Hearing Date: March 25, 2004.
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ITEM 8

TEST CLAIM
PROPOSED STATEMENT OF DECISION

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).

Integrated Waste Management (00-TC-07)

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

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EXECUTIVE SUMMARY

The sole issue before the Commission is whether the Proposed Statement of Decision accurately reflects any decision made by the Commission at the March 25, 2004 hearing on the above-named test claim.[1]

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Statement of Decision, beginning on page two, which accurately reflects the staff recommendation on the test claim. Minor changes to reflect the hearing testimony and the vote count will be included when issuing the final Statement of Decision.

However, if the Commission's vote on Item 7 modifies the staff analysis, staff recommends that the motion on adopting the Proposed Statement of Decision reflect those changes, which will be made before issuing the final Statement of Decision. In the alternative, if the changes are significant, it is recommended that adoption of a Proposed Statement of Decision be continued to the May 2004 Commission hearing.

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[1] California Code of Regulations, title 2, section 1188.1, subdivision (g).

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

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

(Proposed for adoption on March 25, 2004)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on March 25, 2004. [Witness list will be included in the final Statement of Decision.]

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/modified] the staff analysis at the hearing by a vote of [vote count will be included in the final Statement of Decision].

BACKGROUND

Test claim legislation: The test claim legislation[2] requires each "state agency,"[3] defined to include community colleges,[4] 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 divert[5] 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 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.

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[2] 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.

[3] "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).

[4] 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.

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

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.[6] (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.[7]

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."[8] [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.

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.

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[6] Assembly Floor Analysis, Concurrence in Senate Amendments Analysis of Assembly Bill No. 75 (1999 – 2000 Reg. Sess.) as amended Sept. 7, 1999.

[7] 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).

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

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."[9] 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."[10] The act created the Board,[11] and outlined its powers and duties.[12] The act also required cities and counties to prepare integrated waste management plans, to include source reduction and recycling elements.[13] The cities and counties have fee authority for preparing, adopting and implementing the integrated waste management plans.[14]

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.
- 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.

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[9] Public Resources Code section 40000, subdivision (c).

[10] Public Resources Code sections 40001, 40052 and 40703, subdivision (c).

[11] Public Resources Code section 40400 et seq.

[12] Public Resources Code section 40500 et seq.

[13] Public Resources Code sections 40900 - 40901 et seq.

[14] Public Resources Code section 41900 et seq.

- 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 alternative requirement if one was granted; (7) other information relevant to compliance with section 42921.[15]

[15] References in this analysis will be to the Public Resources Code unless otherwise indicated.

- 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.[16]

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.

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

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[16] 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.

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 Constitution[17] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[18] "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."[19] 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.[20] 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.
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

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[17] 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."

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

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

[20] *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 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.)

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.[21] 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.[22]

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.[23] 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."[24]

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?

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

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[21] *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.

[22] *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.

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

[24] *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.

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.[25]

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."[26]

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).[27] The plain meaning of this statute indicates that whether something is a "large state facility" is based on a determination by the Board.[28]

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."

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[25] Letter from claimants' representative to Paula Higashi, August 10, 2001.

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

[27] 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 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."

[28] *Ibid.*

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.[29] 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.[30] 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.[31]

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.[32]

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. If this test claim were approved, community college costs would be eligible for reimbursement when claimed by a community college district.

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[29] *Estate of Griswald, supra,* 25 Cal.4th 904, 911.

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

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

[32] A community college district, however, would be the eligible claimant under the parameters and guidelines should the Commission approve this test claim.

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.[33]

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* case[34] 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

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

[34] *Ibid.*

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."[35] 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,[36] as "any order, plan, requirement, rule, or regulation issued by any of the following: (a) The 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.

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[35] *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.

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

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.[37] 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 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).

[37] 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.)

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

In order for the test claim legislation[38] 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.[39] Only one of these findings is necessary to trigger article XIII B, section 6.[40]

The issue is whether the remaining test claim legislation[41] 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."[42] 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 California*[43] 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..."[44] [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.

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[38] 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).

[39] *County of Los Angeles, supra,* 43 Cal.3d 46, 56.

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

[41] 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.

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

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

[44] *Ibid.*

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.[45] 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, subds. (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."[46]

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.

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

[46] Public Resources Code section 15: ""Shall" is mandatory and "may" is permissive."

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"[47] and "each state agency *shall* submit an adopted integrated waste management plan."[48] 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,[49] a community college that 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.[50] 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 penalty[51] for nonparticipation, i.e., not

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[47] Public Resources Code section 42920, subdivision (b)(1).

[48] Public Resources Code section 42920, subdivision (b)(2).

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

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

[51] 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

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 cities[52] and counties[53] to submit integrated waste management plans to the Board.

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.

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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.

[52] Public Resources Code section 41000 et seq.

[53] Public Resources Code section 41300 et seq.

Preexisting law authorizes each state agency to appoint a recycling coordinator to assist in implementing section 12159 of the Public Contract Code,[54] 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."[55]

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, 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.]

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[54] Public Contract Code section 12159, subdivision (b).

[55] Public Resources Code section 42920, subdivision (c).

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,[56] 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

[56] Public Resources Code section 15.

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, subds. (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 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.[57]

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 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, subds. (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.]

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

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.[58] There must be a compulsion to expend revenue.[59] 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 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.[60]

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

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

[59] *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.

[60] *Ibid.*

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:

> (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 activities[61] are new programs or higher levels of service on community colleges within the meaning of article XIII B, section 6.

- **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

[61] 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 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 should the Commission approve this test claim.

reduction, recycling, and composting activities, and 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.

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.

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.[62] 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,[63] 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

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

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

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 assurance that state mandates would not place additional burdens on their increasingly limited revenue resources."[64]

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

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[64] *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).

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 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 appropriation[65] by the Legislature to offset recycling program costs. Annual revenue under $2,000 is continuously appropriated[66] 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

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[65] 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)

[66] 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)

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"[67] 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 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.[68]

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

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[67] Government Code section 17556, subdivision (e).

[68] 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.

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.]

In the recent case *Department of Finance v. Commission on State Mandates,*[69] 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 mandate ...."[70]

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 Resources 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

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

[70] *Id.* at pages 747-748.

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.[71] 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.

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.[72] Students may only be required to pay a fee if a statute either requires it or authorizes a district to require it.[73] 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."[74] 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,[75] that community colleges do not have fee authority to pay for the waste reduction and recycling activities in the test claim legislation.

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[71] 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.

[72] *Id.* at page 15.

[73] Education Code section 70902, subdivision (b) (9).

[74] Education Code section 70902, subdivision (a).

[75] 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.

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.[76]

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.[77]

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.[78]

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).[79]

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.[80] Moreover, as stated above, Education Code section 70902, subdivision (b)(9) states

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[76] Education Code, section 70902, subdivision (a).

[77] 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.

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

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

[80] Public Resources Code section 41900 et seq.

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 alone, would be broad enough to include the subject to which the more particular provision relates.[81]

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

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

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. 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,[82] 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.

[82] Any offsetting revenues would be identified in the parameters and guidelines phase.

- **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 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.