comparable to the deleted provision. It states: "As we have seen, section 29853.5 as enacted contains nothing corresponding to the deleted provision. Therefore we conclude that the Legislature intended no such provision to be judicially grafted onto the statute. [Citations.]" (Beverly v. Anderson, supra, 76 Cal.App.4th 480, 486.) Here, there was a corresponding provision, and the principle applied in *Beverly* does not govern.

FN15 The City also finds support for its position in a Senate third reading report. However, the portion of that report which it quotes is a provision describing *existing* law. The following page states the change in the law to be made by Senate Bill No. 310: "This bill: [¶] ... [¶] [c]larifies that the power to require mitigation measures, with respect to displaced residents, by a legislative body when a park is converted to another use ... is not applicable to a park converted to resident ownership." (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill No. 310 (1995-1996 Reg. Sess.) as amended June 13, 1995.)

Despite what we find to be rather clear evidence of legislative intent, the Association continues to argue that section 66427.5 only applies to conversion to a

resident-owned park. It attributes a special meaning to that phrase *1172 by citing the definition of "resident ownership" in the Mobilehome Park Purchase Fund law. That definition states: "Resident ownership" means, depending on the context, either the ownership by a resident organization of an interest in a mobilehome park that entitles the resident organization to control the operations of the mobilehome park for a term of no less than 15 years, or the ownership of individual interests in a mobilehome park, or both." (Health & Saf. Code, § 50781, subd. (m).) The Association argues that resident ownership of the park, and control of operations of the park, can only occur when the purchasing residents have the ability to control, manage and own the common facilities in the park, i.e., when 50 percent plus 1 of the lots have been purchased by the residents. [FN16] Thus, the Association would only apply section 66427.5 after the rental mobilehome park has been successfully converted to resident ownership by sale of more than 50 percent of the lots.

FN16 The Association quotes a purported municipal ordinance of the City of Union City which so provides. It is of no value as authority for the Association's argument.

Of course, the Association's interpretation would eliminate any economic displacement protection for persons displaced prior to the sale of more than 50 percent of the lots. The interpretation thus fails to acknowledge that this protection applies to "all nonpurchasing residents." (§ 66427.5, subd. (d).) The Association's interpretation therefore contradicts the clear statutory language, and the legislative intent, to protect all such persons.

The Association's interpretation would conflict with the legislative intent to encourage such conversions. Indeed, even the City notes that "such an onerous condition of approval would effectively give the mobile home park homeowners' association the ability to unilaterally block the proposed park conversion unless the landlord would otherwise set his purchase price at an amount acceptable to the homeowners." Giving the homeowners this power would conflict with the legislative intent "to encourage and facilitate the conversion of mobilehome parks to resident ownership" (Health & Saf. Code, § 50780, subd. (b).)

Equally important is the Legislature's intention, in enacting Senate Bill No. 310, to broaden the protection of mobilehome park residents from

economic displacement to all conversions of rental mobilehome parks to resident ownership, not just conversions financed by use of the Mobilehome Park Purchase Fund.

Finally, even if we were to apply the definition of "resident owner" in Health and Safety Code section 50781, subdivision (m), it is clear from the *1173 definition quoted above that the term "resident owner" includes the usual meaning of the words: i.e., "the ownership of individual interests in a mobilehome park" The Association's selective quoting of the definition to fit its argument is not helpful. We therefore conclude that the term "resident ownership" as used in section 66427.5 means just what it says: the statute applies to all conversions of mobilehome parks to resident ownership.

We therefore reject the Association's legislative intent argument that concludes that section 66427.5 is inapplicable until more than 50 percent of the park's units are sold to the residents.

In further support of their arguments, the City and the Association cite and liberally quote from a letter dated June 19, 2000, from John Tennyson, a consultant to the California State Senate Select Committee on Mobile and Manufactured Homes. That letter is not part of the Legislative Intent Service materials in our record. It was submitted as an exhibit to the Association's memorandum of points and authorities in opposition to the petition for writ of mandate.

Mr. Tennyson's letter purports to discuss the legislative intent of the 1995 amendment to section 66427.5, or, more accurately, a lack of intent: "There was never any intent that [section 66427.5] could be used by a parkowner other than in the context of a bonafide resident conversion." (John Tennyson, consultant, letter to Sen. Select Com. on Mobile and Manufactured Homes, June 19, 2000.)

We decline to consider the letter as evidence of the Legislature's intent when it adopted the 1995 amendments. (7) It is well settled that individual opinions of legislators or staff members merely reflect their individual opinions, and are not probative of the collegial intent of the Legislature at the time the bill was passed. (People v. Patterson (1999) 72 Cal.App.4th 438, 443 [84 Cal.Rptr.2d 870].) "Material showing the motive or understanding of an individual legislator, including the bill's author, his or her staff, or other interested persons, is generally not considered. [Citations.] This is because

such materials are generally not evidence of the Legislature's *collective* intent. [Citations.]" (*Metropolitan Water Dist. v. Imperial Irrigation Dist.* (2000) 80 Cal.App.4th 1403, 1426 [96 Cal.Rptr.2d 314].)

In addition, the subject letter was written five years after enactment of the amendment, and is addressed to an attorney, presumably for use in this litigation. Such post hoc materials are not evidence of legislative intent. (*People v. Patterson, supra*, 72 Cal.App.4th 438, 444; *1174 *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1157-1158, fn. 6 [278 Cal.Rptr. 614, 805 P.2d 873].) "A postenactment statement by a person who was not even a member of the Legislature, such as Senator Keene's staff member, apart from its inadmissibility, is entitled to virtually no weight. [Citations.]" (*Haworth v. Lira* (1991) 232 Cal.App.3d 1362, 1369 [284 Cal.Rptr. 62].) We therefore disregard the statements by Mr. Tennyson. [FN17]

FN17 Even if we considered the letter, there is no evidence that El Dorado's filing of an application for approval of a tentative parcel map is not the beginning of a bona fide conversion to resident ownership, notwithstanding the suspicions of the Association.

(1f) We therefore conclude that the legislative history does not support the Association's contention that section 66427.5 applies only to resident-owned parks, defined as parks with more than 50 percent resident ownership. To the contrary, we conclude that section 66427.5 applies to *all* subdivisions "to be created from the conversion of a rental mobilehome park to resident ownership" (§ 66427.5.)

Other Issues

El Dorado requests that, if we find section 66427.5 applicable (as we have), we reverse and remand to the trial court with directions to the trial court to issue a peremptory writ of mandate directing the City to approve the application without the three further conditions. It would therefore argue that consideration of any other issues is unnecessary to our decision.

We disagree because section 66427.5 requires the City Council to determine whether the subdivider has complied with section 66427.5. It has not yet done so, and we think it proper to remand the case to the trial court to require the City Council to make that determination before the trial court considers issuing

a peremptory writ ordering approval of the application.

The parties have anticipated our conclusion that section 66427.5 applies to El Dorado's application for tentative map approval, and that section 66427.4 does not, and they have raised three other issues that arise as the result of this conclusion.

Before considering these issues, we anticipate El Dorado's argument that there should be no further consideration of the issue by the City Council because its application for tentative map approval has already been approved by operation of law. If El Dorado is correct, no further discussion of the other issues would be necessary. *1175

1. El Dorado's Deemed Approval Argument.

El Dorado contends that its application was approved by operation of law because the City failed to take timely action on it. Section 66452.4 provides for such deemed approval when the local legislative body fails to approve, conditionally approve, or disapprove the application within the time limits set forth in the Subdivision Map Act procedural provisions. (§ 66451 et seq.) The parties agree that July 5, 2000, was the last day for the City Council to take action. However, the parties disagree on what happened at a hearing which was held on that day.

El Dorado contends that the City Council failed to take final action on the application and merely continued the matter until July 19, 2000, without its consent. The City and the Association contend that the City Council denied the application on that date and ordered a new denial motion prepared with findings.

The relevant facts are that the matter was heard on July 5, 2000. The minutes of the meeting begin with the staff's recommendation that the tentative tract map be approved with conditions. After the hearing was closed to public comments, the council members discussed the application. The minutes then state: "Motion to deny the Resolution based on not offering meaningful protection from the impacts of conversion was presented; after which, it was moved by Oden, seconded by Hodges, and carried by the following vote that the Resolution be denied, and that staff be directed to reformulate a new Resolution with findings for denial of the Tract Map." The minutes further reflect that the resolution passed by a four-to-one vote. Although the minutes are unclear, it appears that the resolution referred to was the staff recommendation for approval of the tract map.

We therefore turn to the transcript for clarification. It reflects that the staff presented a report recommending conditions of approval, and that the city attorney then stated: "The action that is being recommended to be taken tonight by the council is approval of a resolution approving the action of the city council approving the tentative tract map with conditions." After the council discussion, Councilman Oden made a motion "to deny the resolution on the basis that it does not offer the meaningful protections for non-purchasing residents from the impacts of the conversion." After further discussion, the city attorney said: "If the council action is to support this motion, I would request that the motion be modified somewhat to be directory to us to prepare a Resolution of Denial; and in that resolution, we would incorporate as best we can the information that's been presented and *1176 what we believe the reasoning of the council would be, and we would bring that resolution back at your next meeting for action. So I think we need a resolution incorporating appropriate findings." Subsequently, Councilman Oden stated: "Since we have a motion on the floor, I am more than willing to make the adjustment to the recommendation of the ... city attorney." The seconding councilwoman agreed and the motion was passed by a four-to-one vote.

El Dorado's position that the City Council failed to take final action on the application on July 5th is supported by subsequent events. At a hearing on August 2, 2000, the city attorney summarized the previous hearing as follows: "Last time we reviewed this matter, the council conducted a public hearing and at the conclusion of the hearing, after much discussion, directed us to prepare a resolution denying the project and bringing that back to you. We have prepared that resolution. It's in your agenda packet." A formal resolution was adopted on August 2, 2000. In its introductory clauses, it states: "Whereas, at the conclusion of its public hearing on July 5, 2000, the City Council directed City staff to prepare a Resolution of Denial for consideration of the City Council at the regularly scheduled July 19, 2000 City Council meeting"

However, on balance, we agree with the City that the City Council, at the July 5th meeting, denied the "resolution approving the action of the city council approving the tentative tract map with conditions." Thus, the statutory mandate was met: the appropriate legislative body disapproved the tentative map as filed. (§ 66452.4; see Carmel Valley View, Ltd. v. Maggini (1979) 91 Cal.App.3d 318, 322-323 [155

Cal.Rptr. 208].) [FN18]

FN18 The City argues that the relevant time period under the permit streamlining provisions of the Subdivision Map Act never began to run because it did not approve the environmental aspects of the project until August 2, 2000. (See § 66452.2.) We find it unnecessary to consider this alternative argument.

The statute does not require that the disapproval be final. (Carmel Valley View, Ltd. v. Maggini, supra, 91 Cal.App.3d 318, 322-323.) In fact, the parties were engaged in substantial settlement negotiations prior to the August 2, 2000, council meeting. At that meeting, as noted above, a formal resolution was adopted which reversed the disapproval and approved the tentative map, albeit with the three further conditions that El Dorado finds objectionable.

We therefore conclude that, in this situation, there was no deemed approval of the tentative map under section 66452.4. We therefore turn to the other three issues raised by the parties. *1177

2. Time of Conversion.

The first issue is when conversion occurs. In Donohue, the trial court held that conversion occurs, and section 66427.5 became applicable, "whenever a subdivider files a tentative map to convert a rental park to resident ownership, even if the conversion does not occur." (Donohue v. Santa Paula West Mobile Home Park, supra, 47 Cal.App.4th 1168, 1172.) The appellate court held the section inapplicable because conversion never occurred. In discussing the statutory language, it read the introductory phrase of the statute ("At the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a rental mobilehome park to resident ownership") to define the time "when the subdivider must offer tenants the option to purchase their space, file and distribute the tenant impact report, and demonstrate to local government that the conversion plan complies with the statute.... Thus, the opening phrase of section 66427.5 describes when the subdivider must inform local government of the rent increases it expects to enact after conversion, not the date on which the increases take effect." (Donohue, at p. 1176.) The court also points out that the use of the term "preconversion" in section 66427.5, subdivision (d)(1) and (2) "distinguishes between the rent charged before conversion and the rent charged after conversion. Had the Legislature intended to distinguish between

the rent charged before a tentative map is filed and the rent charged after filing, it easily could have done so." (*Donohue*, at p. 1176.)

The *Donohue* court gave two further reasons for rejecting the argument that the section applies as soon as a tentative map is filed, regardless of whether the conversion is completed. First, it found that the term "nonpurchasing residents," as used in section 66427.5, subdivision (d)(1) and (2), "only has meaning when applied to a park in which some residents have purchased their spaces and others have not." (*Donohue v. Santa Paula West Mobile Home Park*, *supra*, 47 Cal.App.4th 1168, 1175.) Second, the court found that, if conversion occurred when the map was filed, the first two sentences of subdivision (d), relating to the local government's authority to hold a hearing to determine compliance with the section, would be futile. (*Donohue*, at p. 1176.)

We agree with *Donohue's* basic holding that conversion does not occur when the tentative map is filed, and its conclusion that the statute does not apply if conversion never occurs.

In the normal situation, conversion begins with compliance with the Subdivision Map Act, followed by approval from the Department of Real Estate under the Subdivided Lands Act. (Bus. & Prof. Code, § 11000 et seq.) *1178

Although the Subdivision Map Act does not define the conversion process or the time of conversion more fully, we are not without guidance. As El Dorado and amici curiae point out, several cases hold that a condominium conversion occurs when the first unit is sold.

In *City of West Hollywood v. Beverly Towers, Inc.* (1991) 52 Cal.3d 1184 [278 Cal.Rptr. 375, 805 P.2d 329], the city passed an ordinance requiring a conditional use permit for the conversion of apartments into condominiums. The defendants contended they were exempt from the ordinance because, at the time the ordinance was passed, they had secured final subdivision map approval and permission from the Department of Real Estate to sell individual units as condominiums. (*Id.* at p. 1187.) Our Supreme Court concluded that defendants were exempt from the ordinance because the defendants had completed all the steps required before they could sell condominium units. Because they had the right to sell the units, the court found that the city could not impose additional conditions on the sale. (*Id.* at p. 1190.) The court said: "Under the statutory

definition of a condominium, therefore, an apartment building is not converted into a condominium project until at least one unit has been conveyed, even if the owner has obtained all the governmental approvals and recorded all the documents necessary to subdivide and sell individual apartments as condominiums. [Citation.] The City concedes that once defendants sell a unit, the conversion is complete and the newly enacted regulations may not be enforced." (*Ibid.*) The court therefore found the decisive date was the date the developer secures final subdivision map approval and permission from the Department of Real Estate to sell units. (*Id.* at p. 1191.) The court also noted that a single conveyance completes the conversion process under Civil Code section 1352. Accordingly, at that time, the Davis-Stirling Common Interest Development Act (Civ. Code, § 1350 et seq.) becomes applicable.

Amici curiae also cite *County of Los Angeles v. Hartford Acc. & Indem. Co.* (1970) 3 Cal.App.3d 809 [83 Cal.Rptr. 740]. In that case, the developer sought to convert an apartment building into condominiums. The attempt failed, and the county sought to recover on a bond given as a condition to the recording of a final tract map. In discussing the purposes for which the bond was given, the court noted that, under the Civil Code definition of "condominium" (formerly Civ. Code, § 783, now contained in § 783 & 1351, subd. (f)), "[t]here can be no undivided interest in common (and thus by statutory definition there can be no condominium) until at least one condominium unit has been conveyed by the subdivider." (*County of Los Angeles*, at p. 814.)

We therefore agree with El Dorado and amici curiae that section 66427.5, which is designed to mitigate the economic effects of conversion on nonpurchasing tenants, must be applicable when the first unit is sold. It appears to *1179 us that the *Donohue* court was referring to this time when it concluded that section 66427.5 applies only after a rental park is converted to resident ownership. At that time, sales begin and the economic mitigation measures for displaced residents specified in section 66427.5, including preemption of a local rent control ordinance, become effective. And, as noted above, the Davis-Stirling Common Interest Development Act (Civ. Code, § 1350 et seq.) also becomes applicable at that time.

As amici curiae note, "Under no circumstances ... is it left to local governments to legislate when state law takes effect." If the City were empowered to select a later date, as it did here, the economic displacement

protections for nonpurchasing residents would not apply before the selected date. This contradicts the clear legislative intent to protect all nonpurchasing residents. We therefore conclude the City did not have the authority to impose a condition which purports to impose a different date.

3. Disclosure of Tentative Purchase Price.

Assuming, arguendo, that section 66427.5 is applicable, the Association argues that it requires the subdivider to disclose both the tentative purchase price for the individual lots and the market rent which will eventually be charged to nonpurchasing residents. The Association relies on *Donohue's* summary of the statute. That summary states that the introductory paragraph of section 66427.5 requires the subdivider to offer tenants the option to purchase their space and it also "describes when the subdivider must inform local government of the rent increases it expects to enact after conversion" (*Donohue v. Santa Paula West Mobile Home Park, supra*, 47 Cal.App.4th 1168, 1176.) However, in that passage, the court was merely describing the requirements of the statute. Although a tenant cannot make a rational decision to buy, continue to rent, or move his or her mobilehome unless the tenant is given an option price and a proposed rental price, the tenant is not required to make such a decision until after the Department of Real Estate has approved the project and issued its public report. (Bus. & Prof. Code, § 11010.9.) Under the conditions of approval here, the mobilehome owner is given an exclusive right to purchase his or her unit for six months from the date of issuance of the subdivision public report under Business and Professions Code section 11018.

The Association alleges that El Dorado has not complied with this requirement. Inferentially, it argues that El Dorado's application should therefore have been denied by the City Council because it did not comply with the requirements of section 66427.5.
*1180

El Dorado points out that this specific subject was addressed by the enactment of Business and Professions Code section 11010.9 as part of Senate Bill No. 310, discussed above. That section, which is set out in full in the footnote, provides that disclosure of the tentative sales price shall be made prior to filing a notice of intention to sell with the Department of Real Estate. [FN19] Since that section applies "[n]otwithstanding any other provision of law," we harmonize it with section 66427.5 by finding that the tentative purchase price must be disclosed at the time specified in Business and Professions Code section

11010.9, i.e., at some time prior to the filing of the notice of intention to sell, but that the disclosure need not be made at the time of filing of the application for approval of the tentative map. At the latter time, the subdivider must only notify residents that they will have an option to purchase their sites, or to continue to rent them. [FN20] While the filing of the application and compliance with section 66427.5 give notice to the residents of their option to purchase, the subdivider does not need to disclose a tentative price at that time because the residents do not need to decide whether to purchase at that time. Indeed, the giving of the disclosure notice does not authorize the subdivider to offer to sell the units before obtaining Department of Real Estate approval. (Bus. & Prof. Code, § 11010.9, subd. (c).)

FN19 Business and Professions Code section 11010.9 states: "*Notwithstanding any other provision of law, the subdivider of a mobilehome park that is proposed to be converted to resident ownership, prior to filing a notice of intention pursuant to Section 11010, shall disclose to homeowners and residents of the park, by written notice, the tentative price of the subdivided interest proposed to be sold or leased.* [¶] (b) The disclosure notice required by subdivision (a) shall include a statement that the tentative price is not binding, could change between the time of disclosure and the time of governmental approval to commence the actual sale or lease of the subdivided interests in the park, as the result of conditions imposed by the state or local government for approval of the park conversion, increased financing costs, or other factors and, in the absence of bad faith, shall not give rise to a claim for liability against the provider of this information. [¶] (c) The disclosure notice required by subdivision (a) shall not be construed to authorize the subdivider of a mobilehome park that is proposed to be converted to resident ownership to offer to sell or lease, sell or lease, or accept money for the sale or lease of, subdivided interests in the park, or to engage in any other activities that are otherwise prohibited, with regard to subdividing the park into ownership interests, prior to the issuance of a public report pursuant to this chapter." (Italics added.)

FN20 Although not required, El Dorado

agreed that it would not offer the units for sale at a price exceeding their appraised fair market value.

The Association contends that the legislative history is relevant on the issue of price disclosure. We disagree, finding that the plain meaning of the statutes governs. Even if the legislative history of Senate Bill No. 310 were relevant because of some doubt about legislative intent, it does not help the Association's position.

The Association cites the bill sponsor's letter to the Governor requesting signature of the bill. However, individual statements by bill authors are not *1181 generally admissible as statements of legislative intent. (*Metropolitan Water Dist. v. Imperial Irrigation Dist.*, *supra*, 80 Cal.App.4th 1403, 1426, citing *Calvillo-Silva v. Home Grocery* (1998) 19 Cal.4th 714, 726-727 [80 Cal.Rptr.2d 506, 968 P.2d 65]; *McDowell v. Watson* (1997) 59 Cal.App.4th 1155, 1161, fn. 3 [69 Cal.Rptr.2d 692].)

But even if we overlook that obstacle, the letter is not persuasive. It only states: "SB 310 also addresses an often-heard park resident complaint that homeowners are not given a price for the proposed converted spaces. This measure would require disclosure of, at least, a non-binding price at the front end of the Subdivided Lands Act process, as a means of providing more information and protection to residents." This excerpt does not support the Association's argument, as the bill author was apparently describing the provisions of Business and Professions Code section 11010.9. Those provisions were, as noted above, also part of Senate Bill No. 310. Thus, we conclude that the reference was to that section, not to section 66427.5. [FN21]

FN21 Although we do not consider the author's letter for any purpose, it is interesting to note that the author also states that, under the bill, "[l]ocal governments would no longer be able to impose more stringent rent control or other mitigation requirements by construing the conversion as subject to the 'change of use' provisions of the Subdivision Map Act." Since the change of use provision is section 66427.4, this quote supports our conclusion that subdivision (e) of that section was intended to make the section inapplicable to conversions from rental mobilehome parks to resident-owned mobilehome parks.

Accordingly, section 66427.5 does not require disclosure of the tentative purchase price, or the proposed rental prices, at the time of the filing of the tentative map application.

4. Forced Conversion.

The Association also contends that El Dorado cannot use section 66427.5 to force a conversion without the consent of a majority of the existing residents. Under this heading, the Association reiterates several of the arguments discussed and rejected above, including its continuing reliance on section 66427.4. The remainder of its argument apparently springs from its contention that section 66427.5 requires the agreement of "66% (or at least 50%) of the existing residents [who] are willing to purchase their lots." The 66 percent argument apparently comes from section 66428.1, while the 50 percent argument apparently springs from the Association's interpretation of Health and Safety Code section 50781, subdivision (m). The latter contention has been rejected above.

Section 66428.1 provides that the requirement for the filing of a tentative map is waived if two-thirds of the owners of mobilehomes in the park *1182 commit to purchase their units upon conversion. Thus, if there is the requisite consent, there is no need to file a tentative map application at all. The absence of such consent does not mean that no conversion is possible; it only means that the filing requirement is not waived. The owner can still subdivide his property by following the statutory procedures, including the economic displacement mitigation measures specified in section 66427.5. The City agrees: "Without question, mobile home parks can be converted to resident ownership over the objection of the residents (that is what is happening in the case of this park)."

The legislative intent to encourage conversion of mobilehome parks to resident ownership would not be served by a requirement that a conversion could only be made with resident consent. We therefore reject the Association's argument.

Disposition

The judgment is reversed and the case is remanded to the trial court with directions to require the City Council to promptly determine the sole issue of whether El Dorado's application for approval of a tentative parcel map complies with section 66427.5. If so, the City Council should approve the application. If not, the City Council should specify the grounds of noncompliance and the trial court

should retain jurisdiction to review the issue of compliance in further proceedings.

El Dorado is to recover its costs on appeal.

McKinster, J., and Ward, J., concurred.

The petitions of all respondents for review by the Supreme Court were denied June 26, 2002. *1183

Cal.App.4th Dist., 2002.

EL DORADO PALM SPRINGS, LTD., Plaintiff and Appellant, v. CITY OF PALM SPRINGS et al., Defendants and Respondents; EL DORADO MOBILE COUNTRY CLUB HOMEOWNERS ASSOCIATION, Intervener and Respondent.

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ROBERT WHITE, Plaintiff and Appellant,
 v.
 COUNTY OF SACRAMENTO et al., Defendants
 and Respondents
 S.F. No. 24394.

Supreme Court of California

Jun 21, 1982.

SUMMARY

A deputy sheriff who had been reassigned to a lower paying position based on his alleged deficient performance petitioned the trial court for a writ of mandate after the county civil service commission denied his request for a hearing. Relying on the Public Safety Officers Procedural Bill of Rights Act (Gov. Code, § § 3300-3311), plaintiff contended that he could not be reassigned to a lower paying position without being afforded an administrative appeal, as provided by § 3304, subd. (b), with respect to punitive actions. The trial court denied the petition. (Superior Court of Sacramento County, No. 288012, Benjamin A. Diaz, Judge.)

The Supreme Court reversed and remanded to the trial court for further proceedings consistent with its opinion. The court held that the decision to reassign the deputy to a lower paying position based on his alleged deficient performance was per se disciplinary, or punitive in nature, and that he was thus entitled to an administrative appeal. In accordance with the last antecedent rule of statutory construction, the court held that the phrase "for purposes of punishment," as used in Gov. Code, § 3303, defining "punitive action" as "any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment," qualified only the word "transfer." Thus, a demotion or reduction in salary imposed for deficient performance and not for purposes of punishment fell within the scope of the statutory hearing requirement. (Opinion by Bird, C. J., expressing the unanimous view of the court.) *677

HEADNOTES

Classified to California Digest of Official Reports

(1) Law Enforcement Officers § 23--Sheriffs and

Constables--Reassignment for Deficient Performance--Right to Administrative Hearing.

A decision to reassign a deputy sheriff to a lower paying position based on his alleged deficient performance was per se disciplinary, or punitive in nature, and, as such, the officer was entitled to an administrative appeal under the Public Safety Officers Procedural Bill of Rights Act (Gov. Code, § 3304, subd. (b)). In accordance with the last antecedent rule of statutory construction, the phrase "for purposes of punishment," as used in Gov. Code, § 3303, defining "punitive action" as "any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment," qualified only the word "transfer" and not the words "dismissal," "demotion," "suspension," "reduction in salary," and "written reprimand." The sense of the Bill of Rights Act did not require that the phrase "for purposes of punishment" be applied to each of the preceding terms in § 3303, and relevant portions of the State Civil Service Act (Gov. Code, § 18500 et seq.) also supported the conclusion that the Legislature viewed "dismissals," "demotions," "suspensions," "reductions in salary" and "written reprimands" to be per se disciplinary in nature. A transfer, however, is disciplinary in nature only if imposed for purposes of punishment. Thus, a demotion or reduction in salary imposed for deficient performance and not for purposes of punishment fell within the scope of the statutory hearing requirement.

[See Cal.Jur.3d, Law Enforcement Officers, § 23; Am.Jur.2d, Sheriffs, Police, and Constables, § 15.]

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Chief Deputy County Counsel, and Arlene Prater, Deputy County Counsel, as Amici Curiae on behalf of Defendants and Respondents.

BIRD, C. J.

Does the Public Safety Officers Procedural Bill of Rights Act (Bill of Rights Act) afford a peace officer, who is reassigned to a lower paying position based on his alleged deficient performance, a right to an administrative appeal?

I.

The facts are not in dispute. Plaintiff, Robert White, is a deputy sheriff with the Sacramento County Sheriff's Department (Department). Defendants are the County of Sacramento, its civil service commission and its sheriff's department.

Under the Department's salary structure, deputy sheriffs who are assigned to certain more specialized positions, such as detective, are given the rank of corporal and a 5 percent special pay allowance. Plaintiff held such assignments from 1972 to 1980. He served in the detective division from 1975 to 1980.

In December of 1979, the Department told plaintiff that his performance was deficient and that he would be reassigned to the patrol division on or about January 13, 1980. As a result, he would lose both his rank and the special pay allowance.

Plaintiff sought a hearing before the Sacramento County Civil Service Commission, but his request was denied. Thereafter, he filed a petition for a writ of mandate to compel the commission to grant him a hearing. Relying on the Bill of Rights Act (Gov. Code, §§ 3300-3311), [FN1] *679 plaintiff contended that the Department could not reassign him to a lower paying position without affording him an administrative appeal, as provided in section 3304, subdivision (b) of the act.

FN1 All statutory references are to the Government Code unless otherwise indicated.

The trial court denied his petition and this appeal followed.

II.

(1) The Bill of Rights Act sets forth a number of basic rights and protections which must be accorded individual public safety officers by the public

agencies which employ them. [FN2] One of the basic protections is the right to an administrative appeal of punitive actions. Section 3304, subdivision (b), provides that "No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal." The sole question presented by this case is whether this right to an appeal extends to a public safety officer who is reassigned to a lower paying position because of his alleged deficient performance. [FN3]

FN2 As used in the act, "public safety officer" refers to any person designated a peace officer by Penal Code sections 830.1 or 830.2, subdivisions (a) and (b). (§ 3301.) A deputy sheriff, "regularly employed and paid as such" is among those defined as peace officers under Penal Code section 830.1.

FN3 It should be stressed that this case deals only with the availability of an administrative appeal where "punitive action" is taken against an individual officer. This case does not concern, for example, mass layoffs occasioned by a reduction of personnel due to budgetary constraints.

Resolution of this question obviously turns on the definition of the term "punitive action." Plaintiff contends that his reassignment was a "demotion" and his loss of the special pay allowance a "reduction in salary" both of which, by definition, are punitive actions giving rise to a right of appeal under section 3304. Plaintiff relies upon section 3303 which defines "punitive action" as "any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment."

Defendants contend, however, that the phrase "for purposes of punishment" qualifies each of the preceding terms, thereby precluding from the reach of the statute "demotions" or "reductions in salary" not imposed "for purposes of punishment." Since plaintiff's reassignment was imposed for deficient performance and not as punishment for misconduct, *680 they contend that he is not entitled to a hearing under section 3304.

In order to adopt this proposed construction of section 3303, this court would have to violate the most fundamental rules of statutory construction and

ignore the legislative history and the underlying policy of the Bill of Rights Act.

A longstanding rule of statutory construction - the "last antecedent rule" - provides that "qualifying words, phrases and clauses are to be applied to the words or phrases immediately preceding and are not to be construed as extending to or including others more remote." (*Board of Port Commrs. v. Williams* (1937) 9 Cal.2d 381, 389 [70 P.2d 918]; accord *People v. Corey* (1978) 21 Cal.3d 738, 742 [147 Cal.Rptr. 639, 581 P.2d 644].) Applied here, the rule requires that the phrase "for purposes of punishment" be read to qualify only the word "transfer" and not the words "dismissal," "demotion," "suspension," "reduction in salary," and "written reprimand."

Further support for this reading is provided by the punctuation of the statute. (See *Estate of Coffee* (1941) 19 Cal.2d 248 [120 P.2d 661]; *Duncanson-Harrelson Co. v. Travelers Indemnity Co.* (1962) 209 Cal.App.2d 62 [25 Cal.Rptr. 718].) Evidence that a qualifying phrase 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. (*Board of Trustees v. Judge* (1975) 50 Cal.App.3d 920, 927-928, fn. 4 [123 Cal.Rptr. 830].)

Here, however, the phrase "for purposes of punishment" is *not* set off from the preceding terms by a comma. Instead, the entire phrase, "transfer for purposes of punishment," is set off from the preceding terms by a comma followed by the word "or." Such use of the word "or" in a statute indicates an intention to use it disjunctively so as to designate alternative or separate categories. (*Piet v. United States* (S.D.Cal. 1959) 176 F.Supp. 576; accord *People v. Smith* (1955) 44 Cal.2d 77 [279 P.2d 33].) Thus, application of the ordinary rules of statutory construction strongly suggests that the phrase "for purposes of punishment" was intended to modify only the term "transfer."

There are two exceptions to the "last antecedent rule," but on examination it quickly becomes apparent that neither is applicable here. The first exception provides that "[w]hen several words are followed by a *681 clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all." (*Wholesale T. Dealers v. National etc. Co.* (1938) 11 Cal.2d 634, 659 [82 P.2d 3, 118 A.L.R. 486]; accord *People v. Corey*, *supra*, 21 Cal.3d 738, 742.)

Here, the phrase "for purposes of punishment" is *not* equally applicable to all the preceding terms. It would be redundant to provide for a "written reprimand" "for purposes of punishment." A reprimand, by definition, is a punishment, that is, a penalty. Accordingly, to read the statute as defendants suggest would violate the rule that "Interpretive constructions which render some words surplusage ... are to be avoided." (*California Mfrs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 844 [157 Cal.Rptr. 676, 598 P.2d 836].) "[E]very word, phrase and provision employed in a statute is intended to have meaning and to perform a useful function" (*Clements v. T. R. Bechtel Co.* (1954) 43 Cal.2d 227, 233 [273 P.2d 5]; *Prager v. Isreal* (1940) 15 Cal.2d 89 [98 P.2d 729].)

The second exception to the "last-antecedent rule" provides that "[w]here the sense of the entire act requires that a qualifying word or phrase apply to several preceding wo[r]ds ..., [its application] will not be restricted" (2A Sutherland, *Statutory Construction* (4th ed. 1973) § 47.33, p. 159; see *People v. Knowles* (1950) 35 Cal.2d 175 [217 P.2d 1].) This is, of course, but another way of stating the fundamental rule that a court is to construe a statute "so as to effectuate the purpose of the law." (*Tripp v. Swoap* (1976) 17 Cal.3d 671, 679 [131 Cal.Rptr. 789, 552 P.2d 749].) "Where a statute is theoretically capable of more than one construction [a court must] choose that which most comports with the intent of the Legislature." (*California Mfrs. Assn. v. Public Utilities Com.*, *supra*, 24 Cal.3d at p. 844.)

In this case, the "sense" of the Bill of Rights Act does not require that the phrase "for purposes of punishment" be applied to each of the preceding terms in section 3303. While there can be no doubt that the act is concerned primarily with affording individual police officers certain procedural rights during the course of proceedings which might lead to the imposition of penalties against them (see, e.g., §§ 3303, 3305-3307, 3309), a "transfer" is the only personnel action listed in section 3303 which is not intrinsically disadvantageous to an officer. Each of the other personnel actions - "dismissal," "demotion," "suspension," "reduction in salary" and "written reprimand" - by definition result in *682 disadvantage, loss or hardship. They are by nature penalties, no matter for what reason imposed. A transfer need not be. Indeed, it is entirely possible that a transfer could be advantageous to an officer.

Further support for the view that the Legislature

considered the other personnel actions listed in section 3303 as *per se* "disciplinary" or "punitive" in nature, without regard to the reason for which they are imposed, is provided by the State Civil Service Act. (§ 18500 et seq.) "Under general rules of statutory construction, [this court] may, in construing a statute, consider other statutes that might bear on the meaning of the statute at issue. [Citation.]" (*People v. Corey, supra*, 21 Cal.3d at p. 743.) In this regard, the State Civil Service Act is particularly germane.

This comprehensive act "invest[s] [civil service] employees with substantive and procedural protections against punitive actions by their superiors." (*Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, 202 [124 Cal.Rptr. 14, 539 P.2d 774]*; see § § 19570-19588.) Among these is the right to a hearing. (§ § 19572, 19578; see also *Skelly v. State Personnel Bd., supra*, 15 Cal.3d at pp. 202-216.)

The term "punitive action" is defined in section 19570 as "dismissal, demotion, suspension, or *other disciplinary action*." (Italics added.) "The [State Personnel] Board has defined 'other disciplinary action' to include, among other things, official reprimand and reduction in salary. [Citation.]" (*Skelly v. State Personnel Bd., supra*, 15 Cal.3d at p. 202, fn. 11.)

If the appointing authority decides to impose any such "disciplinary action" on an employee, he or she is entitled to an administrative appeal. (§ § 19575-19578.) It matters not in the least whether the reason for the punitive action is misconduct (see, e.g., § 19572, subs. (a), (d), (e), (f) and (g)), or "incompetency," or "inefficiency" (see § 19572, subs. (b) and (c)).

As regards transfers, the State Civil Service Act provides that an employee may protest a transfer, i.e., seek an administrative appeal, on the grounds that the transfer was ordered for the purpose of harassment or discipline. (Former § § 19361, 19362, now § § 19994.3, 19994.4.)

In sum, the provisions of the State Civil Service Act strongly support the conclusion that the Legislature intended, in the Bill of Rights Act, *683 to provide the right of administrative appeal to a peace officer against whom disciplinary action is taken, and that the Legislature viewed "dismissals," "demotions," "suspensions," "reductions in salary" and "written reprimands" to be *per se* disciplinary in nature. A transfer, however, is "disciplinary" in nature only if

imposed "for purposes of punishment." [FN4]

FN4 The provisions of the State Civil Service Act also strongly suggest that the right to an administrative appeal provided by section 3304 of the Bill of Rights Act does not apply where police officers are laid off as part of a mass reduction in personnel due, for example, to budgetary constraints. By its terms section 3303 does not include "layoffs" within the definition of "punitive action." The same is true of the comparable provision of the State Civil Service Act (see § 19570). Under that act, a civil service employee has a limited right to appeal a layoff but that right arises under an entirely separate section (former § 19541, now § 19997.14). No corollary to this right appears in the Bill of Rights Act.

Finally, this construction of sections 3303 and 3304, subdivision (b) accords with the express purpose of the Bill of Rights Act. [FN5] Section 3301 declares that the act's "rights and protections" are afforded peace officers in order to assure the "maintenance of stable employer-employee relations," and thus to secure "effective law enforcement ... services" for "all people of the state." It is evident that the more widely available the opportunity to appeal a decision resulting in disadvantage, harm, loss or hardship, the more "meaningful [the] hedge against erroneous action'." (*Skelly v. State Personnel Bd., supra*, 15 Cal.3d 194, 210.)

FN5 It also finds implicit support in the legislative history of section 3304, subdivision (b). The Bill of Rights Act grew out of Assembly Bill No. 301 which was introduced on December 19, 1974. The bill did not originally provide for the right to an administrative hearing. The bill was amended by the Assembly on April 29, 1975, to extend such right only for dismissals, demotions and denials of promotion. The bill was amended in conference on August 12, 1976, just prior to its enactment, to increase the types of personnel actions which would be appealable to include all of those now set forth in the statute.

Erroneous action can only foster disharmony, adversely affect discipline and morale in the workplace, and, thus, ultimately impair employer-employee relations and the effectiveness of law

enforcement services. With regard to the availability of the right of administrative appeal, the interpretation to which the ordinary rules of statutory construction leads is also the one which is most consonant with the express purpose of the Bill of Rights Act.

Accordingly, this court holds that a decision to reassign a peace officer to a lower paying position is per se disciplinary, or punitive in *684 nature, and that the officer therefore must be accorded the "opportunity for [an] administrative appeal." (§ 3304, subd. (b).) [FN6]

FN6 It should be noted that the parties to this appeal have not raised the question of the "timing" of the "opportunity for administrative appeal" provided by section 3304, subdivision (b). *Doyle v. City of Chino* (1981) 117 Cal.App.3d 673, 678-680 [172 Cal.Rptr. 844] held that the right does not arise until a decision to take punitive action is made. That court rejected the notion that the right arises upon the taking of any action which might lead to punitive action. (See § 3303 [set out *ante*, at pp. 681-682].)

Butler v. County of Los Angeles (1981) 116 Cal.App.3d 633, 640 [172 Cal.Rptr. 244] held that "subdivision (b) of section 3304 requires a public agency to make [an appeal] available to public safety officers ... but the appeal need not be completed prior to implementation of a punitive action."

III.

For the reasons set forth above, the judgment is reversed and the case remanded for further proceedings consistent with this opinion. Plaintiff shall recover his costs on appeal.

Mosk, J., Richardson, J., Newman, J., Kaus, J., Broussard, J., and Grodin, J., [FN*] concurred. *685

FN* Assigned by the Chairperson of the Judicial Council.

Cal., 1982.

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END OF DOCUMENT

Expense and Revenue Worksheet Regarding Claims for Reimbursement of AB 75 (PRC Section 42920 et. sec.)

Program Claimed for reimbursement: _____

Start date of program (1): _____

(2)

Expense	Pre AB 75 Program	Current Program	Net Difference
Staffing			
Overhead			
Materials			
Storage			
Transportation costs			
Equipment			
Disposal fees			
Other Expense related to program			
Revenue	Pre AB 75 Program	Current Program	Net Difference
Sale of commodities			
Avoided disposal fees			
Other Revenue related to program			

- (1) The start date of the program should indicate when the program being claimed actually started. This date can be shown as being before January 1, 2000. (i.e. Campus may have always left grass clippings on the lawn)
- (2) Use of this table can generate a savings (negative number) in the net difference column. This would serve as a credit towards the total claim being submitted for reimbursement.

Definitions of Terms are on the reverse side of this example matrix.

Expenses:

- **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 claimant 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.
- **Overhead:**
Costs incurred for overhead, such as benefits, for the PY s 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 my have been achieved. The elimination of storage is a cost savings that must be allocated to off set any costs associated to the implementation of the identified program(s) being claimed by the claimant.
- **Transportation costs:**
The transportation of supplies and waste materials has a cost. The claimant 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.

Claimant 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 claimant should take into consideration the specific program being claimed for reimbursement and identify all areas that have been impacted.

Revenue

- **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 claimant be required to identify all savings associated to the particular program or activity as per the findings of the Commission.

