

ITEM 9
FINAL STAFF ANALYSIS
PROPOSED AMENDMENTS TO PARAMETERS AND
GUIDELINES

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

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

State Agency Model Integrated Waste Management Plan (February 2000)

Integrated Waste Management
05-PGA-16

Integrated Waste Management Board, Requestor

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EXECUTIVE SUMMARY

Background

This is a request filed by the Integrated Waste Management Board pursuant to Government Code section 17557, subdivision (d), to amend the original parameters and guidelines for the *Integrated Waste Management* program. If the Commission approves the Board's request, the amendments would be effective for costs incurred beginning July 1, 2005.

The Board requests that the parameters and guidelines be amended in Section VIII, Offsetting Cost Savings, to include language requiring community college districts to analyze avoided disposal costs and other offsetting savings relating to staffing, overhead, materials, storage, etc., as a result of the test claim statutes when filing reimbursement claims. A similar request was made by the Board at the Commission's September 26, 2008 hearing, when the Commission amended the parameters and guidelines pursuant to the court's writ and judgment in *State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates* (Sacramento County Superior Court, Case No. 07CS00355). The Commission denied the Board's request and found that the request was not consistent with the statutes or the court's judgment and writ. (See Exhibit G.)

The Board also requests that the following additional language be included in Section IX, State Controller's Claiming Instructions:

The claiming instructions shall include sufficient instructions to ensure that only additional expenses related to this mandate are included and that any offsetting savings, as described above, are not included.

The Board contends that the proposed amendments should be made "to more accurately capture the information necessary to provide accurate claims and a Statewide Cost Estimates [sic]."

The request to amend the parameters and guidelines was issued for comment on April 10, 2006. No comments were received. A draft staff analysis recommending that the Commission deny the Board's request was issued on December 8, 2008. On December 30, 2008, the Integrated Waste Management Board filed comments on the draft. No other comments have been received.

Staff Analysis

Staff recommends that the Commission deny the request to amend the parameters and guidelines to include language requiring community colleges to specifically analyze the cost savings information identified by the Board when filing reimbursement claims for the following reasons:

- There is no requirement in statute or Board regulations that community college districts perform the analysis specified by the Board.
- The Commission does not have the authority to impose additional requirements on community college districts regarding this program.
- The current offsetting cost savings paragraph identifies the offsetting savings consistent with the language of Public Resources Code section 42925, subdivision (a), and Public Contract Code sections 12167 and 12167.1, and with the court's judgment and writ in *State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355).
- Information on cost savings is already available to the Board in the community colleges' annual reports submitted to the Board pursuant to Public Resources Code section 42926, subdivision (b)(1).

Staff further recommends that the Commission deny the proposed language to amend Section IX of the parameters and guidelines to require that the claiming instructions include sufficient instructions to ensure that only additional expenses related to this mandate are included and that any offsetting savings are not included, for the following reasons:

- The requirement that only increased costs be claimed is already provided in the boilerplate language of Section IV of the parameters and guidelines.
- The offsetting cost savings are adequately described in Section VIII of the parameters and guidelines, the first sentence of which states that "[r]educed or avoided costs realized from implementation of the community college districts' Integrated Waste Management plans *shall be identified and offset from this claim* as cost savings, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1." (Emphasis added.)

- The claiming instructions prepared by the State's Controller's Office are required to be derived from the test claim decision and the adopted parameters and guidelines. (Gov. Code, § 17558, subd. (b).)

Conclusion and Staff Recommendation

Staff recommends that the Commission deny the request of the Integrated Waste Management Board to amend the original parameters and guidelines.



STAFF ANALYSIS

Requestor

Integrated Waste Management Board

Chronology

- 03/25/04 Statement of Decision adopted by Commission
- 03/30/05 Parameters and guidelines adopted by Commission
- 03/30/06 Integrated Waste Management Board files comments to the proposed statewide cost estimate and requests that the Commission amend the parameters and guidelines
- 04/10/06 Integrated Waste Management Board's request to amend the parameters and guidelines is issued for comment
- 10/26/06 Commission adopts statewide cost estimate
- 03/--/07 Integrated Waste Management Board and Department of Finance file petition for writ of mandate challenging the Statement of Decision and parameters and guidelines (Sacramento County Superior Court, Case No. 07CS00355)
- 06/30/08 Sacramento County Superior Court issues judgment and writ of mandate in Case No. 07CS00355 ordering Commission to amend the parameters and guidelines with respect to offsetting revenue and cost savings
- 09/26/08 Commission amends parameters and guidelines in compliance with the court's writ of mandate
- 12/08/08 Draft Staff Analysis issued on the request to amend the parameters and guidelines by the Integrated Waste Management Board
- 12/30/08 Integrated Waste Management Board files comments on the draft staff analysis

Background

The Board's Request to Amend the Parameters and Guidelines

This is a request filed by the Integrated Waste Management Board (hereafter "the Board") pursuant to Government Code section 17557, subdivision (d), to amend the parameters and guidelines for the *Integrated Waste Management* program.¹ If the Commission approves the Board's request, the amendments would be effective for costs incurred beginning July 1, 2005.

The Board requests that the parameters and guidelines be amended in Section VIII, Offsetting Cost Savings,² to include the following language requiring community college

¹ Exhibit A.

² Exhibit B, parameters and guidelines.

districts to analyze avoided disposal costs and other offsetting savings as a result of the test claim statutes when filing reimbursement claims.

Only additional expenses related to this mandate may be included in a claim and offsetting savings to the same program experienced as a result of this same mandate shall be subtracted from the amount of the claim. Claimants shall analyze the following items in determining what to include in their claims:

Staffing:

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

Overhead:

Costs incurred for overhead, such as benefits, for the PYs identified under "staffing."

Materials:

Through the implementation of the program being claimed a reduction or elimination of supplies and materials may have been achieved. This could include, and is not limited to: White office paper, mixed office paper, cardboard, printed catalogs, postage, envelopes, and other office supplies.

Storage:

Through the implementation of this program being claimed a reduction or elimination of storage of supplies and materials may have been achieved. The elimination of storage is a cost savings that must be allotted to offset any costs associated to the implementation of the identified program(s) being claimed by the claimant.

Transportation Costs:

The transportation of supplies and waste materials has a cost. The claimant should determine how many trips staff was making to purchase, pick-up and deliver supplies needed for the program being claimed and the current level of the activity.

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

Equipment:

Any costs associated with new/replacement equipment, including any costs avoided for maintenance of obsolete equipment.

Sale of Commodities:

This would include any and all revenues generated due to the sale of materials collected through the implementation of the specific program being claimed. This could include, but is not limited to white office paper, mixed office paper, cardboard, beverage containers, ferrous and nonferrous metals, glass, plastic, re-sale of used text books, compost, mulch, and firewood.

Avoided disposal fees:

Through the implementation of the AB 75 program(s) a facility will see a direct reduction in the amount of materials that would have been placed into a landfill or a trash dumpster on the campus. These direct savings are to be credited to the program based on today's disposal costs.

Sale of obsolete equipment:

Proceeds of any sales of obsolete equipment.

Other revenue related to program:

Dependent on the particular program or activity being submitted to the Commission for reimbursement several other factors can and will generate a cost savings.

The Board also requests that the following additional language be included in Section IX, State Controller's Claiming Instructions:

The claiming instructions shall include sufficient instructions to ensure that only additional expenses related to this mandate are included and that any offsetting savings, as described above, are not included.

The Board contends that the proposed amendments should be made "to more accurately capture the information necessary to provide accurate claims and a Statewide Cost Estimates [sic]."

On December 30, 2008, the Board filed comments on the draft staff analysis, stating that "since the Commission has already rejected our arguments, rather than reiterate them, we are simply incorporating by reference our earlier comment letter, dated August 26, 2008, and asking that they be included in the record, so that the record will reflect our arguments in the matter."³ The Board's August 26, 2008 letter is in the record under Exhibit G, (Item 8, September 26, 2008 Commission Hearing, Adoption of Amendments to Parameters and Guidelines, on Remand from the Sacramento County Superior Court in Case No. 07CS00355) on page 385, and is summarized in the history and analysis below.

The Board further states the following:

In closing, I just want to note that the Board's position is that the Commission views its authority too narrowly in this matter and the result will be that it will receive a number of inaccurate claims that it and other

³ Exhibit H.

state agencies will have to spend unnecessary time and resources reviewing. Furthermore, if those claims are not completely reviewed and/or audited, the State may end up paying for claims that it should not.

History of the Claim

The *Integrated Waste Management* program requires community college districts to develop and adopt, in consultation with the Integrated Waste Management Board, an integrated waste management plan. Each community college is required to divert from landfills at least 25 percent of generated solid waste by January 1, 2002, and at least 50 percent by January 1, 2004. Community college districts are also required to submit annual reports to the Integrated Waste Management Board describing the calculations of annual disposal reduction and information on changes in waste generated or disposed for the year. The Commission approved the test claim and adopted the Statement of Decision on March 25, 2004.⁴

Parameters and guidelines were adopted in March 2005.⁵ In comments to the proposed parameters and guidelines, the Integrated Waste Management Board argued that the program would inevitably result in cost savings as a result of avoided disposal costs and recommended that the parameters and guidelines require information on cost savings in any claim submitted to the State Controller's Office. Similar to the Board's request in this item, the Board proposed that the Commission adopt the following costs/savings worksheet to be attached to the parameters and guidelines "as guidance for collecting relevant information."

Expenses

- *Staffing.* Through the implementation of the program being claimed a reduction in staff hours (PYs) can be achieved. In order to determine any cost increases or decreases the claimants will need to evaluate the total staff required to implement the program being claimed prior to AB 75 and the staff needed to implement and operate the current program. All values identified must be calculated based on a conversion to the dollar values for the particular year being claimed.
- *Overhead.* Costs incurred for overhead, such as benefits, for the PYs identified under "staffing."
- *Materials.* Through the implementation of the program being claimed a reduction or elimination of supplies and materials may have been achieved. This could include, and is not limited to: white office paper, mixed office paper, cardboard, printed catalogs, postage, envelopes, and other office supplies.
- *Storage.* Through the implementation of the program being claimed a reduction or elimination of storage of supplies and materials may have been achieved. The elimination of storage is a cost savings that must be

⁴ Exhibit C.

⁵ Exhibit D.

allocated to offset any costs associated to the implementation of the identified program(s) being claimed by the claimants.

- *Transportation costs:* The transportation of supplies and waste materials has a cost. The claimants should determine how many trips staff was making to purchase, pick-up and deliver supplies needed for the program being claimed and the current level of the activity. It should be calculated based on a conversion of the previous programs' activities being converted to the dollar values for the particular year for which a claim is being submitted.

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

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

Revenue

- *Sale of commodities.* This would include any and all revenues generated due to the sale of materials collected through the implementation of the specific program being claimed. This could include, but is not limited to, white office paper, mixed office paper, cardboard, beverage containers, ferrous and nonferrous metals, glass, plastic, re-sale of used text books, compost, mulch, and firewood.
- *Avoided disposal fees.* Through the implementation of the AB 75 program(s) a facility will see a direct reduction in the amount of materials that would have been placed into a landfill or a trash dumpster on the campus. These direct savings are to be credited to the program based on today's disposal costs.
- *Sale of obsolete equipment.* Proceeds of any sales of obsolete equipment.
- *Other revenue related to program.* Dependent on the particular program or activity being submitted to the Commission for reimbursement several other factors can and will generate a cost savings. It is suggested that the claimants be required to identify all savings associated to the particular program or activity as per the findings of the Commission.⁶

⁶ Exhibit D.

In the parameters and guidelines analysis adopted in March 2005, the Commission found that community colleges are not required to identify in their reimbursement claims the potential costs savings that may result from avoiding disposal costs. The Commission also found that community college districts are not required by law to submit with their reimbursement claims a program worksheet recommended by the Board.⁷

Thus, the parameters and guidelines did not identify any offsetting cost savings for avoided disposal costs as a result of the mandate to divert solid waste.

In October 2006, the Commission adopted a statewide cost estimate in the amount of \$10,785,532 (with an average annual cost of \$1,198,392), covering fiscal years 1999-2000 through 2006-2007. The statewide cost estimate was based on 142 actual, unaudited, reimbursement claims filed by 27 community college districts for fiscal years 1999-2000 through 2004-2005, and estimated costs using the implicit price deflator for fiscal years 2005-2006 through 2006-2007. During the proceedings for the statewide cost estimate, the Board contended that the Commission's failure to include offsetting cost savings in the parameters and guidelines resulted in inaccurate cost claims. The Board filed comments arguing that the statewide cost estimate should be set at zero since community college districts collectively reported to the Board the diversion of waste in a tonnage amount that equaled \$22 million in avoided disposal costs.⁸

The Integrated Waste Management Board and the Department of Finance then filed a petition for writ of mandate in March 2007, asking the court to set aside the Commission's decision granting the test claim and to require the Commission to issue a new Statement of Decision and parameters and guidelines that give full consideration to the community colleges' cost savings (e.g. avoided landfill disposal fees) and revenues (from recyclables) by complying with the test claim statutes. They contended that the Commission did not properly account for all the offsetting cost savings from avoided disposal costs, or offsetting revenues from the sale of recyclable materials in the Statement of Decision or parameters and guidelines. (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* Sacramento County Superior Court, Case No. 07CS00355.)

On May 29, 2008, the Sacramento County Superior Court issued its Ruling on Submitted Matter, finding that the Commission's rationale for the treatment of cost savings and revenues in the parameters and guidelines was erroneous and required that the parameters and guidelines be amended.⁹

With regard to cost savings, the court found that the reduction or avoidance of costs resulting from solid waste diversion activities represent savings that must be offset and deducted from the claim for costs incurred as a result of the mandated activities in accordance with Public Contract Code section 12167 and 12167.1. Cost savings may be determined from the calculations of annual solid waste disposal reduction or diversion that community colleges must annually report to the Board pursuant to Public Resources

⁷ Exhibit D.

⁸ Exhibit E.

⁹ Exhibit F.

Code section 42926, subdivision (b)(1).¹⁰ The court further concluded that offsetting savings are limited by Public Contract Code section 12167 and 12167.1, which require community colleges to deposit cost savings into the Integrated Waste Management Account in the Integrated Waste Management Fund. These funds may, on appropriation by the Legislature, be spent by the Board to offset integrated waste management plan implementation costs. The cost savings that do not exceed \$2000 annually are continuously appropriated for the colleges to spend to offset implementing and administering the costs of the integrated waste management plan. Cost savings in excess of \$2000 annually are available for this same purpose when appropriated by the Legislature.¹¹ The judgment and writ issued by the court on June 30, 2008, directed the Commission to amend the parameters and guidelines with respect to cost savings as follows:

Amend the parameters and guidelines in Test Claim No. 00-TC-07 to require community college districts claiming reimbursable costs of an integrated waste management plan under Public Resources Code section 42920, et seq. to identify and offset from their claims, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1, cost savings realized as a result of implementing their plans.¹²

The hearing on the parameters and guidelines on remand from the court took place on September 26, 2008. In addition to making the changes required by the court's writ, the Board requested that the Commission amend the parameters and guidelines to further require community college districts to provide information with their claims identifying all cost savings resulting from the plans, including amounts that exceed \$2000. The Board also requested that the Commission require community college districts to analyze the following categories of potential cost savings in determining what to include in their claims:

Staffing:

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

Overhead:

Costs incurred for overhead, such as benefits, for the PYs identified under "staffing."

¹⁰ Exhibit F, Ruling, page 7.

¹¹ Exhibit F, Ruling, pages 8-9.

¹² Exhibit F.

Materials:

Through the implementation of the program being claimed a reduction or elimination of supplies and materials may have been achieved. This could include, and is not limited to: White office paper, mixed office paper, cardboard, printed catalogs, postage, envelopes, and other office supplies.

Storage:

Through the implementation of this program being claimed a reduction or elimination of storage of supplies and materials may have been achieved. The elimination of storage is a cost savings that must be allotted to offset any costs associated to the implementation of the identified program(s) being claimed by the claimant.

Transportation Costs:

The transportation of supplies and waste materials has a cost. The claimant should determine how many trips staff was making to purchase, pick-up and deliver supplies needed for the program being claimed and the current level of the activity.

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

Equipment:

Any costs associated with new/replacement equipment, including any costs avoided for maintenance of obsolete equipment.

Sale of Commodities:

This would include any and all revenues generated due to the sale of materials collected through the implementation of the specific program being claimed. This could include, but is not limited to white office paper, mixed office paper, cardboard, beverage containers, ferrous and nonferrous metals, glass, plastic, re-sale of used text books, compost, mulch, and firewood.

Avoided disposal fees:

Through the implementation of the AB 75 program(s) a facility will see a direct reduction in the amount of materials that would have been placed into a landfill or a trash dumpster on the campus. These direct savings are to be credited to the program based on today's disposal costs.

Sale of obsolete equipment:

Proceeds of any sales of obsolete equipment.

Other revenue related to program:

Dependent on the particular program or activity being submitted to the Commission for reimbursement several other factors can and will generate a cost savings.

The Board argued that "this change is consistent with the Commission's statutes which provide that the 'reasonable reimbursement methodology' used should identify the costs to implement the mandate in a cost-efficient manner."¹³

The Commission disagreed with the Board's argument and denied the request. The Commission found that the request to require community college districts to provide offsetting savings information whether or not the offsetting savings generated exceeds the \$2000 continuous appropriation was not consistent with the statutes or the court's judgment and writ. Pages 6-8 of the analysis adopted by the Commission makes the following findings in this regard:

Rather, as described below, the court interpreted the plain language of these statutes as requiring community college districts to deposit all cost savings resulting from their Integrated Waste Management plans in the Integrated Waste Management Account in the Integrated Waste Management Fund. The funds deposited in the Integrated Waste Management Account, upon appropriation by the Legislature, and approval of the Integrated Waste Management Board, may be appropriated for the expenditure by those community college districts for the purposes of offsetting program costs.

Public Resources Code section 42925, subdivision (a), states the following:

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

Public Contract Code section 12167 states:

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

Public Contract Code section 12167.1 states:

Notwithstanding Section 12167, upon approval by the California Integrated Waste Management Board, revenues derived from the sale of recyclable materials by state agencies and institutions that do not

¹³ Exhibit G.

exceed two thousand dollars (\$2,000) annually are hereby continuously appropriated, without regard to fiscal years, for expenditure by those state agencies and institutions for the purposes of offsetting recycling program costs. Revenues that exceed two thousand dollars (\$2,000) annually shall be available for expenditure by those state agencies and institutions when appropriated by the Legislature. Information on the quantities of recyclable materials collected for recycling shall be provided to the board on an annual basis according to a schedule determined by the board and participating agencies.

The court interpreted these statutes as follows:

By requiring the redirection of cost savings from state agency IWM plans to fund plan implementation and administration costs "in accordance with Sections 12167 and 12167.1 of the Public Contract Code," section 42925 assures that cost savings realized from state agencies' IWM plans are handled in a manner consistent with the handling of revenues received from state agencies' recycling plans under the State Assistance for Recycling Markets Act. Thus, in accordance with section 12167, state agencies, along with California Community Colleges which are defined as state agencies for purposes of IWM plan requirements in Public Resources Code section 42920 et seq. [citations omitted], must deposit cost savings resulting from IWM plans in the Integrated Waste Management Account in the Integrated Waste Management Fund; the funds deposited in the Integrated Waste Management Account, upon appropriation by the Legislature, may be expended by the Integrated Waste Management Board for the purpose of offsetting IWM plan costs. In accordance with section 12167.1 and notwithstanding section 12167, cost savings from the IWM plans of the agencies and colleges that do not exceed \$2000 annually are continuously appropriated for expenditure by the agencies and colleges for the purpose of offsetting IWM plan implementation and administration costs; cost savings resulting from IWM plans in excess of \$2000 annually are available for such expenditure by the agencies and colleges when appropriated by the Legislature.¹⁴

Accordingly, the Board's request is not consistent with these statutes or the court's judgment and writ. Thus, the Commission does not have jurisdiction to make the changes requested by the Board.

The Commission also found that the Board's request to require community college districts to analyze specified categories of potential cost savings in staffing, overhead, materials, etc., when filing their claims was not required by the test claim statutes and not consistent with the court's ruling, judgment, and writ. The Commission's findings are as follows:

¹⁴ Exhibit F, Ruling, page 9.

The Commission's jurisdiction on this item is limited by the court's judgment and writ. The court's judgment and writ do not direct the Commission to include the additional language requested by the Board in the parameters and guidelines.

The court agreed with the Board that community college districts are required by Public Resources Code section 42925, subdivision (a), to redirect any cost savings realized as a result of the diversion activities to fund the district's implementation and administration of the integrated waste management plan. But the court determined that the amount or value of cost savings is already available from the annual report the community colleges provide to the Board pursuant to Public Resources Code section 42926, subdivision (b).¹⁵ This report is required to include the district's "calculations of annual disposal reduction" and "information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors." The court's writ requires the Commission to amend the parameters and guidelines as follows:

Amend the parameters and guidelines in Test Claim No. 00-TC-07 to require community college districts claiming reimbursable costs of an integrated waste management plan under Public Resources Code section 42920, et seq. *to identify and offset from their claims, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1, cost savings realized as a result of implementing their plans.*

The writ does not direct the Commission to amend the parameters and guidelines to require community college districts to analyze the potential categories of cost savings identified by the Board.

Thus, the offsetting cost language adopted by the Commission on September 26, 2008, tracks the statutory language of Public Resources Code sections 42925 and Public Contract Code sections 12167 and 12167.1. Section VIII of the parameters and guidelines, Offsetting Cost Savings, states the following:

VIII. OFFSETTING COST SAVINGS

Reduced or avoided costs realized from implementation of the community college districts' Integrated Waste Management plans shall be identified and offset from this claim as cost savings, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1.

Pursuant to these statutes, community college districts are required to deposit cost savings resulting from their Integrated Waste Management plans in the Integrated Waste Management Account in the Integrated Waste Management Fund; the funds deposited in the Integrated Waste Management Account, upon appropriation by the Legislature, may be expended by the California Integrated Waste Management Board for the

¹⁵ Exhibit F, Ruling, page 7.

purpose of offsetting Integrated Waste Management plan costs. Subject to the approval of the California Integrated Waste Management Board, cost savings by a community college that do not exceed two thousand dollars (\$2,000) annually are continuously appropriated for expenditure by the community college for the purpose of offsetting Integrated Waste Management program costs. Cost savings exceeding two thousand dollars (\$2,000) annually may be available for expenditure by the community college only when appropriated by the Legislature. To the extent so approved or appropriated and applied to the college, these amounts shall be identified and offset from the costs claimed for implementing the Integrated Waste Management Plan.¹⁶

Issue 1: Should the Commission amend Section VIII of the parameters and guidelines to require community college districts to analyze specified categories of potential cost savings in staffing, overhead, materials, etc.; when filing their claims?

The Board requests that the parameters and guidelines be amended in Section VIII, Offsetting Cost Savings, to include the following language requiring community college districts to analyze avoided disposal costs and other offsetting savings as a result of the test claim statutes when filing reimbursement claims.

Only additional expenses related to this mandate may be included in a claim and offsetting savings to the same program experienced as a result of this same mandate shall be subtracted from the amount of the claim. Claimants shall analyze the following items in determining what to include in their claims:

Staffing:

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

Overhead:

Costs incurred for overhead, such as benefits, for the PYs identified under "staffing."

Materials:

Through the implementation of the program being claimed a reduction or elimination of supplies and materials may have been achieved. This could include, and is not limited to: White office paper, mixed office

¹⁶ Exhibit B.

paper, cardboard, printed catalogs, postage, envelopes, and other office supplies.

Storage:

Through the implementation of this program being claimed a reduction or elimination of storage of supplies and materials may have been achieved. The elimination of storage is a cost savings that must be allotted to offset any costs associated to the implementation of the identified program(s) being claimed by the claimant.

Transportation Costs:

The transportation of supplies and waste materials has a cost. The claimant should determine how many trips staff was making to purchase, pick-up and deliver supplies needed for the program being claimed and the current level of the activity.

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

Equipment:

Any costs associated with new/replacement equipment, including any costs avoided for maintenance of obsolete equipment.

Sale of Commodities:

This would include any and all revenues generated due to the sale of materials collected through the implementation of the specific program being claimed. This could include, but is not limited to white office paper, mixed office paper, cardboard, beverage containers, ferrous and nonferrous metals, glass, plastic, re-sale of used text books, compost, mulch, and firewood.

Avoided disposal fees:

Through the implementation of the AB 75 program(s) a facility will see a direct reduction in the amount of materials that would have been placed into a landfill or a trash dumpster on the campus. These direct savings are to be credited to the program based on today's disposal costs.

Sale of obsolete equipment:

Proceeds of any sales of obsolete equipment.

Other revenue related to program:

Dependent on the particular program or activity being submitted to the Commission for reimbursement several other factors can and will generate a cost savings.

The Board contends that the proposed amendments should be made "to more accurately capture the information necessary to provide accurate claims and a Statewide Cost Estimates [sic]."

Staff recommends that the Commission deny the request to amend the parameters and guidelines by requiring community colleges to specifically analyze the cost savings information identified by the Board when filing reimbursement claims. There is no requirement in statute or Board regulations that community college districts perform the analysis specified by the Board. Moreover, the Commission does not have the authority to impose additional requirements on community college districts regarding this program. Rather, section 1183.1, subdivision (a)(8), of the Commission's regulations simply requires that the parameters and guidelines include an identification of offsetting savings in the same program experienced because of the state statutes or executive orders found to contain a mandate. The current offsetting cost savings paragraph identifies the offsetting savings consistent with the language of Public Resources Code section 42925, subdivision (a), and Public Contract Code sections 12167 and 12167.1, and with the court's judgment and writ. The language is also consistent with Public Resources Code section 42927, subdivision (b), which becomes operative and effective on January 1, 2009. (Stats. 2008, ch. 343, Sen. Bill No. 1016.) Section 42927 is consistent with the court's ruling and judgment, and requires a community college to "expend all cost savings that result from implementation of the district's integrated waste management plan pursuant to this chapter to fund the continued implementation of the plan consistent with the requirement that revenues from the sale of recyclable materials be used to offset recycling program costs, as specified in Sections 12167 and 12167.1 of the Public Contract code."

Furthermore, the Board incorrectly argues that "this change is consistent with the Commission's statutes which provide that the 'reasonable reimbursement methodology' used should identify the costs to implement the mandate in a cost-efficient manner." A reasonable reimbursement methodology is defined in Government Code section 17518.5 to mean a formula for reimbursing school districts for costs mandated by the state that is based on general allocation formulas, uniform cost allowances, and other approximations of local costs. Reasonable reimbursement methodologies are used in lieu of a district maintaining detailed documentation of actual local costs and may be developed by the Department of Finance, the State Controller's Office, an affected state agency, a claimant, or an interested party. The Commission has not adopted a reasonable reimbursement methodology in this case, and one has not yet been proposed.

Finally, the Board contends that the proposed amendments are necessary to capture information necessary to provide accurate claims. But the information on cost savings is already available to the Board. The court found that cost savings can be determined from the calculations of annual solid waste disposal reduction or diversion included in the community colleges' annual reports to the Board pursuant to Public Resources Code section 42926, subdivision (b)(1).¹⁷ In comments to the proposed statewide cost estimate, the Board was able to determine from this report the dollar amount of cost savings for the fiscal years in question and argued that the statewide cost estimate should be set at zero "since community college districts collectively reported to the Board the

¹⁷ Exhibit F, Ruling, page 7.

diversion of waste in a tonnage amount that equaled \$22 million in avoided disposal costs."¹⁸

Therefore, staff recommends that the Commission deny the Board's request to amend the parameters and guidelines to require community colleges to specifically analyze the cost savings information identified by the Board when filing reimbursement claims.

Issue 2: Should the Commission amend Section IX of the parameters and guidelines to add language regarding the State Controller's claiming instructions?

Section IX of the parameters and guidelines states the following:

IX. STATE CONTROLLER'S REVISED CLAIMING INSTRUCTIONS

The Controller shall, within 60 days after receiving amended parameters and guidelines prepare and issue revised claiming instructions for mandates that require state reimbursement after any decision or order of the commission pursuant to section 17558. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission. Pursuant to Government Code section 17561, subdivision (d)(2), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission. In preparing revised claiming instructions, the Controller may request the assistance of other state agencies. (Gov. Code, § 17558, subdivision (c).)

If revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

The Board requests that the Commission add the following language to Section IX:

The claiming instructions shall include sufficient instructions to ensure that only additional expenses related to this mandate are included and that any offsetting savings, as described above, are not included.

Staff recommends that the Commission deny the proposed language. The requirement that only increased costs be claimed is already provided in the boilerplate language of Section IV of the parameters and guidelines, Reimbursable Activities, which states that:

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

¹⁸ Exhibit E.

Furthermore, staff finds that offsetting cost savings are adequately described in Section VIII of the parameters and guidelines, the first sentence of which states that “[r]educed or avoided costs realized from implementation of the community college districts’ Integrated Waste Management plans *shall be identified and offset from this claim* as cost savings, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1.” (Emphasis added.)

The claiming instructions prepared by the State’s Controller’s Office are required to be derived from the test claim decision and the adopted parameters and guidelines. (Gov. Code, § 17558, subd. (b).)

Accordingly, staff recommends that the Commission deny the proposed amendments to Section IX of the parameters and guidelines.

Conclusion and Staff Recommendation

Staff recommends that the Commission deny the request of the Integrated Waste Management Board to amend the parameters and guidelines.

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Amended: September 26, 2008
 Adopted: March 30, 2005

AMENDMENTS TO PARAMETERS AND GUIDELINES

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

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

State Agency Model Integrated Waste Management Plan (February 2000)

Integrated Waste Management
 00-TC-07

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

I. SUMMARY OF THE MANDATE

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

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

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

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

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

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

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

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

State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al. (Sacramento County Superior Court, Case No. 07CS00355)

The Department of Finance and the Integrated Waste Management Board filed a petition for writ of mandate in March 2007, asking the court to set aside the Commission's decision granting the test claim and to require the Commission to issue a new Statement of Decision and parameters and guidelines that give full consideration to the community colleges' cost savings (e.g. avoided landfill disposal fees) and revenues (from recyclables) by complying with the test claim statutes. Petitioners' position was that the Commission had not properly accounted for all the offsetting cost savings from avoided disposal costs, or offsetting revenues from the sale of recyclable materials, in the Statement of Decision or parameters and guidelines. The Judgment and a Writ of Mandate were issued on June 30, 2008, ordering the Commission to:

1. amend the parameters and guidelines in Test Claim No. 00-TC-07 to require community college districts claiming reimbursable costs of an integrated waste management plan under Public Resources Code section 42920, et seq. to identify and offset from their claims, consistent with the directions for revenue in Public Contract code sections 12167 and 12167.1, cost savings realized as a result of implementing their plans; and

Parameters and Guidelines Amendment
Integrated Waste Management
00-TC-07

2. amend the parameters and guidelines in Test Claim No. 00-TC-07 to require community college districts claiming reimbursable costs of an integrated waste management plan under Public Resources Code section 42920, et seq. to identify and offset from their claims all of the revenue generated as a result of implementing their plans, without regard to the limitations or conditions described in sections 12167 and 12167.1 of the Public Contract Code.

II. ELIGIBLE CLAIMANTS

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

III. PERIOD OF REIMBURSEMENT

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

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

Actual costs for one fiscal year should be included in each claim. Pursuant to Government Code section 17561, subdivision (d), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the claiming instructions by the State Controller.

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

IV. REIMBURSABLE ACTIVITIES

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

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

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

For each eligible claimant, the following activities are reimbursable:

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

1. Develop the necessary district policies and procedures for the implementation of the integrated waste management plan.
2. Train district staff on the requirements and implementation of the integrated waste management plan (one-time per employee). Training is limited to the staff working directly on the plan.

B. Ongoing Activities (*Reimbursable starting January 1, 2000*)

1. Complete and submit to the Board the following as part of the State Agency Model Integrated Waste Management Plan (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000.):
 - a. state agency or large state facility information form;
 - b. state agency list of facilities;
 - c. state agency waste reduction and recycling program worksheets that describe program activities, promotional programs, and procurement activities, and other questionnaires; and
 - d. state agency integrated waste management plan questions.

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

2. Respond to any Board reporting requirements during the approval process. (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000.)
3. Consult with the Board to revise the model plan, if necessary.¹ (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000.)
4. Designate one solid waste reduction and recycling coordinator ("coordinator") for each college in the district to perform new duties imposed by chapter 18.5 (Pub. Resources Code, §§ 42920 – 42928). The coordinator shall implement the integrated waste management plan. The coordinator shall act as a liaison to other state agencies (as defined by section 40196.3) and coordinators. (Pub. Resources Code, § 42920, subd. (c).)
5. Divert at least 25 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2002, and at least 50 percent of all solid waste from landfill

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

disposal or transformation facilities by January 1, 2004, through source reduction, recycling, and composting activities. Maintain the required level of reduction, as approved by the Board. (Pub. Resources Code, §§ 42921 & 42922, subd. (i).)

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

1. Seek either an alternative requirement or time extension if a community college is unable to comply with the January 1, 2002 deadline to divert 25 percent of its solid waste, by doing the following: (Pub. Resources Code, §§ 42927 & 42923 subds. (a) & (c).)
 - a. Notify the Board in writing, detailing the reasons for its inability to comply.
 - b. Request of the Board an alternative to the January 1, 2002 deadline.
 - c. Provide evidence to the Board that the college is making a good faith effort to implement the source reduction, recycling, and composting programs identified in its integrated waste management plan.
 - d. Provide information that describes the relevant circumstances that contributed to the request for extension, such as lack of markets for recycled materials, local efforts to implement source reduction, recycling and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed of by the community college.
 - e. Submit a plan of correction that demonstrates that the college will meet the requirements of Section 42921 [the 25 and 50 percent diversion requirements] before the time extension expires, including the source reduction, recycling, or composting steps the community college will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, the existing programs that it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.
2. Seek either an alternative requirement or time extension if a community college is unable to comply with the January 1, 2004 deadline to divert 50 percent of its solid waste, by doing the following: (Pub. Resources Code, §§ 42927 & 42922, subds. (a) & (b).)
 - a. Notify the Board in writing, detailing the reasons for its inability to comply.
 - b. Request of the Board an alternative to the 50-percent requirement.
 - c. Participate in a public hearing on its alternative requirement.
 - d. Provide the Board with information as to:
 - (i) the community college's good faith efforts to 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;
 - (ii) the community college's inability to meet the 50 percent diversion requirement despite implementing the measures in its plan;

- (iii) how the alternative source reduction, recycling, and composting requirement represents the greatest diversion amount that the community college may reasonably and feasibly achieve; and,
- (iv) the circumstances that support the request for an alternative requirement, such as waste disposal patterns and the types of waste disposed by the community college.

D. Accounting System (*Reimbursable starting January 1, 2000*)

Developing, implementing, and maintaining an accounting system to enter and track the college's source reduction, recycling and composting activities, the cost of those activities, the proceeds from the sale of any recycled materials, and such other accounting systems which will allow it to make its annual reports to the state and determine waste reduction. Note: only the pro-rata portion of the costs incurred to implement the reimbursable activities can be claimed.

E. Annual Report (*Reimbursable starting January 1, 2000*)

Annually prepare and 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 must encompass the previous calendar year and shall contain, at a minimum, the following as outlined in section 42926, subdivision (b): (Pub. Resources Code, §§ 42926, subd. (a) & 42922, subd. (i).)

1. calculations of annual disposal reduction;
2. information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors;
3. a summary of progress made in implementing the integrated waste management plan;
4. the extent to which the 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.

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

Annually report to the Board on quantities of recyclable materials collected for recycling. (Pub. Contract Code, § 12167.1.)

V. **CLAIM PREPARATION AND SUBMISSION**

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

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

4. Fixed Assets and Equipment

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

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules

of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

B. Indirect Cost Rates

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

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

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

VI. RECORD RETENTION

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

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Reimbursement for this mandate from any source, including but not limited to, services fees collected, federal funds, and other state funds allocated to any service provided under this program, shall be identified and offset from this claim. Offsetting revenue shall include all revenues generated from implementing the Integrated Waste Management Plan.

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

VIII. OFFSETTING COST SAVINGS

Reduced or avoided costs realized from implementation of the community college districts' Integrated Waste Management plans shall be identified and offset from this claim as cost savings, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1. Pursuant to these statutes, community college districts are required to deposit cost savings resulting from their Integrated Waste Management plans in the Integrated Waste Management Account in the Integrated Waste Management Fund; the funds deposited in the Integrated Waste Management Account, upon appropriation by the Legislature, may be expended by the California Integrated Waste Management Board for the purpose of offsetting Integrated Waste Management plan costs. Subject to the approval of the California Integrated Waste Management Board, cost savings by a community college that do not exceed two thousand dollars (\$2,000) annually are continuously appropriated for expenditure by the community college for the purpose of offsetting Integrated Waste Management program costs. Cost savings exceeding two thousand dollars (\$2,000) annually may be available for expenditure by the community college only when appropriated by the Legislature. To the extent so approved or appropriated and applied to the college, these amounts shall be identified and offset from the costs claimed for implementing the Integrated Waste Management Plan.

IX. STATE CONTROLLER'S REVISED CLAIMING INSTRUCTIONS

The Controller shall, within 60 days after receiving amended parameters and guidelines prepare and issue revised claiming instructions for mandates that require state reimbursement after any decision or order of the commission pursuant to section 17558. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission. Pursuant to Government Code section 17561, subdivision (d)(2), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission. In preparing revised claiming instructions, the Controller may request the assistance of other state agencies. (Gov. Code, § 17558, subdivision (c).)

If revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

X. REMEDIES BEFORE THE COMMISSION

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

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

XI. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

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

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE (916) 323-3662
FAX (916) 445-0278
E-mail: csmlinfo@csm.ca.gov

Exhibit B

April 10, 2006

Mr. Elliot Block
California Integrated Waste Management Board
1001 I Street
P.O. Box 4025
Sacramento, CA 95812-4025

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

RE: **Request to Amend Parameters and Guidelines**
Integrated Waste Management, 05-PGA-16
Public Resources Code Sections 40148, 40196.3, 42920-42928
Public Contract Code Sections 12167 and 12167.1
Statutes 1999, Chapter 764; Statutes 1992, Chapter 1116
State Agency Model Integrated Waste Management Plan (February 2000)

Dear Mr. Block:

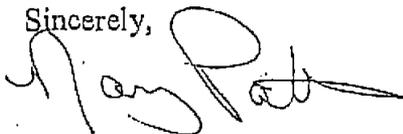
We received your request to amend the parameters and guidelines for the above-named program to include additional information as a method to accurately capture offsetting savings. Your request is deemed complete.

Review and Comments. All state agencies and interested parties in receipt of this letter are invited to comment on the proposed amendment to the parameters and guidelines. Recommendations and comments must be submitted to the Commission by **May 10, 2006**. The claimant and interested parties may file rebuttals with the Commission by **June 9, 2006**. The claimant, state agencies, and interested parties are required to submit an original and two (2) copies of written responses or rebuttals to the Commission and to simultaneously serve copies on the requestor, state agencies, and interested parties on the mailing list.

Hearing. If requested, Commission staff will conduct a prehearing conference. A hearing on this matter will be set when the record closes.

Please contact Cathy Cruz at (916) 323-8218 if you have any questions.

Sincerely,



NANCY PATTON
Assistant Executive Director

Enc.: Request to Amend Parameters and Guidelines
j:mmandates/2005/pgal6/complete/tr

MAILED: Mail List FAXED:
DATE: 1/10/90 INITIAL: LD
CHRON: FILE:
WORKING BINDER:

California Integrated Waste Management Board

Margo Reid Brown, Chair

1001 I Street • Sacramento, California 95814 • (916) 341-6000

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www.ciwmb.ca.gov



Arnold Schwarzenegger
Governor

Secretary for
Environmental
Protection

March 30, 2006

Paula Higashi

Executive Director

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95864

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

**Re: Proposed Statewide Cost Estimate and Request for Additional Comments
And Written Request To Amend, Modify, or Supplement Parameters and
Guidelines**

Integrated Waste Management Board 00-TC-07

Public Resources Code Sections 40148, 40196.3, 42920-42928

Public Contract Code Sections 12167 and 12167.1

Statutes 1999, Chapter 764; Statutes 1992, Chapter 1116

State Agency Model Integrated Waste Management Plan (February 2000)

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

Dear Ms. Higashi:

This letter is intended to serve as comments on the proposed Statewide Cost Estimate, and also, pursuant to Government Code Section 17557, the California Integrated Waste Management Board ("Board") hereby makes a written request to amend, modify, or supplement the Parameters and Guidelines for the claims that have been used to prepare this estimate. As further discussed below, the Board believes that the proposed cost estimate is based upon flawed information, and the Board believes that its inherent inaccuracies can best be remedied through amending, modifying, or otherwise supplementing the Parameters and Guidelines.

Request to Remove From Consent Calendar

Prior to discussing the substance of the Board's comments and request, there is one procedural issue to address. The transmittal letter for the analysis indicates that this matter is scheduled to be on the Commission's Consent Agenda. The Board hereby expressly requests that this matter not be considered as a consent item as we do plan on attending and testifying at the hearing.

California Environmental Protection Agency

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you can reduce demand and cut your energy and fuel costs, Flex Your Power and visit www.fypower.com.

Board Request for Additional Information on Offsetting Savings In Parameters and Guidelines was Deemed Unnecessary

At the Commission's discussion of the proposed Parameters and Guidelines at its March 30, 2005 meeting, the Board suggested a way for making this "stronger reference" to ensure that cost savings were properly identified.

"[Ms. Borzelleri] argued that while the Commission regulations [(2 CCR 1183.1(a) (9))] provide that all proposed parameters and guidelines must allow for any offsetting savings realized in the same program, she felt that staff summarily dismissed the information that the Board brought forward. ... the Board submitted a proposed cost savings worksheet that claimants could use as a tool to identify costs and the commensurate savings realized as a result of implementing diversion programs ... that could be adopted as part of the parameters and guidelines."

The claimants representative argued that this additional reference was unnecessary.

"[Mr. Petersen] explained that only increased costs are reimbursed, and therefore, doing what you used to do is not an increased cost. ... Mr. Petersen noted that claimants do not claim costs that are not incurred."

The Commission did not include any additional explanation or requirements in the parameters and guidelines. Instead, it relied on the State Controller's Claiming Instructions (incorporated through Section VIII of the Parameters and Guidelines) which in Program 256 Form IWM-1, line item (08) simply provides a space to fill in "Offsetting Savings." The sole instructions on the form provide the following:

"If applicable, enter the total savings experienced by the claimant as a direct result of this mandate. Submit a detailed schedule of savings with the claim."

The Failure to Include Additional Information on Offsetting Savings In Parameters and Guidelines Resulted in Inaccurate Cost Claims and an Inaccurate Cost Estimate

From the point of view of an entity using this form, it is easy to imagine why one would not provide any information that would reduce its claim and require it to document that reduction, without further explanation that it is required and that at some point in the process (when the State Controller reviews and/or audits their claim) the entity will have to provide it anyway.

The Board believes that the failure to provide either a stronger explanation of offsetting savings that must be included or a format/table to fill out to help determine offsetting savings, has resulted in the inaccurate claims that have been presented and which inevitably led to an inaccurate Statewide Cost Estimate. The only reasonable and efficient way to remedy this situation is to amend, modify or supplement the Parameters and Guidelines to ensure that the necessary information is provided.

can provide information that it is aware of through the implementation of this program which underscore the fact that these claims appear to be incorrect and excessive.

Reimbursable Activities

The draft staff analysis of the statewide cost estimate identifies the items that are to be considered reimbursable activities. On their surface, it appears clear that many of these items should have little, if any, cost claim associated with them.

A. One-time activities

1. Develop district policies and procedures
 2. Train district staff
-

As indicated in the draft staff analysis (p. 8), the dollar amounts associated with these two items above is relatively small (with the exception of Palomar which is an order of magnitude higher than the others and thus appears suspect). This is because the Board has already developed and provided access to many model policies and procedures that can be easily and with little or no time or cost be adapted for and utilized by Community College Districts. Likewise, the Board provides free training and support to recycling coordinators. In a recent training session, conducted by the Community Colleges, which Board staff was invited to, more than 15 college campuses and District offices were able to completely prepare and finalize for submittal, the regional annual report within a total of 5 hours. In addition, the fact that a number of claims included claims for multiple years for these items, even though they were expressly identified as one-time cost items, also calls into question the accuracy of the claims in general - hence the need for more information to properly evaluate them.

B. On-going activities

1. Complete and submit plan
2. Respond to Board reporting requirements
3. Consult with Board if necessary
4. Designate recycling coordinator
5. Divert 25% by 2002 and 50% by 2004

Again for the above items, the costs associated with them should be minimal, if any. The Board provided a model plan on computer disc that could be filled out electronically that simply involved filling in the blanks for many districts. Every Community College District used the Model Plan.

The Board is not aware of any significant amount of time that districts had to spend responding to or consulting with the Board regarding reports or revisions. As for designating a recycling coordinator and diverting waste, the Board does recognize that there may be a cost involved (because there is certainly initial spending necessary for those Districts that weren't already providing recycling programs). However, as the Board has previously indicated, and the Commission has previously acknowledged, for the most part, these activities pay for themselves through avoided costs (like reduced disposal costs and increased resource efficiency). In fact, the fifth item in this section is the main purpose of the "mandate" and it is also main way in

Commission Staff also note that the amount claimed will increase when late or amended claims are filed. The Board believes just the opposite is true and the fact that so many of the districts have not filed claims is just as likely to be an indication that the "mandate" hasn't resulted in increased overall costs for many of the districts. Furthermore, based upon the Commission Staff's analysis, amended claims, to correct some of the inaccurate claims noted above, should result in a lower cost claim. (As a side note, since the deadline for filing late claims is October 2006, it does not seem appropriate to finalize this estimate until all of those claims are filed.)

In addition, in its February 28, 2005 Comments on Draft Staff Analysis, Proposed Parameters and Guidelines, the Board included Attachment 1 which identified actual diversion realized for 117 Community Colleges and District Offices as reported for 2003 at more than 66,000 tons. Translated into dollar amounts, the reporting entities in the aggregate could realize nearly \$2 million in avoided disposal costs for 2003 alone, i.e. offsetting savings, when diversion programs are implemented. This would more than offset the claimed costs indicated on page 9 of the Draft Staff Analysis showing estimated costs of \$1.1 million for Fiscal Year 2002-2003 and \$1.2 million for Fiscal Year 2003-2004.

The Excessive Cost Claims Should Be Addressed Now, Not Later

Finally, the Commission Staff notes in its analysis that "The SCO may reduce any reimbursement claim for this program." While that is true, given all of the inaccuracies on the face of these claims, and given the impact that an excessive cost estimate could have on the Board's activities, the Board believes it would be a more efficient use of resources by all parties involved if the Commission reconsidered and revised the Parameters and Guidelines to require more accurate information in advance of claims and estimates, rather than require more resources to audit, review and revise the claims after the fact. The Board has already been contacted by the Department of Finance to talk about where the estimated \$5.9 million will come from in our next budget, hence the cost estimate will actually start affecting the Board's operating budget now.

For the reasons discussed above, we believe that there is enough factual evidence to indicate that the claims should be reduced in some amount and that the Parameters and Guidelines should be amended, modified, or supplemented to require more information from the claimants regarding actual costs (with offsetting savings factored in). This would also make the Parameters and Guidelines consistent with the statutes and regulations cited above. These are not hypothetical issues and should be dealt with accurately as the process moves along - not be left for someone to "clean-up" later. The Board has significant and strong concerns about the proposed Statewide Cost Estimate that has been prepared and, in fact, as has been expressed previously, strong concerns about the entire claims process that gave rise to this estimate.

Board Requests Adding To the Parameters and Guidelines Additional Information as a Method To Accurately Capture Offsetting Savings

Title 2 CCR 1183.3 requires that the request to amend, modify or supplement Parameters and Guidelines shall include the proposed language for specific sections of the existing Parameters

Attachment – Proposed Amendments to Parameters and Guidelines

VIA. OFFSETTING REVENUES AND REIMBURSEMENTS

...[no proposed change to body of section]

VII. ADDITIONAL EXPENSES AND OFFSETTING SAVINGS

Only additional expenses related to this mandate may be included in a claim and offsetting savings to the same program experienced as a result of this same mandate shall be subtracted from the amount of the claim. Claimants shall analyze the following items in determining what to include in their claims:

- Staffing:
Through the implementation of the program being claimed a reduction in staff hours (PYs) can be achieved. In order to determine any cost increases or decreases the claimant will need to evaluate the total staff required to implement the program being claimed prior to AB 75 and the staff needed to implement and operate the current program. All values identified must be calculated based on a conversion to the dollar values for the particular year being claimed.
- Overhead:
Costs incurred for overhead, such as benefits, for the PY s identified under "staffing."
- Materials:
Through the implementation of the program being claimed a reduction or elimination of supplies and materials may have been achieved. This could include, and is not limited to: White office paper, mixed office paper, cardboard, printed catalogs, postage, envelopes, and other office supplies.
- Storage:
Through the implementation of the program being claimed a reduction or elimination of storage of supplies and materials my have been achieved. The elimination of storage is a cost savings that must be allocated to off set any costs associated to the implementation of the identified program(s) being claimed by the claimant.
- Transportation costs:
The transportation of supplies and waste materials has a cost. The claimant should determine how many trips staff was making to purchase, pick-up and deliver supplies needed for the program being claimed and the current level of the activity.

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

PROOF OF SERVICE

**Proposed Statewide Cost Estimate and Request for Additional Comments
And Written Request To Amend, Modify, or Supplement Parameters and
Guidelines**

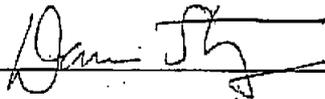
Integrated Waste Management Board 00-TC-07

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within-entitled cause; my business address is 1001 I Street, 23rd floor, Sacramento, California, 95814.

On March 30, 2006, I served the attached request for extension of time by hand delivery to the Commission on State Mandates and by placing a true copy thereof to all of those listed on the attached mailing list enclosed in a sealed envelope with postage thereon fully prepaid in the U. S. Mail at Sacramento, California, in the normal pickup location at 1001 I Street, 23rd floor, for Interagency Mail Service, addressed as follows:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 30, 2006 at Sacramento, California.



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Commission on State Mandates

Original List Date: 4/7/2006

Mailing Information: Completeness Determination

Last Updated:

Last Print Date: 04/10/2006

Claim Number: 05-PGA-16

Issue: Integrated Waste Management

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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126



BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

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

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

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

Filed on March 9, 2001,

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

No. 00-TC-07

Integrated Waste Management

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

(Adopted on March 25, 2004)

STATEMENT OF DECISION

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

PAULA HIGASHI, Executive Director

Date

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

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

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Filed on March 9, 2001,

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

No. 00-TC-07

Integrated Waste Management

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

(Adopted on March 25, 2004)

STATEMENT OF DECISION

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

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

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

Adopted Statement of Decision
00-TC-07

BACKGROUND

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

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

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

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

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

² “State agency” is “every state office, department, division, board, commission, or other agency of the state, including the California Community Colleges and the California State University. The Regents of the University of California are encouraged to implement this division (Pub. Resources Code, § 40196.3).

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

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

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

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

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

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

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

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.

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

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

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

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

Claimants' Position

Claimants contend that the test claim legislation constitutes a reimbursable state mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514. Claimants seek reimbursement for labor, materials and supplies, travel, data processing services and software, contracted services and consultants, equipment and capital assets, staff training, and student and public awareness training for community colleges to implement the following activities:

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

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

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

¹⁰ Public Resources Code section 40400 et seq.

¹¹ Public Resources Code section 40500 et seq.

¹² Public Resources Code sections 40900 - 40901 et seq.

¹³ Public Resources Code section 41900 et seq.

- 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 42921.¹⁴

¹⁴ 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.¹⁵

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

State Agency Positions

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

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

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

agencies to offset recycling program costs. DOF argues that these provisions do not apply to community colleges, which therefore should be able to keep all recycling program revenues. (3) The community colleges may institute fees to offset administrative costs and state reimbursement.

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

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

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

DOF did not comment on the draft staff analysis.

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

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

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

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

COMMISSION FINDINGS

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

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

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

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

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

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

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

This test claim presents the following issues:

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

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

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

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

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

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

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

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

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

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

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

The definitions in the test claim legislation are as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

²⁷ *Ibid.*

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

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

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

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

Resources Code section 40100 states "Unless the context otherwise requires, the definitions in this article govern the construction of this division." Therefore, a "state agency" includes community colleges only for purposes of division 30 of the Public Resources Code.

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

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

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

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

Subdivision (b) of this section states:

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

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

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

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

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

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

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

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

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

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

Government Code section 17516 defines executive order, for purposes of mandates law,³⁵ as “any order, plan, requirement, rule, or regulation issued by any of the following: (a) The Governor. (b) Any officer or official serving at the pleasure of the Governor. (c) Any agency, department, board, or commission of state government.”

³³ *Ibid.*

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

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

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

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

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

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

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

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

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

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

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

In order for the test claim legislation³⁷ to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program," defined as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.³⁸ Only one of these findings is necessary to trigger article XIII B, section 6.³⁹

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

Because of the statutory scheme in this test claim that applies to state agencies as well as community colleges, the question arises as to whether the test claim legislation must be unique to "local" government, as opposed to state government. In *County of Los Angeles v. State of California*⁴² the court did not distinguish between local governmental functions and those at other levels of government. Rather the court stated "the intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar

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

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

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

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

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

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

to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally...⁴³ [Emphasis added.] Thus, the program at issue need not be unique to *local* government, rather it need only provide a governmental function or impose unique requirements on local governments that do not apply generally to all residents or entities of the state, as in the definition of "program" cited above.

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

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

Article XIII B, section 6 of the California Constitution states, "whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds." To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.⁴⁴ As discussed above, a community college is a state agency for purposes of division 30 of the Public Resources Code.

INTEGRATED WASTE MANAGEMENT PLAN

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

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

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,

⁴³ *Ibid.*

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

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

then the model integrated waste management plan, as revised by the board in consultation with the agency, shall take effect on that date, or on a later date as determined by the board, and shall have the same force and effect as if adopted by the state agency.

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

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

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

The Commission disagrees. Since a community college can be automatically governed by the model integrated waste management plan adopted by the Board,⁴⁸ a community college that chooses to develop its own plan is exercising its discretion in doing so. A local decision that is discretionary does not result in a finding of state-mandated costs.⁴⁹ Although a district may incur extra costs in developing a plan to deal with its unique waste management problems, those

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

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

⁴⁸ The test claim statute requires the Board to adopt the model plan by February 15, 2000 (Pub. Resources Code, § 42920, subd. (a)). The Board, at its September 11-12, 2001 meeting, disapproved of 12 community colleges' integrated waste management plans (Resolution 2001-345). See <<http://www.ciwmb.ca.gov/Agendas/agenda.asp?RecID=280&Year=2001&Comm=BRD&Month=9>> [as of February 17, 2002]. At its September 17-18, 2002 meeting, the Board almost recommended adopting an integrated waste management plan for one community college (Resolution 2002-499) but it appears this item was pulled from the Board's agenda (see <http://www.ciwmb.ca.gov/Agendas/agenda.asp?RecID=418&Year=2002&Comm=BRD&Month=9>) [as of February 17, 2002].

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

are not "costs mandated by the state" because the district's problems are not increased costs "as a result of any statute ... or any executive order." (Gov. Code, § 17514).

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

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

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

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

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

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

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

⁵¹ Public Resources Code section 41000 et seq.

⁵² Public Resources Code section 41300 et seq.

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

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

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

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

SOLID WASTE DIVERSION

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

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

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

source reduction, recycling, and composting, is a new program or higher level of service for community colleges.

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

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

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

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

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

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

According to section 42927, the requirement to notify the Board and request an alternative goal or time extension is contingent on the community college's inability "to comply with the requirements of this chapter." This inability could be outside the control of the community college, a fact recognized in the statute itself. For example, section 42923, subdivision (c)(1), requires the Board to consider, in deciding whether to grant a time extension to the community college, the following factors: "lack of markets for recycled materials, local efforts to implement source reduction, recycling, and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed of by the agency." Most of these factors are outside the college's control. Similarly, section 42922, subdivision (b) requires the Board to consider the following when determining whether to grant an alternative (other than 50-percent) diversion requirement: "waste disposal patterns and the types of waste disposed by the state agency or large state facility ... [which] may provide the board with any additional information [it] ... determines to be necessary to demonstrate to the board the need for the alternative requirement."

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

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

Seek an alternative to the 50-percent requirement (Pub. Resources Code, § 42922, 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.

⁵⁵ Public Resources Code section 15.

Therefore, because it is new, the Commission finds that if a community college is unable to comply with the 50-percent diversion requirement, it is a new program or higher level of service for it to (1) notify the Board in writing, detailing the reasons for its inability to comply; (2) request of the Board an alternative to the 50-percent requirement; (3) participate in a public hearing on its alternative requirement; (4) provide the Board with information as to (a) the community college's good faith efforts to effectively implement the source reduction, recycling, and composting measures described in its integrated waste management plan, and demonstration of its progress toward meeting the alternative requirement as described in its annual reports to the Board; (b) the community college's inability to meet the 50-percent diversion requirement despite implementing the measures in its plan; and (c) the alternative source reduction, recycling, and composting requirement represents the greatest diversion amount that the community college may reasonably and feasibly achieve.

The Commission also finds that subdivision (b) of section 42922 is a new program or higher level of service for a community college to relate to the Board circumstances that support the request for an alternative requirement, such as waste disposal patterns and the types of waste disposed by the community college.

Seek a time extension first (Pub. Resources Code, § 42922, subd. (c)): Subdivision (c) of section 42922 states that if a community college (i.e., state agency or large state facility)

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

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

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

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

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

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

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

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

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

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

The Commission agrees with the claimants' interpretation regarding legislative intent. However, a reimbursable state mandate does not arise merely because a local entity finds itself bearing an "additional cost" imposed by state law.⁵⁷ There must be a compulsion to expend revenue.⁵⁸ Section 42922 only requires a request for an alternative *or* a time extension for districts unable to comply with the requirements of chapter 18.5. (Pub. Resources Code, §§ 42920-42928). There is no compulsion to request both. Therefore, the Commission finds that section 42922 requires seeking only one alternative requirement for community colleges unable to comply with the requirements. Seeking a subsequent alternative requirement is at the discretion of the community college, which does not result in finding state mandated costs.⁵⁹

Seek a time extension (Pub. Resources Code, § 42923): Section 42923, subdivision (a), authorizes the Board to grant one or more single or multiyear time extensions from the

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

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

⁵⁹ *Ibid.*

January 1, 2002 requirement to divert at least 25 percent of generated solid waste (the requirement in section 42921, subdivision (a)) if specified conditions are met.

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

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

Subdivision (c) (1) requires the Board, when granting an extension, to consider information provided by the community college that describes the relevant circumstances that contributed to the request for extension, such as lack of markets for recycled materials, local efforts to implement source reduction, recycling and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed of by the community college.

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

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

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

Therefore, because it is new, the Commission finds that if a community college is unable to comply with the January 1, 2002 deadline to divert 25 percent of its solid waste, it is a new program or higher level of service to: (1) notify the Board in writing, detailing the reasons for its inability to comply; (2) request of the Board an alternative to the January 1, 2002 deadline; (3) provide evidence to the Board that it is making a good faith effort to implement the source reduction, recycling, and composting programs identified in its integrated waste management plan; (4) provide information to the Board that describes the relevant circumstances that contributed to the request for extension, such as lack of markets for recycled materials, local efforts to implement source reduction, recycling and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed of by the community college.

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

(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

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implementation schedule pursuant to section 42921, subdivision (b), and complying with the college's plan of correction, before the expiration of the time extension. (6) For a community college that has been granted an alternative source reduction, recycling, and composting requirement by the Board pursuant to section 42922, the report shall include a summary of progress made towards meeting the alternative requirement as well as an explanation of current circumstances that support the continuation of the alternative requirement.

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

Submit recycled material reports (Pub. Contract Code, § 12167.1): This section requires that "[I]nformation on the quantities of recyclable materials collected for recycling shall be provided to the board on an annual basis according to a schedule determined by the board and participating agencies."

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

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

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

- **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

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

agency or large state facility information form; (2) state agency list of facilities; (3) state agency waste reduction and recycling program worksheet, including the sections on program activities, promotional programs, and procurement activities; and (4) state agency integrated waste management plan questions.

- **Designate a solid waste reduction and recycling coordinator (Pub. Resources Code, § 42920, subd. (c)):** A community college must designate one solid waste reduction and recycling coordinator to perform new duties imposed by chapter 18.5 (Pub. Resources Code, §§ 42920 – 42928), including implementing the community college's integrated waste management plan, and acting as a liaison to other state agencies (as defined by section 40196.3) and coordinators.
- **Divert solid waste (Pub. Resources Code, §§ 42921 & 42922, subd. (i)):** A community college must divert at least 25 percent of all solid waste generated by a community college from landfill disposal or transformation facilities by January 1, 2002, through source reduction, recycling, and composting activities, and divert at least 50 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2004, through source reduction, recycling, and composting.

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

- **Seek an alternative requirement (Pub. Resources Code, §§ 42927 & 42922, subds. (a) & (b)):** A community college that is unable to comply with the 50-percent diversion requirement must: (1) notify the Board in writing, detailing the reasons for its inability to comply; (2) request of the Board an alternative to the 50-percent requirement; (3) participate in a public hearing on its alternative requirement; (4) provide the Board with information as to (a) the community college's good faith efforts to effectively implement the source reduction, recycling, and composting measures described in its integrated waste management plan, and demonstration of its progress toward meeting the alternative requirement as described in its annual reports to the Board; (b) the community college's inability to meet the 50-percent diversion requirement despite implementing the measures in its plan; (c) the alternative source reduction, recycling, and composting requirement represents the greatest diversion amount that the community college may reasonably and feasibly achieve, and (d) relate to the Board circumstances that support the request for an alternative requirement, 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

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contributed to the request for extension, such as lack of markets for recycled materials, local efforts to implement source reduction, recycling and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed of by the community college. (5) The community college must also submit a plan of correction that demonstrates that it will meet the requirements of Section 42921 [the 25 and 50 percent diversion requirements] before the time extension expires, including the source reduction, recycling, or composting steps the community college will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, the existing programs that it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.

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

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

In order for the activities listed above to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution, two criteria must apply. First, the activities must impose increased costs mandated by the state.⁶¹ Second, no statutory exceptions

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

as listed in Government Code section 17556 can apply. Government Code section 17514 defines "costs mandated by the state" as follows:

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

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

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

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

Article XIII B, section 6 of the California Constitution requires the state to provide a subvention of funds to reimburse local governments whenever the Legislature or a state agency mandates a new program or higher level of service that results in increased costs for the local governments. Government Code section 17514 was enacted to implement this constitutional provision. The principle of reimbursement was "enshrined in the Constitution to provide local entities with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources."⁶³

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

⁶³ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal. App. 4th 1264, 1282. Two cases have held legislative declarations similar to that in section 42920, subdivision (c) unenforceable. In *Carmel Valley Fire Protection District v. State of California, supra*, 190 Cal.App.3d 521, the court held that "Legislative disclaimers, findings and budget control language are no defense to reimbursement." The Carmel Valley court called such language "self serving" and "transparent attempts to do indirectly that which cannot lawfully be done directly." (*Id.* at p. 541). Similarly, in *Long Beach Unified School District v. State of California (supra*, 225 Cal.App.3d 155) the Legislature deleted requested funding from an appropriations bill and enacted a finding that the executive order did not impose a state mandated local program. The court held that "unsupported legislative disclaimers are insufficient to defeat reimbursement. ...[The district,] pursuant to Section 6, has a constitutional right to

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

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

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

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

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

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

Public Contract Code sections 12167 and 12167.1 (Stats. 1992, ch. 1116) require revenue received from a recycling plan to be deposited in the Integrated Waste Management Account in the Board. This recycling plan does not apply to community colleges. Rather, the Public Contract Code Provisions only apply to the extent that funds are to be "redirected in accordance" with them. After July 1, 1994, the test claim legislation authorizes the Board to spend the revenue upon appropriation⁶⁴ by the Legislature to offset recycling program costs. Annual

reimbursement of its costs in providing an increased service mandated by the state. The Legislature cannot limit a constitutional right." (*Id.* at p. 184).

⁶⁴ An appropriation is "an authorization from a specific fund to a specific agency or program to make expenditures/incur obligations for a specified purpose and period of time. ... Appropriations are made by the Legislature in the annual budget Act and in other legislation." (Governor's 2003-04 Budget, Glossary of Budget Terms, Appendix p. 2)

revenue under \$2,000 is continuously appropriated⁶⁵ for expenditure by state agencies and institutions, whereas annual revenue over \$2,000 is available for expenditures upon appropriation by the Legislature.

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

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

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

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

⁶⁶ Government Code section 17556, subdivision (e).

12167.1, claimants argue, is a limited exception to section 12167, which continuously appropriates revenues not exceeding \$2,000 for expenditure by state agencies to offset recycling program costs. Revenues over \$2,000 are still subject to appropriation by the Legislature. Claimants restate the portion of the test claim that recognized the revenue sources and their limitations, noting that the Chancellor's Office's comments stated that the offsetting revenue was "unlikely to offset much of the costs."

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

Pursuant to section 12167, revenue is to be deposited into the Integrated Waste Management Account in the Integrated Waste Management Fund and may be spent by the Board, only on appropriation by the Legislature, to offset recycling program costs. Pursuant to section 12167.1, revenue from selling recyclable materials that does not exceed \$2,000 annually is continuously appropriated to community colleges to offset recycling program costs. Revenue that exceeds \$2,000 annually is available for expenditure when appropriated by the Legislature.

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

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

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

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

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

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

⁶⁹ *Id.* at pages 747-748.

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

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

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

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

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

⁷¹ *Id.* at page 15.

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

⁷³ Education Code section 70902, subdivision (a).

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

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

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

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

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

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

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

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

On the other hand, if the fee is for materials, services, or privileges which will assist a student, but are not otherwise required for registration, enrollment, entry into class, or completion of the required classroom objectives of a course, the fee

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

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

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

can be classified as optional in nature. Under the authority of the permissive code, [Ed. Code, § 70902, subd. (a)] a district may charge a fee which is optional in nature, provided that the fee is not in conflict or inconsistent with existing law, and is not inconsistent with the purposes for which community college districts are established.⁷⁷

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

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

A specific statutory provision relating to a particular subject, rather than a general statutory provision, will govern in respect to that subject, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates.⁸⁰

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

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

Education Code section 76375 reads in pertinent part as follows:

76375. (a) The board of trustees of a community college district may establish an annual building and operating fee for the purpose of financing, constructing, enlarging,

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

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

⁷⁹ Public Resources Code section 41900 et seq.

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

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 ... [¶] ... to a student who is a recipient of the benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or the General Assistance program. The fee authorized by this section shall be supplemental to all other fees charged to community college students. [¶]...[¶]

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

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

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

Therefore, the Commission finds that there are costs mandated by the state in spite of the fee authority in Education Code section 76375. Any revenue from these fees used to comply with

the test claim legislation would be considered offsets,⁸¹ as with any other revenues that accrue to community colleges as discussed above.

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

CONCLUSION

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

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

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

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.

- o **Seek a time extension (Pub. Resources Code, §§ 42927 & 42923 subs. (a) & (c)):** A community college that is unable to comply with the January 1, 2002 deadline to divert 25 percent of its solid waste, must do the following pursuant to section 42923, subdivisions (a) and (c): (1) notify the Board in writing, detailing the reasons for its inability to comply; (2) request of the Board an alternative to the January 1, 2002 deadline; (3) provide evidence to the Board that it is making a good faith effort to implement the source reduction, recycling, and composting programs identified in its integrated waste management plan; and (4) provide information to the Board that describes the relevant circumstances that contributed to the request for extension, such as lack of markets for recycled materials, local efforts to implement source reduction, recycling and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed of by the community college. (5) The community college must also submit a plan of correction that demonstrates that it will meet the requirements of Section 42921 [the 25 and 50 percent diversion requirements] before the time extension expires, including the source reduction, recycling, or composting steps the community college will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, the existing programs that it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.

- o **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.

ITEM 10

**FINAL STAFF ANALYSIS
 PROPOSED PARAMETERS AND GUIDELINES
 AS MODIFIED BY STAFF**

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

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

State Agency Model Integrated Waste Management Plan (February 2000)

Integrated Waste Management (00-TC-07)

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

EXECUTIVE SUMMARY

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

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

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

Staff Recommendation

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

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

STAFF ANALYSIS

Co-Claimants

Santa Monica and Lake Tahoe Community College Districts¹

Chronology

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

Summary of the Mandate

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

Discussion

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

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

² Exhibit A.

³ Exhibit B.

⁴ Exhibits C, D, E, and F.

⁵ Exhibit E.

⁶ Exhibit F.

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

III. Period of Reimbursement

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

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

IV. Reimbursable Activities

Boilerplate definition of Actual Costs

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

Staff Findings

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

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

One-Time Activities

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

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

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

Staff Findings

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

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

Ongoing Activities

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

⁷ Exhibit D.

⁸ Exhibit F.

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

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

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

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

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

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

Staff Findings

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

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

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

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

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

¹² Exhibit D.

¹³ Exhibit C.

¹⁴ Exhibit F.

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

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

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

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

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

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

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

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

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

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

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

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

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

VII. *Offsetting Savings (Revenues) and Reimbursements*

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

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

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

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

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

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

²⁰ Exhibit C.

²¹ Exhibit E.

²² Exhibit E.

- *Overhead.* Costs incurred for overhead, such as benefits, for the PYs identified under "staffing."
- *Materials.* Through the implementation of the program being claimed a reduction or elimination of supplies and materials may have been achieved. This could include, and is not limited to: white office paper, mixed office paper, cardboard, printed catalogs, postage, envelopes, and other office supplies.
- *Storage.* Through the implementation of the program being claimed a reduction or elimination of storage of supplies and materials may have been achieved. The elimination of storage is a cost savings that must be allocated to offset any costs associated to the implementation of the identified program(s) being claimed by the claimants.
- *Transportation costs.* The transportation of supplies and waste materials has a cost. The claimants should determine how many trips staff was making to purchase, pick-up and deliver supplies needed for the program being claimed and the current level of the activity. It should be calculated based on a conversion of the previous programs' activities being converted to the dollar values for the particular year for which a claim is being submitted.
Claimants should also consider the cost incurred for the collection of waste materials associated with the activity being claimed.
- *Equipment.* Any costs associated with new/replacement equipment, including any costs avoided for maintenance of obsolete equipment.
- *Disposal fees.* Costs associated to the disposal of materials prior to the implementation of the specific program being implemented. Since the intent and impact of the legislation is to divert materials from the landfill, a direct savings is seen.
- *Other expenses related to program.* The claimants should take into consideration the specific program being claimed for reimbursement and identify all areas that have been impacted.

The Board also defined the following revenue items:

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

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

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

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

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

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

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

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

Staff Findings

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

²³ Exhibit F.

²⁴ Exhibit H.

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

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

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

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

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

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

²⁶ Public Contract Code section 12167 states:

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

²⁷ Public Contract Code section 12167.1 states:

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

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

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

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

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

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

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

³⁰ *Ibid.*

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

³² *Ibid.*

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

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

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

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

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

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

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

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

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

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

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

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

Staff Recommendation

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

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

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

PROPOSED PARAMETERS AND GUIDELINES

Public Resources Code Sections 40148, 40196.3, 42920-42928

Public Contract Code Sections 12167 and 12167.1

Statutes 1999, Chapter 764 (A.B. 75)

Statutes 1992, Chapter 1116 (A.B. 3521)

State Agency Model Integrated Waste Management Plan (February 2000)

Integrated Waste Management (00-TC-07)

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

I. SUMMARY OF THE MANDATE

Per Statement of Decision

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

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

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

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

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

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

be funded.

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

II. ELIGIBLE CLAIMANTS

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

III. PERIOD OF REIMBURSEMENT

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

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

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

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

submitted within 120 days of the issuance of the claiming instructions by the State Controller. If the total costs for a given fiscal year do not exceed \$1000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

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

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

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

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

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

1. Policies and Procedures

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

2. Staff Training

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

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

3. Plan Development and Approval

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

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

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

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

4. Program Coordinator

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

5. Waste Diversion

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

PART 1. PROGRAM ACTIVITIES

A. Source Reduction

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

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

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

~~B. Recycling~~

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

~~C. Composting~~

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

~~D. Special Waste~~

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

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

PART 2: PROMOTIONAL PROGRAMS

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

G. ~~Other promotional programs~~

PART 3: PROCUREMENT ACTIVITIES

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

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

C. ~~Exceeding SABRC goals~~

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

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

F. ~~Annual SABRC report~~

G. ~~Staff training~~

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

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

J. ~~Sharing success stories with SABRC~~

K. ~~Joint purchase pools~~

L. ~~Other procurement activities~~

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

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

A. 25% Diversion Requirement

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

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

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

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

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

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

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

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

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

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

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

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

4d. Provide the Board with information as to:

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

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

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

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

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

Developing, implementing, and maintaining an accounting system to enter and track the college's source reduction, recycling and composting activities, the cost of those activities, the proceeds from the sale of any recycled materials, and such other accounting systems which will allow it to make its annual reports to the state and determine waste reduction. Note: only the pro-rata portion of the costs incurred to implement the reimbursable activities can be claimed.

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

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

1. calculations of annual disposal reduction;

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

decreases in employees, economics, or other factors;

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

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

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

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

V. CLAIM PREPARATION AND SUBMISSION

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

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

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

4. Fixed Assets and Equipment

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

5. Travel

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

6. Training

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

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

B. Indirect Cost Rates

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

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

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

VI. RECORD RETENTION

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

VII. OFFSETTING SAVINGS-REVENUES AND REIMBURSEMENTS

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

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

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

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

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

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

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

IX. REMEDIES BEFORE THE COMMISSION

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

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

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

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

State Agency Model Integrated Waste Management Plan

February 2000



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Gray Davis
Governor

Winston Hickox
Secretary, California Environmental Protection Agency

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Appendix 2: Assembly Bill 75 A2-1

Executive Summary

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

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

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

This document contains the following key sections:

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

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

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

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

Instructions for Completing the State Agency Model

Integrated Waste Management Plan

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

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

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

Completed plans should be submitted to the following address:

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

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

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

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

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

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

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

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

State agencies must submit this completed form.

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

Large State facilities must submit this completed form.

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

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

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

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

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

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

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

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

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

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

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

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

or are proposed for implementation, note them in the blank rows under the appropriate program

activity areas in Column B1. Identify all your agency's existing programs with an "X" in Column B2. Identify the proposed programs with an "X" in Column B3.

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

1. In Column C, Rows 1-73, enter the amount of material anticipated to be diverted for every existing program activity at your State agency or large State facility.

2. Row 74, Page 10 (Total Tonnage Diverted): Total all rows and enter the sum.

3. Row 75, Page 10 (Total Tonnage Disposed): Enter the amount of waste that is projected for disposal in calendar year 2000 by your State agency or large State facility at a disposal facility or that is being collected by a waste hauler for disposal. Use any available actual data in calculating this amount.

4. Row 76, Page 10 (Total Tonnage Generated): Add figures from Row 76 and Row 77 (total tonnage generated = total tonnage diverted + total tonnage disposed).

5. Row 77, Page 10 (Overall Diversion Percentage): Divide the number in Row 74 (Total Tonnage Diverted) by the number in Row 76 (Total Tonnage Generated). Multiply the result by 100.

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

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

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

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

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

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

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

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

Column B, Rows 78-106, Page 11

List additional existing or proposed promotional programs your agency has.

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

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

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

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

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

Column B, Rows 119-126, Page 12

List additional existing or proposed procurement activities your agency has.

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

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

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

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

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

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

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

State Agency Name: _____

Address: _____

City: _____ ZIP Code: _____

State Agency Director's Name: _____

Recycling Coordinator: _____

Name: _____

Address: _____

City: _____ ZIP Code: _____

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

Fax Number: (____) _____

Number of Employees: _____

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

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

Signature of Chairman, Commissioner,
or Director

Date

Printed Name

Title

Part I-B: Large State Facility Information Form

Facility: _____

Address: _____

City: _____ ZIP Code: _____

Facility Director: _____

Recycling Coordinator:

Name: _____

Address: _____

City: _____ ZIP Code: _____

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

Fax Number: (_____) _____

Number of Employees: _____

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

Signature of District or Facility Director

Date

Printed Name

Title

Signature of Chairman, Commissioner,
Director, or President

Date

Printed Name

Title

Part II: State Agency List of Facilities

State Agency or Large State Facility:

No.	Facility Name and Mailing Address <small>(List all facilities that are not at the State or Large State Facility)</small>	City			No. of Employees
		Name	State	Zip	
1					
2					
3					
4					
5					
6					
Total number of employees					

205

State of Illinois								Total Number of Employees
7								
8								
9								
10								
11								
12								
13								

Part I State Agency Waste Reduction and Recycling Program Worksheet

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

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

	Section Program Activities			2000		2001		2002		2003		2004		2005		2006	
	B1	B2*	B3*	Projected Tonnage	Proposed Tonnage	Actual Tonnage											
27	Other Recycling Programs																
28	Special Collection Programs																
29	Clean-Up Events																
30																	
31																	
32	Composting																
33	Commercial Pick-Up of Green Waste																
34	Commercial Self-Haul of Green Waste																
35	Food Waste Composting																
36	Other Composting Programs																
37																	
208																	
42																	
43																	
44																	
45																	
46																	
47																	
48	Special Waste																
49	Construction/Demolition Recycling																
50	Concrete/Rubble Reuse																
51	Concrete/Asphalt Recycling																
52	Rendering/Grease Recycling																

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

A	B			C	D	E	F	H	I	J	K	L	M	O		
	Section 1 Program Activities			2000	2001		2002		2003		2004		2005		2006	
	B 1	B 2	B 3	Projected Tonnage	Proposed Tonnage	Actual Tonnage										
53	Tires															
54	Use of Retreads															
55	Tire Reuse															
56	Tire Recycling															
57	Use of Rubberized Asphalt															
58	Use of Tire-Derived Products															
59	Collection Program															
60	Drop-Off at Landfills															
61	Used Oil/Antifreeze															
62	White and Brown Goods (Reuse/Recycling)															
63	Wood Waste															
64	Wood Waste Chipping for Mulch or Compost (Drop-Off)															
65	Brush/Wood Waste Chipping															
66	Other Special Waste															
67																
68																
69																
70																
71																
72																
73																
74	Total Tonnage Diverted															
75	Total Tonnage Disposed															
76	Total Tonnage Generated															
77	Overall Diversion Percentage															

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

A	B	C	D		E		F		G		H		I		J		K		L		M		N	
			2000	2001		2002		2003		2004		2005		2006										
	Procurement Activities	Existing	Proposed	Implemented																				
107	State Agency Buy Recycled Campaign (SABRC)—All procurement activities should be coordinated through SABRC.																							
108	Department-Wide Recycled-Content Procurement (RCP) Policy																							
109	Exceeding SABRC Goals																							
110	Department-Wide Automated Procurement Tracking System																							
111	Requiring Recycled-Content Product Certification for All Purchases																							
112	Annual Submittal of SABRC Report																							
114	Staff Recycled-Content Procurement Training																							
	Participating in Dept. of General Services Buy Recycled Task Force																							
115	Proactively Working With RCP Suppliers																							
116	Sharing Success Stories With SABRC																							
117	Joint Purchase Pools																							
118	Other Procurement Activities																							
119																								
120																								
121																								
122																								
123																								
124																								
125																								
126																								

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Appendix 1: Glossary of Terms

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

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

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

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

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

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

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

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

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

Office Paper – See “Ledger Paper.”

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

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

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

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

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

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

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

Waste Audits – See “Waste Assessment.”

Waste Evaluation – See “Waste Assessment.”

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

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

$$GEN = DISP + DIVERT$$

where:

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

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

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

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

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

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

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

Sources

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

Appendix 2: Assembly Bill 75

BILL NUMBER: AB 75 CHAPTERED
BILL TEXT

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

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

DECEMBER 7, 1998

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 18.5. STATE AGENCY INTEGRATED WASTE MANAGEMENT PLAN

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

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

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

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

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

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

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

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

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

(b) On and after January 1, 2004, each state agency and each large state facility shall divert at least 50 percent of all solid waste from landfill disposal or transformation facilities through source reduction, recycling, and composting activities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) A state agency or a large state facility that is granted an alternative requirement pursuant to this section shall continue to implement source reduction, recycling, and composting programs, and shall report the status of those programs in the report required pursuant to Section 42926.

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

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

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

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

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

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

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

(B) The state agency or the large state facility submits a plan of correction that demonstrates that the state agency or the large state facility will meet the requirements of Section 42921 before the time extension expires, includes the source reduction, recycling, or composting steps the state agency or the large state facility will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, existing programs that it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.

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

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

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

(c) (1) In determining whether to grant the request by a state agency or a large state facility for the time extension authorized by subdivision (a), the board shall consider information provided by the state agency or the large state facility that describes relevant circumstances that contributed to the request for extension, such as a lack of markets for recycled materials, local efforts to implement source reduction, recycling, and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed by agency.

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

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

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

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

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

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

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

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

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

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

(1) Calculations of annual disposal reduction.

(2) Information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors.

(3) A summary of progress made in implementing the integrated waste management plan.

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

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

(6) If the state agency has been granted an alternative source reduction, recycling, and composting requirement pursuant to Section 42922, the state agency shall include a summary of progress made towards meeting the alternative requirement as well as an explanation of current circumstances that support the continuation of the alternative requirement.

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

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

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

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

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

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

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

California Integrated Waste Management Board

Linda Moulton-Patterson, Chair

1001 I Street • Sacramento, California 95814 • (916) 341-6000

Mailing Address: P. O. Box 4025, Sacramento, CA 95812-4025

www.ciwmb.ca.gov



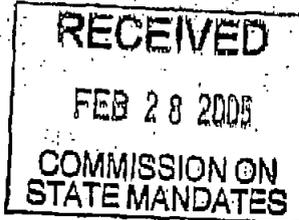
Arnold Schwarzenegger
Governor

Terry Tamminen
Secretary for
Environmental
Protection

VIA FACSIMILE: (916) 445-0278

Via U.S. Mail

February 28, 2005



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

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

Dear Ms. Higashi:

The California Integrated Waste Management Board (IWMB) respectfully submits the following comments on the Draft Staff Analysis, Proposed Parameters and Guidelines (Ps & Gs) for the above referenced test claim.

The Board's primary concern with the Draft Staff Analysis (Analysis) is that it continues to fail to address significant offsetting cost savings that can and have been realized with implementation of the test claim statute. In previous comments to the Commission, the IWMB has noted that offsetting cost savings could be so great that no real costs are incurred by claimants, and in its latest comments offered a worksheet as a tool to identify cost savings. In each instance, the Commission staff has discounted the information.

At the early stages of the test claim process, Commission staff indicated that the timing was inappropriate, i.e., the information should be brought back at the Ps and Gs phase. Now at the Ps and Gs phase, page 9 of the Analysis, Commission staff has determined that Government Code section 17565 bars an analysis of cost savings information for periods of time prior to passage of the test claim statute, and that claimants cannot be required to submit a cost savings worksheet for any point in time because such information is not required in the Statement of Decision, the test claim statute, nor is it reasonably necessary to comply with the mandate. IWMB respectfully

California Environmental Protection Agency

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Paula Higashi, Executive Director
February 28, 2005
Page 2

points out that cost savings information, though presented at the time, was not allowed into the Statement of Decision.

The Analysis asserts that the worksheet violates Government Code section 17565, which prohibits reimbursement for voluntary activities that were implemented prior to the test claim statute. It states, "[t]hus, the identified 'costs' in the Board's AB 75 program worksheet, to the extent incurred by community colleges, are reimbursable regardless of the college's activities prior to the test claim statute. Claimants, therefore, are not required to show costs savings from any programs engaged in prior to the test claim statute."

It appears to IWMB that the Analysis misconstrued the applicability of Government Code section 17565 to the cost savings worksheet. IWMB intended the worksheet to identify regular activities engaged in by the college prior to the test claim statute, rather than activities that could be claimed as reimbursable, and then identify how those non-reimbursable activities subsequently cost less by implementing the programs mandated. This concept appears to be consistent with other parts of the analysis as well as the proposed Ps and Gs.

On page 10 of the Analysis, Commission staff maintains that evidence in the Statement of Decision record supports only the fact that the community colleges are incurring increased costs due to the test claim statutes, and that "there is no direct evidence in the record that reduced disposal costs will necessarily occur as a result of this program."

In the interest of clarifying our previously submitted comments, IWMB hereby submits relevant statutory provisions and evidence to support its position regarding cost savings. As defined in statute, all waste that is generated by an entity is then either disposed of or diverted. Public Resources Code (PRC) section 40124 defines "diversion" as "activities which reduce or eliminate the amount of solid waste from solid waste disposal ..." PRC section 40192(b) defines "solid waste disposal" as "the management of solid waste through landfill disposal or transformation at a permitted solid waste facility." Pursuant to PRC sections 41780 et seq. and 42921, diversion is expressed as disposal reduction. Thus, increased "diversion" directly results in less "disposal."

The estimated average cost per ton of solid waste disposal is \$30. For purposes of the test claim statute, the most obvious and significant cost savings will be avoided disposal costs. Attachment 1 identifies actual diversion realized for 117 Community Colleges and District Offices as reported for 2003 at more than 66 thousand tons. Translated into dollar amounts, the reporting entities in the aggregate could realize nearly \$2 million in avoided disposal costs for 2003, i.e. cost savings, when diversion programs are implemented. The worksheet IWMB staff offered to the Commission could be used to identify this type of cost savings.

As noted in previous comments, IWMB does not claim that in every instance these types of cost savings will offset costs to implement diversion programs. However, IWMB reiterates that every claimant will realize some disposal cost savings if it implements any diversion program as part of the mandate. The Annual Report that must be submitted as part of the mandate already requires a calculation of annual disposal reduction as well as changes in waste generated or

Paula Higashi, Executive Director

February 28, 2005

Page 3

disposed (see Page 20). It cannot be a significant burden to at a minimum identify the cost savings associated with these disposal figures.

IWMB contends that identifying cost savings should be more clearly and thoroughly addressed in the Ps and Gs, particularly for this test claim, because the potential for such savings are so significant. The cost savings worksheet is offered as a tool rather than a required "form," but IWMB maintains that every claimant should be required to provide information related to cost savings, in whatever format is deemed appropriate. IWMB argues that such information is necessary for the Commission and the State Controller's Office to carry out their fiscal responsibilities.

IWMB offers the following specific comments on the Ps and Gs, in support of the previous argument:

Page 15. IV. REIMBURSABLE ACTIVITIES:

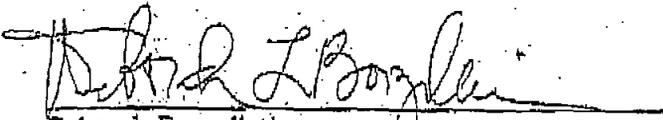
Modify the second sentence to read: "Actual costs are those costs actually incurred to implement the mandated activities *after the test claim statute was enacted, and that would not otherwise occur if the mandate was not in place.*"

Page 23. VII. OFFSETTING SAVINGS AND REIMBURSEMENTS:

Add the following text after the first sentence: "*Claimant shall, at a minimum, deduct offsetting savings resulting from avoided disposal costs. Where applicable, claimant shall deduct offsetting savings resulting from other avoided or reduced costs resulting from implementation of diversion programs.*"

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and complete to the best of my personal knowledge, information and belief.


Deborah Borzelleri
Staff Counsel

2/28/05
Date

Attachment

cc: Mailing List Dated February 14, 2005

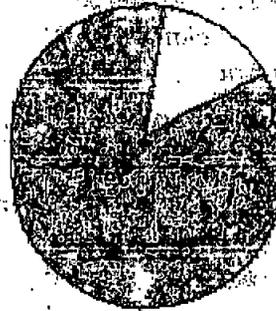
117 Community Colleges - Tonnage Reported for 2003

Diversion Rate Table	
Category	Tons
Diversion	66,620.20
Disposal	42,227.50
Generation	108,847.70
Diversion %	61.20%
Pounds Per Person Per Day	0.3

Existing Programs	
Source Reduction	% of Diversion
Source Reduction	
Business Source Reduction	4.79%
Material Exchange	2.60%
Salvage Yards	0.27%
Other Sources	0.03%
Recycling	
Beverage Containers	0.59%
Cardboard	3.29%
Glass	0.31%
Newspaper	0.49%
Office Paper (white)	0.92%
Office Paper (mixed)	6.20%
Plastics	0.19%
Scrap Metal	2.46%
Special Collection Events	0.06%
Other Materials	0.10%
Composting	
Xeriscaping, grasscycling	23.84%
On-site composting/mulching	4.67%
Self-haul greenwaste	2.59%

2003 Generation Summary

(values under 1% are not shown)



Source Reduction	7.7%
Recycling	14.6%
Composting	34.4%
Special Waste	35.0%
Facility Recovery	7.2%

Programs Proposed or Planned for Expansion	
Source Reduction	Business Source Reduction, Material Exchange, Other Sources, Salvage Yards
Recycling	Beverage Containers, Cardboard, Glass, Newspaper, Office Paper (mixed), Office Paper (white), Other Materials, Plastics, Scrap Metal, Special Collection Events
Composting	Commercial pickup of compostables, Food waste composting, On-site composting/mulching, Other composting, Xeriscaping, grasscycling
Special Waste	Ash, Concrete/asphalt/rubble (C&D), Other special waste, Rendering, Scrap Metal, Sludge (sewage/industrial), Tires, White/brown goods, Wood waste
Facility Recovery	Alternative Daily Cover, MRF, Other facility recovery
Transformation	Biomass, Other Transformation, Tires, Waste To Energy
Hazardous	Batteries, Electronic Waste, Other

Organizational Category Diversion Profile Page

Commercial pickup of compostables	2.98%
Food waste composting	0.10%
Other composting	0.26%
Special Waste	
Ash	0.01%
Sludge (sewage/industrial)	0.06%
Tires	0.12%
White/brown goods	0.05%
Scrap Metal	1.47%
Wood waste	2.16%
Concrete/asphalt/rubble (C&D)	28.72%
Rendering	0.22%
Other special waste	3.16%
Facility Recovery	
MRF	6.18%
Alternative Daily Cover	1.06%
Transformation	
Biomass	0.03%
Tires	0.01%

Material	Hazardous Waste, Paint, Universal Waste, Used Oil/Antifreeze
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[Return to Admin Home Page](#)

Last updated: August 19, 2004

State Agency Waste Management <http://www.ciwmb.ca.gov/StateAgency/>
 Phil Morales: pmorales@ciwmb.ca.gov (916) 341-6215
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[Terms of Use/Privacy](#)

PROOF OF SERVICE BY CERTIFIED MAIL

I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of eighteen years and not a party to the within action, my business address is P.O. Box 4025, 1001 I Street, Sacramento, California, 95812-4025.

On February 28, 2005, I served a true copy of the attached letter dated February 28, 2005 signed by Deborah Bozzellari, Staff Counsel in a postpaid, envelope, addressed to the parties hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and contents in the United States Mail marked certified at Sacramento, California.

Addressee(s):

Mr. Jon Stephens
South Lake Tahoe Community
College District
One College Drive
South Lake Tahoe, CA 96150

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

Ms. Jesse McGuinn
Department of Finance (A-15)
915 L Street, 8th Floor
Sacramento, CA 95814

Mr. Louis R. Mauro
Department of Justice
(D-08)
1300 I Street, 17th
Floor
P.O. Box 944255
Sacramento, CA 95814

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

Mr. Steve Smith
Steve Smith Enterprises,
Inc.
11130 Sun Center Drive,
Suite 100
Rancho Cordova, CA 95670

Ms. Cheryl Miller
Santa Monica Community College
District
1900 Pico Blvd.
Santa Monica, CA 90405-1628

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

Expense and Revenue Worksheet Regarding Claims for Reimbursement of AB 75 (PRC Section 42920 et. sec.)

Program Claimed for reimbursement: _____

Start date of program (1): _____

(2)

Expense	Pre AB 75 Program	Current Program	Net Difference
Staffing			
Overhead			
Materials			
Storage			
Transportation costs			
Equipment			
Disposal fees			
Other Expense related to program			
Revenue	Pre AB 75 Program	Current Program	Net Difference
Sale of commodities			
Avoided disposal fees			
Other Revenue related to program			

- (1) The start date of the program should indicate when the program being claimed actually started. This date can be shown as being before January 1, 2000. (i.e. Campus may have always left grass clippings on the lawn)
- (2) Use of this table can generate a savings (negative number) in the net difference column. This would serve as a credit towards the total claim being submitted for reimbursement.

Definitions of Terms are on the reverse side of this example matrix.

Expenses:

- **Staffing:**
Through the implementation of the program being claimed a reduction in staff hours (PYs) can be achieved. In order to determine any cost increases or decreases the claimant will need to evaluate the total staff required to implement the program being claimed prior to AB 75 and the staff needed to implement and operate the current program. All values identified must be calculated based on a conversion to the dollar values for the particular year being claimed.
- **Overhead:**
Costs incurred for overhead, such as benefits, for the PY s identified under "staffing."
- **Materials:**
Through the implementation of the program being claimed a reduction or elimination of supplies and materials may have been achieved. This could include, and is not limited to: White office paper, mixed office paper, cardboard, printed catalogs, postage, envelopes, and other office supplies.
- **Storage:**
Through the implementation of the program being claimed a reduction or elimination of storage of supplies and materials may have been achieved. The elimination of storage is a cost savings that must be allocated to off set any costs associated to the implementation of the identified program(s) being claimed by the claimant.
- **Transportation costs:**
The transportation of supplies and waste materials has a cost. The claimant should determine how many trips staff was making to purchase, pick-up and deliver supplies needed for the program being claimed and the current level of the activity. It should be calculated based on a conversion of the previous programs' activities being converted to the dollar values for the particular year for which a claim is being submitted.

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

Revenue

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

COMMISSION ON STATE MANDATES

880 NINTH STREET, SUITE 300

SACRAMENTO, CA 95814

PHONE: (916) 323-3662

(916) 445-0278

E-MAIL: csminfo@csm.ca.gov

Exhibit E

October 31, 2006

Mr. Keith Petersen

Six Ten and Associates

5252 Balboa Avenue, Suite 807

San Diego, CA 92117

*And Affected State Agencies and Interested Parties (see enclosed mailing list)*RE: **Adopted Statewide Cost Estimate***Integrated Waste Management, 00-TC-07*

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

Public Resources Code Sections 40148, 40196.3, 42920-42928

Public Contract Code Sections 12167 and 12167.1

Statutes 1999, Chapter 764; Statutes 1992, Chapter 1116

State Agency Model Integrated Waste Management Plan (February 2000)

Dear Mr. Petersen:

On October 26, 2006, the Commission on State Mandates adopted the statewide cost estimate of \$10,785,532 for the above-named program. This amount will be included in our next Report to the Legislature.

Please call Cathy Cruz Jefferson at (916) 323-8218 if you have questions.

Sincerely,



PAULA HIGASHI
Executive Director

Enclosure: Statewide Cost Estimate

MAILED: _____
DATE: 11/22
INITIAL: LD
FILE: _____
WORKING BINDER: _____

Adopted: October 26, 2006

STATEWIDE COST ESTIMATE

Public Resources Code Sections 40148, 40196.3, 42920-42928

Public Contract Code Sections 12167 and 12167.1

Statutes 1999, Chapter 764 (AB 75)

Statutes 1992, Chapter 1116 (AB 3521)

~~State Agency Model Integrated Waste Management Plan (February 2000)~~

Integrated Waste Management (00-TC-07)

Santa Monica and Lake Tahoe Community College Districts, Claimants

Summary of the Mandate

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

The claimant filed the first claim on March 9, 2001. The Commission adopted the Statement of Decision on March 25, 2004, and the parameters and guidelines on March 30, 2005. Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by October 4, 2005.

Reimbursable Activities

The Commission approved the following reimbursable activities for this program:

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

1. Develop the necessary district policies and procedures for the implementation of the integrated waste management plan.
2. Train district staff on the requirements and implementation of the integrated waste management plan (one-time per employee). Training is limited to the staff working directly on the plan.

B. Ongoing Activities (Reimbursable starting January 1, 2000)

1. Complete and submit to the Board the following as part of the State Agency Model Integrated Waste Management Plan (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000.):
 - a. state agency or large state facility information form;
 - b. state agency list of facilities;

- c. state agency waste reduction and recycling program worksheets that describe program activities, promotional programs, and procurement activities, and other questionnaires; and
- d. state agency integrated waste management plan questions.

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

- 2. Respond to any Board reporting requirements during the approval process. (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000.)
- 3. Consult with the Board to revise the model plan, if necessary. (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000.)
- 4. Designate one solid waste reduction and recycling coordinator ("coordinator") for each college in the district to perform new duties imposed by chapter 18.5 (Pub. Resources Code, §§ 42920 - 42928). The coordinator shall implement the integrated waste management plan. The coordinator shall act as a liaison to other state agencies (as defined by section 40196.3) and coordinators. (Pub. Resources Code, § 42920, subd. (c).)
- 5. Divert at least 25 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2002, and at least 50 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2004, through source reduction, recycling, and composting activities. Maintain the required level of reduction, as approved by the Board. (Pub. Resources Code, §§ 42921 & 42922, subd. (i).)

C. Alternative Compliance (*Reimbursable from January 1, 2000 - December 31, 2005*)

- 1. Seek either an alternative requirement or time extension if a community college is unable to comply with the January 1, 2002 deadline to divert 25 percent of its solid waste, by doing the following: (Pub. Resources Code, §§ 42927 & 42923 subds. (a) & (c).)
 - a. Notify the Board in writing, detailing the reasons for its inability to comply.
 - b. Request of the Board an alternative to the January 1, 2002 deadline.
 - c. Provide evidence to the Board that the college is making a good faith effort to implement the source reduction, recycling, and composting programs identified in its integrated waste management plan.
 - d. Provide information that describes the relevant circumstances that contributed to the request for extension, such as lack of markets for recycled materials, local efforts to implement source reduction, recycling and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed of by the community college.
 - e. Submit a plan of correction that demonstrates that the college will meet the requirements of Section 42921 [the 25 and 50 percent diversion requirements] before the time extension expires, including the source reduction, recycling, or

composting steps the community college will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, the existing programs that it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.

2. Seek either an alternative requirement or time extension if a community college is unable to comply with the January 1, 2004 deadline to divert 50 percent of its solid waste, by doing the following: (Pub. Resources Code, §§ 42927 & 42922, subs. (a) & (b).)

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

b. Request of the Board an alternative to the 50-percent requirement.

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

d. Provide the Board with information as to:

- (i) the community college's good faith efforts to 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;
- (ii) the community college's inability to meet the 50 percent diversion requirement despite implementing the measures in its plan;
- (iii) how the alternative source reduction, recycling, and composting requirement represents the greatest diversion amount that the community college may reasonably and feasibly achieve; and,
- (iv) the circumstances that support the request for an alternative requirement, such as waste disposal patterns and the types of waste disposed by the community college.

D. Accounting System (Reimbursable starting January 1, 2000)

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

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

E. Annual Report (Reimbursable starting January 1, 2000)

Annually prepare and 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 must encompass the previous calendar year and shall contain, at a minimum, the following as outlined in section 42926, subdivision (b): (Pub. Resources Code, §§ 42926, subd. (a) & 42922, subd. (i).)

1. calculations of annual disposal reduction;
2. information on the changes in waste generated or disposed of due to increases or

Staff notes the following:

- a. *Three out of the eight community college districts did not report any offsetting revenues*
Section VII. of the parameters and guidelines state the following:

Reimbursement for this mandate from any source, including but not limited to, ~~available~~ service fees collected, federal funds, and other state funds allocated to any service provided under this program, shall be identified and deducted from this claim. Offsetting revenue shall include the revenues cited in Public Resources Code section 42925 and Public Contract Code sections 12167 and 12167.1.

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

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

The districts that did not offset revenues or other reimbursements include Coast Community College District, Gavilan Joint Community College District, and Rancho Santiago Community College District. Coast claimed a total of \$592,398 for six fiscal years; Gavilan Joint claimed a total of \$368,229 for six fiscal years; and Rancho Santiago claimed a total of \$494,944 for six fiscal years.

On March 30, 2005, the Commission adopted the staff analysis on the proposed parameters and guidelines, which found that there was insufficient legal authority to support a requirement to track cost savings that may result from avoiding disposal costs as a result of this program. Staff explained that Public Resources Code section 42925's reference to "cost savings" actually means "revenues" received and redirected via Public Contract Code sections 12167 and 12167.1. Further, the Board would have claimants reduce disposal costs from the claims submitted. As explained in the staff analysis:

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

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

Usually, under section VII. Offsetting Revenues and Reimbursements of the parameters and guidelines, there is a standard provision that states, "Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed." Staff notes that all the cost savings identified by the Board during the parameters and guidelines phase (e.g., reduced disposal) were not rooted in the costs that are mandated by the test claim legislation, so they are not "in the same program as a result of the same statutes or executive orders found to contain the mandate." Therefore, the Board's request for additional information on offsetting savings was not included because the Commission found that it was inconsistent with the test claim's statutory scheme and the analysis of offsetting savings. As shown above, staff added to the standard provision in section VII. of the parameters and guidelines by identifying specific offsetting revenues.

In its comments dated March 30, 2006, the Board argued that its request for additional information on offsetting savings in the parameters and guidelines was deemed unnecessary, and that a "stronger reference" to ensure that cost savings were properly identified were not included in the parameters and guidelines. Thus, the Board requested a parameters and guidelines amendment to include additional information as a method to accurately capture offsetting savings. The Board provided a summary of the additional expenses and offsetting savings, stating that:

the failure to provide either a stronger explanation of offsetting savings that must be included or a format/table to fill out to help determine offsetting savings, has resulted in the inaccurate claims that have been presented and which inevitably led to an inaccurate Statewide Cost Estimate. The only reasonable and efficient way to remedy this situation is to amend... the Parameters and Guidelines to ensure that the necessary information is provided.

The DOF concurred with the Board's summary of additional expenses and offsetting savings.

Staff notes that in general, the Board's comments focused on its request to amend the parameters and guidelines. However, because the reimbursement claims for fiscal years 1999-2000 through 2004-2005 have already been submitted, the Board's suggestion to add additional information to the parameters and guidelines regarding offsetting savings

will not affect these claims.² Thus, staff was unable to improve the proposed statewide cost estimate for the initial years based on the Board's comments.

The Board's request to amend the parameters and guidelines was sent to affected state agencies and interested parties on April 10, 2006, for review and comment. As of September 2006, no comments have been received. This matter will be heard and determined at a later hearing, and if adopted, would be effective on July 1, 2005.

- b. *Five out of the eight community college districts claimed one-time activities over multiple fiscal years.* The parameters and guidelines provided one-time reimbursement for the development of necessary district policies and procedures for the implementation of the integrated waste management plan, and for training of district staff on the requirements and implementation of the integrated waste management plan (one-time per employee). Training was limited to the staff working directly on the plan. However, Table 2 below shows the "one-time" costs claimed by five of the eight community college districts reviewed.

**TABLE 2. ONE-TIME ACTIVITIES CLAIMED
OVER MULTIPLE FISCAL YEARS**

District	Activity	1999- 2000	2000- 2001	2001- 2002	2002- 2003	2003- 2004	2004- 2005
Cavallaro/Joni	Policies	\$ 1,135	\$ 1,987	\$ 2,499	\$ 1,531	\$ 1,876	\$ 1,938
	Training	\$ 1,892	\$ 4,410	\$ 7,431	\$ 7,474	\$ 5,166	\$ 5,476
Grossmont	Policies	-	\$ 620	-	-	-	-
	Training	\$ 693	\$ 561	\$ 1,731	\$ 1,863	\$ 793	\$ 1,374
Los Rios	Policies	-	\$ 1,957	-	\$ 1,300	-	-
	Training	-	\$ 1,152	\$ 308	-	-	-
Palomar	Policies	-	-	-	-	-	-
	Training	\$ 7,087	\$ 18,872	\$ 20,368	\$ 22,471	\$ 23,115	\$ 25,499
Santa Monica	Policies	-	-	-	\$ 1,338	\$ 1,346	\$ 1,461
	Training	-	-	\$ 6,490	\$ 9,051	\$ 10,443	\$ 11,600

The claims did not include enough information as to whether the costs claimed for training were in fact for new employees only. A representative of the Palomar Community College District indicated that "groundskeepers and maintenance technicians [reported] 20 to 50 hours of training each year" and guessed that the time related to "operation of equipment relevant to source reduction..." The representative also indicated that one recycling coordinator reported 400 hours of training, "which might cover organized training events for district employee[s]." Overall, the representative believed that the district's training time was unique and quantitatively above average.

The Board commented that the costs associated with the reimbursable one-time activities

² Government Code section 17557, subdivision (c), states that "[a] parameters and guidelines amendment filed more than 90 days after the claiming deadline for initial claims...and on or before January 15 following a fiscal year, shall establish eligibility for that fiscal year."

should be relatively small because:

the Board has already developed and provided access to many model policies and procedures that can be easily and with little or no time or cost be adapted for and utilized by Community College Districts. Likewise, the Board provides free training and support to recycling coordinators. In a recent training session, conducted by the Community Colleges, which Board staff was invited to, more than 15 college campuses and District offices were able to completely prepare and finalize for submittal, the regional annual report within a total of 5 hours.

Staff notes that other districts may have also claimed one-time activities over multiple fiscal years.

Therefore, based on the foregoing observations, staff finds that the 142 actual claims filed by 27 community college districts only represent an estimated cost of the program for fiscal years 1999-2000 through 2004-2005.

2. *The actual amount claimed will increase when late or amended claims are filed.* Only 27 of the 72 community college districts in California have filed reimbursement claims for this program. Many of the largest community college districts, including the Los Angeles Community College District, have not filed reimbursement claims. Thus, if reimbursement claims are filed by any of the remaining districts, the amount of reimbursement claims may exceed the statewide cost estimate. For this program, late claims may be filed until October 2006.
3. *The SCO may reduce any reimbursement claim for this program.* If the SCO audits this program and deems any reimbursement claim to be excessive or unreasonable, it may be reduced. Therefore, the total amount of reimbursement for this program may be lower than the statewide cost estimate.

Methodology

Fiscal Years 1999-2000 through 2004-2005

The proposed statewide cost estimate for fiscal years 1999-2000 through 2004-2005 is based on the 142 actual reimbursement claims filed with the SCO for these years. However, staff notes that the claims are unaudited and may be inaccurate for the reasons stated above.

Fiscal Years 2005-2006 and 2006-2007

Staff estimated fiscal year 2005-2006 costs by multiplying the 2004-2005 estimate by the implicit price deflator for 2004-2005 (3.5%), as forecast by the Department of Finance. Staff estimated fiscal year 2006-2007 costs by multiplying the 2005-2006 estimate by the implicit price deflator for 2005-2006 (3.1%). Staff estimated fiscal year 2007-2008 costs by multiplying the 2006-2007 estimate by the implicit price deflator for 2006-2007 (6.4%).

The proposed statewide cost estimate includes nine fiscal years for a total of \$10,785,532. This averages to \$1,198,392 annually in costs for the state.

Following is a breakdown of estimated total costs per fiscal year:

**TABLE 3. BREAKDOWN OF ESTIMATED
TOTAL COSTS PER FISCAL YEAR**

Fiscal Year	Number of Claims Filed with SCO	Estimated Cost
1999-2000	21	\$ 478,106
2000-2001	25	788,658
2001-2002	23	1,003,710
2002-2003	25	1,109,250
2003-2004	25	1,203,354
2004-2005	24	1,463,719
2005-2006 (estimated)	N/A	1,514,949
2006-2007 (estimated)	N/A	1,561,912
2007-2008 (estimated)	N/A	1,661,874
TOTAL	143	\$ 10,785,532

Commission on State Mandates

Original List Date: 3/20/2001 Mailing Information: Notice of Adopted SCE
Last Updated: 9/18/2006
List Print Date: 11/01/2006 Mailing List:
Claim Number: 00-TC-07
Issue: Integrated Waste Management

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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INTEGRATED
WASTE
MANAGEMENT
BOARD

October 26, 2006

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95864

Re: Final Staff Analysis and Proposed Statewide Cost Estimate
Integrated Waste Management Board 00-TC-07
Public Resources Code Sections 40148, 40196.3, 42920-42928
Public Contract Code Sections 12167 and 12167.1
Statutes 1999, Chapter 764; Statutes 1992, Chapter 1116
State Agency Model Integrated Waste Management Plan (February 2000)
Santa Monica and South Lake Tahoe Community College Districts, Co-
Claimants

Dear Ms. Higashi:

This letter is intended to provide comments on, and request changes to, the Proposed Statewide Cost Estimate entitled above. The California Integrated Waste Management Board (CIWMB) agrees with Commission staff that this estimate is inaccurate and for that reason the CIWMB believes that it should not be forwarded to the Legislature as currently proposed. This letter provides evidence that should be used to revise the statewide cost estimate to make it more accurate.

CONTEXT OF PREVIOUS CIWMB COMMENTS

As noted in the Staff's analysis, the CIWMB provided comments and participated in a pre-hearing conference on the draft estimate. Those comments were based upon Commission staff's request in the January 9, 2006 draft analysis that

"the costs seem excessive and no correlation exists between district size and the costs claimed ... staff requests any additional information regarding the costs associated with diversion ... that may assist in the

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development of a more accurate statewide cost estimate ... specifically from the [CIWMB]."

The CIWMB's comments were thus directed at providing information that it believed would enable the Commission staff to evaluate the costs claimed and come up with a more accurate estimate of what the claimed costs should be. Unfortunately, the information provided was not the kind of information that Commission staff felt that they could use. The final staff analysis states that "the additional comments did not provide enough evidence to help staff reduce the proposed estimate by deducting offsets that should have been realized."

For the record, it should be noted that at no time did the Commission staff request any specific information about specific claims, nor provide any indication as to the type of "evidence" that it could use for reducing the claims. Furthermore, the CIWMB was not provided with any information on most of the claimants (only portions of information from 8 were included in the draft estimate) until it received the "final" analysis ten days ago. To date, the only information about the claims that the CIWMB has received is in these two documents. With all due respect, it is disingenuous at best to expect that the CIWMB could even deduce what would be necessary to provide as "evidence" to reduce the claims when it had not been provided with specific information about the claims, nor with specific questions from the Commission staff as to what type of information the Commission staff was seeking. (Interestingly enough, Commission staff did not use the information about inaccurate claims that it identified on its own to reduce the claims - multiple claims for one-time costs).

The CIWMB still believes that its comments on the draft statewide estimate are germane (Exhibit B of the Commission's materials), and believes that the evidence could have been used to reduce the estimate. Nevertheless, at this time, based upon the additional information provided in the Final Analysis, the CIWMB would like to offer additional evidence that it believes should be used to reduce the statewide cost estimate and make it more accurate.

SUBMISSION OF EVIDENCE OF OFFSETTING REVENUES TO REDUCE THE STATEWIDE ESTIMATE

As noted in the Final Analysis, revenues generated from recyclable materials can be used to offset the claimed costs. These revenues are expressly included in the Parameters and Guidelines (see page 6 of the Final Staff Analysis). This is based upon Public Contract Code section 12167.1 which provides that those entities can sell the recyclable materials they collect and retain the revenues generated.

Based upon the reports submitted to the CIWMB, a statewide estimate of revenue generation by placing the collected materials into the recycle markets can be derived. This estimate is based on the following:

Official District and College reported diversion of listed commodities; and, the market prices of the listed commodities and published in the industry's informational sheet know as the "yellow sheet." (See attachments)

Based upon these two factors it can be estimated that the total value of the collected recyclables, as sold through the commodity markets could generate total revenues from 2001-2005 of \$22,676,296.01. (See attachments)

The proposed statewide cost estimate on page 12, Table 3, of the Final Analysis notes that the estimated total cost claimed from 1999-2008 to be \$10,785,532. Thus, the estimated revenue generated from the sale of recyclables would more than wipe out the estimated potential costs. Therefore, based upon this evidence, the CIWMB believes that the statewide cost estimate should be zero (in fact, as these estimate numbers show, there would be a net gain).

ALTERNATIVELY, OFFSETTING SAVINGS SHOULD ALSO BE USED TO REDUCE THE STATEWIDE ESTIMATE

Previously, the Commission staff rejected the CIWMB's request to offset claimed costs by subtracting savings that resulted from implementing the program. Specifically, avoided disposal costs as a result of implementing diversion programs were rejected. (Avoided disposal costs occur when material is recycled instead of being sent to the landfill thereby reducing disposal costs which are typically charged based upon the tons disposed). The Commission staff has explained that since disposal costs were not part of a previous mandate, they can not be credited now that those costs are avoided (page 8 of final analysis).

However, the CIWMB believes that the Commission Staff's recommendation not to include avoided disposal costs in the statewide estimate is a result of a hyper-literal reading of the CIWMB's statute and a selective reading of the Commission's own regulations. As noted in the Final Analysis, Public Resources Code section 42925(a) provides that cost savings must be directed to fund the integrated waste management plan, only "to the extent feasible." Based upon this phrase, the Commission Staff concludes that this offset should not be included. This interpretation of the CIWMB's statute is inappropriate in a situation such as this where the cost savings must occur automatically as a result of implementing the mandated program.

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Paula Higashi

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Standard rules of statutory construction provide that a statute should not be interpreted in a way that would lead to an absurd result. It is true that in a typical situation the phrase "to the extent feasible" would allow an entity to opt out of doing something where there is a barrier of some kind - be it financial, staffing or other resources. However, in a case where the action occurs automatically (i.e. there is no exercise of discretion necessary) as in avoided disposal costs, there would be no barriers to the accrual of savings, nor even any decision to make on applying those cost savings to the program. In fact, through the day to day operation of a District of College campus there exists a method of recording and tracking the savings. This is directly linked to the monthly billings obtained for waste services that are charged and processed by the accounting offices of every District and campus. Therefore, the direction of these savings to the program are by definition feasible.

The Legislature's direction in this regard is further evidenced by other portions of the relevant statute that expressly recognize reduced disposal as part of the implementation of the diversion plan:

"42920. (b) (1) ...shall develop ... an integrated waste management plan ... that will reduce solid waste..."

"42926. ... shall submit a report to the board summarizing its progress in reducing solid waste as required by Section 42921. ... (b) ... annual report to the board shall, at a minimum, include all of the following:

(1) Calculations of annual disposal reduction...."

In addition to the Legislature recognizing the need to include the avoided disposal costs within the off-setting costs of implementing a program, the Solid Waste Industry has recognized through numerous newspaper and magazine articles over the past ten years that the use of avoided disposal costs are a necessary component of calculating the cost of implementing diversion programs.

The CIWMB's interpretation of its statute is further bolstered by the Commission's own regulations which states that "any offsetting savings to the same program experienced as a result of the same statutes found to contain a mandate shall be deducted from the costs claimed." (2 CCR 1183.1(a) (9) [emphasis added]). In this case, avoided disposal costs are by definition a result of the same statutes that require the diversion program to be implemented. Furthermore, the Commission's statutes provide that the "reasonable reimbursement methodology" used should identify the costs to implement the mandate in a cost-efficient manner." (Government Code section 17518.5 [emphasis added]). This statute would seem to require that the costs claimed must take account of savings that result directly and automatically from the implementation of the mandate

October 26, 2006

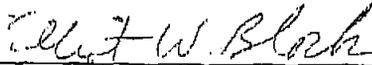
Paula Higashi

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For the years 2001-2005, Community College Districts collectively reported the diversion of waste in the tonnage amount noted in the attached table. While disposal fees vary around the state, the statewide average for 2001-2004 has ranged between \$36 and \$39 per ton. The reported figures of diversion amount to an estimated cost savings of \$21,979,208.92 for the years 2001-2005. The estimated avoided disposal costs would more than wipe out the potential costs estimated. Therefore, the CIWMB submits that the statewide cost estimate should be set at zero using this evidence of avoided disposal costs. (See attachments).

I certify, under penalty of perjury, that I am an authorized representative of the California Integrated Waste Management Board and that the statements made in this document are true and correct to the best of my personal knowledge and belief.

Executed this 26th day of October, 2006 in Sacramento, California, by:



Elliot Block

Acting Chief Counsel

California Integrated Waste Management Board

1001 I Street

Sacramento, CA 95812

Enclosures

Statewide Cost Estimate of Generated Revenues by Community College Districts based on Actual Reported Tonnage

Year	Recycling Program	Reported and Approved Tonnage	Average Commodity Value Per Ton	Total Statewide Estimate of Available Revenue
2001	Beverage Containers*	1407.72	\$500.00	\$703,860.00
2001	Cardboard	14017.968	n/a	
2001	Newspaper	1704.603	n/a	
2001	Office Paper (white) **	6322.819	n/a	
2001	Office Paper (mixed)	16751.705	n/a	
2001	Scrap Metal	8479.25	\$74.90	\$635,095.83
2001	Plastics	885.819	n/a	
2001	Glass	697.309	n/a	
2002	Beverage Containers*	4582.456	\$500.00	\$2,291,228.00
2002	Cardboard	16284.691	\$85.55	\$1,393,155.32
2002	Newspaper	2028.279	\$62.50	\$126,767.44
2002	Office Paper (white) **	9607.937	\$107.50	\$1,032,853.23
2002	Office Paper (mixed)	16844.351	\$50.28	\$846,933.97
2002	Scrap Metal	7648.094	\$92.56	\$707,907.58
2002	Plastics	1041.92	n/a	
2002	Glass	869.518	n/a	
2003	Beverage Containers*	2172.063	\$500.00	\$1,086,031.50
2003	Cardboard	17240.114	\$65.00	\$1,120,607.41
2003	Newspaper	2137.022	\$53.75	\$114,864.93
2003	Office Paper (white) **	6693.81	\$65.00	\$435,097.65
2003	Office Paper (mixed)	18481.867	\$53.33	\$985,637.97
2003	Scrap Metal	7606.819	n/a	
2003	Plastics	1149.974	n/a	
2003	Glass	840.337	n/a	
2004	Beverage Containers*	2609.807	\$500.00	\$1,304,903.50
2004	Cardboard	16543.721	\$85.63	\$1,416,638.83
2004	Newspaper	2461.519	\$62.50	\$153,844.94
2004	Office Paper (white) **	7185.629	\$133.34	\$958,131.77
2004	Office Paper (mixed)	20771.529	\$65.43	\$1,359,081.14
2004	Scrap Metal	7527.441	n/a	
2004	Plastics	1631.838	n/a	
2004	Glass	1027.378	n/a	
2005	Beverage Containers*	2781.245	\$500.00	\$1,390,622.50
2005	Cardboard	16593.197	\$82.50	\$1,368,938.75
2005	Newspaper	2522.955	\$58.33	\$147,163.97
2005	Office Paper (white) **	6289.428	\$116.67	\$733,787.56
2005	Office Paper (mixed)	19980.812	\$63.33	\$1,265,384.82
2005	Scrap Metal	12914.793	\$85.00	\$1,097,757.41
2005	Plastics	1382.334	n/a	
2005	Glass	1058.378	n/a	

Estimated Grand Total of Available Revenues

\$22,676,296.01

Statewide Cost Estimate of Generated Revenues by Community College Districts Based on Actual Reported Avoided Disposal Tonnage

Avoided Disposal by Year	Total Tons Reported Diverted	Price Index ***	Total Avoided Disposal Costs
2001	80,211.40	\$36.39	\$2,918,892.85
2002	61,209.60	\$36.17	\$2,213,951.23
2003	66,620.20	\$36.83	\$2,453,621.97
2004	193,435.30	\$38.42	\$7,431,784.23
2005	181,180.60	\$39.12	\$6,960,958.65
Estimated Grand Total of Avoided Disposal			\$21,979,208.92

Total Estimated Revenues Generated Through Implementation of Public Resource Code (PRC) Section 42920 et. sec.:

\$44,655,504.93

Foot notes:

* Beverage Containers based on average commingled value per lbs (Division of Recycling)

** Value for Office Paper based on SOP (Standard Office Pack). If paper were graded to White Ledger values would be:

Year	Value per ton
2001	n/a
2002	\$166.94
2003	\$190.00
2004	\$214.58
2005	\$200.93

*** Solid Waste Price Index based on 2004 study conducted by Solid Waste Digest

**** 2005 Index not available at time this report was prepared. Have used 2004 to establish estimate.

Average Recycle Paper Prices*

2002	Mixed	News (6)	News (8)	OCC	SOP	White Ledger
April-June	45.83	52.50	64.17	90.83	87.50	147.50
July-Sept	54.17	67.50	92.50	100.00	108.33	170.00
Oct-Dec	50.83	67.50	84.17	65.83	126.67	183.33
Yearly Avg	\$50.28	\$62.50	\$80.28	\$85.55	\$107.50	\$166.94

2003	Mixed	News (6)	News (8)	OCC	SOP	White Ledger
Jan-March	50.83	57.50	67.50	59.17	133.33	190.00
April-June	57.50	57.50	77.50	69.17	115.00	190.00
July-Sept	52.50	50.00	69.16	65.83	101.67	190.00
Oct-Dec	52.50	50.00	69.19	65.83	101.67	190.00
Yearly Avg	\$53.33	\$53.75	\$70.84	\$65.00	\$112.92	\$190.00

2004	Mixed	News (6)	News (8)	OCC	SOP	White Ledger
Jan-March	59.17	59.17	87.50	75.83	115.00	210.00
April-June	67.50	65.83	90.83	89.17	121.67	210.00
July-Sept	67.50	62.50	87.50	90.00	150.00	225.00
Oct-Dec	67.50	62.50	90.00	87.50	146.67	213.33
Yearly Avg	\$65.42	\$62.50	\$88.96	\$85.63	\$133.34	\$214.58

2005	Mixed	News (6)	News (8)	OCC	SOP	White Ledger
Jan	67.50	62.50	92.50	87.50	145.00	220.00
Feb	67.50	62.50	92.50	92.50	145.00	220.00
March	67.50	62.50	92.50	92.50	140.00	220.00
April	67.50	62.50	92.50	92.50	130.00	220.00
May	67.50	62.50	92.50	92.50	105.00	200.00
June	67.50	62.50	92.50	87.50	105.00	190.00
July	67.50	62.50	87.50	87.50	105.00	190.00
Aug	57.50	52.50	80.50	77.50	105.00	190.00
Sept	57.50	52.50	82.50	72.50	105.00	190.00
Oct	57.50	52.50	82.50	72.50	105.00	190.00
Nov	57.50	52.50	82.50	67.50	105.00	190.00
Dec	57.50	52.50	82.50	67.50	105.00	190.00
Yearly Avg	\$63.33	\$58.33	\$87.75	\$82.50	\$116.67	\$200.83

* Information obtained from the Yellow Sheet Official Board Markets Transacted Paper Stock Prices. Prices represent board and paper mill purchase prices, baled, F.O.B. seller's dock, San Francisco port.

Average California Landfill Prices*

2001	Price per ton
Jan	36.15
Feb	36.15
March	36.15
April	
May	36.17
June	36.61
July	36.58
Aug	36.58
Sept	36.58
Oct	36.58
Nov	36.58
Dec	36.13
<u>Yearly Avg.</u>	<u>\$36.39</u>

2002	Price per ton
Jan	36.20
Feb	36.20
March	
April	
May	36.15
June	36.15
July	
Aug	35.97
Sept	
Oct	
Nov	35.98
Dec	36.51
<u>Yearly Avg.</u>	<u>\$36.17</u>

2003	Price per ton
Jan	36.51
Feb	36.51
March	36.80
April	
May	36.76
June	
July	
Aug	
Sept	36.65
Oct	36.89
Nov	
Dec	37.71
<u>Yearly Avg.</u>	<u>\$36.88</u>

2004	Price per ton
Jan	37.71
Feb	
March	
April	
May	
June	39.12
July	
Aug	
Sept	
Oct	
Nov	
Dec	
<u>Yearly Avg.</u>	<u>\$38.42</u>

2005	Price per ton
Jan	
Feb	
March	
April	
May	
June	
July	
Aug	
Sept	
Oct	
Nov	
Dec	
<u>Yearly Avg.</u>	<u></u>

* Information obtained from the Solid Waste Digest - Solid Waste Price Index.

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COMMISSION ON
STATE MANDATES

PUBLIC HEARING

COMMISSION ON STATE MANDATES

--oOo--

TIME: 9:30 a.m.

DATE: Thursday, October 26, 2006

PLACE: State Capitol, Room 126
Sacramento, California

--oOo--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--oOo--

ORIGINAL

Reported by:

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ANNE SHEEHAN

(Commission Chair)

Representative for MICHAEL GENEST
Director, State Department of Finance

PAUL GLAAB

City Council Member
City of Laguna Niguel

FRANCISCO LUJANO

Representative for PHILIP ANGELIDES
State Treasurer

AMY HAIR

Representative for STEVE WESTLY
State Controller

J. STEVEN WORTHLEY

Supervisor and Chairman of the Board
County of Tulare

SARAH OLSEN

Public Member

JOHN FILLMORE

Representative for SEAN WALSH
Director, Office of Planning & Research

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1 MEMBER OLSEN: So moved.

2 MEMBER WORTHLEY: Second.

3 CHAIR SHEEHAN: All right. We have a motion
4 and a second to adopt the staff recommendation. All
5 those in favor say "aye."

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

7 CHAIR SHEEHAN: Opposed?

8 (No audible response.)

9 CHAIR SHEEHAN: Motion carries.

10 All right. Now we skip over a lot of stuff.
11 8 and 9 are postponed and we come to 18?

12 MS. HIGASHI: Yes.

13 MEMBER OLSEN: Madam Chair, I believe that when
14 we swore the witnesses in we did not ask those who were
15 related to item 18 to stand. Do we need to do that?

16 CHAIR SHEEHAN: That is correct. We've already
17 done the swearing-in part of the testimony. This is the
18 "after" part. Right. And we just got a -- today --

19 MS. HIGASHI: We were just handed a letter. Do
20 you want to take about five minutes so everybody can read
21 this?

22 CHAIR SHEEHAN: Yes. We just got a letter
23 today from the California Integrated Waste Management
24 Board.

25 Is there someone here from the Board?

1 You know, we've actually posted this item for a while.
2 I'm sure you're aware that this was going to be on our
3 agenda today.

4 MR. BLOCK: We received a letter about ten days
5 ago. We were attempting to postpone this hearing, got
6 together information as soon as we could, but the final
7 analysis was different than the draft analysis from a few
8 months ago, so

9 CHAIR SHEEHAN: All right. Well, it's just --
10 as my colleagues in the Department of Finance know, I'm
11 not one to like getting stuff the day of. I just

12 MR. BLOCK: I understand.

13 CHAIR SHEEHAN: Maybe I'm channeling people in
14 this building when you show up at a hearing as opposed
15 to -- in the future we would appreciate getting a little
16 more heads-up.

17 So we'll take a couple minutes to go through
18 this.

19 *(Pause, 9:54 to 9:58 a.m.)*

20 CHAIR SHEEHAN: Okay. Why don't we go ahead
21 and get started.

22 MS. HIGASHI: Item 18, program analyst Cathy
23 Cruz Jefferson will present this item.

24 MS. JEFFERSON: Good morning.

25 On March 25, 2004, the Commission adopted its

1 Statement of Decision finding that the Integrated Waste
2 Management program constitutes a new program or higher
3 level of service for community college districts within
4 the meaning of article XIII B, section 6, of the
5 California Constitution and imposes costs mandated by the
6 state pursuant to Government Code section 17514.

7 Staff reviewed the claims data submitted by the claimants
8 and compiled by the Controller's Office. The data showed
9 that 27 community college districts filed 142 claims for
10 fiscal years 1999-2000 and 2004-2005 for a total of over
11 \$6 million.

12 On January 9th, 2006, staff issued its draft
13 analysis and requested additional information regarding
14 the costs associated with diversion of solid waste and
15 complying with the program that may assist in the
16 development of a more accurate statewide cost estimate.
17 The California Integrated Waste Management Board and the
18 Department of Finance submitted comments.

19 On July 27 staff conducted a prehearing
20 conference so the parties could assist in identifying
21 offsets and, again, to assist in developing a more
22 accurate statewide cost estimate.

23 Staff notes that the additional comments did
24 not provide enough evidence to help staff reduce the
25 proposed estimate by deducting offsets that should have

1 been realized but were not reported in claims.

2 In general, the Board's comments focused on its
3 request to amend the Parameters and Guidelines. However,
4 because the reimbursement claims for fiscal years
5 '99-2000 through '04-05 have already been submitted, the
6 Board's suggestion to add additional information to the
7 P's & G's regarding offsetting savings will not affect
8 these claims. Staff was unable to improve the proposed
9 estimate for the initial years based on the Board's
10 comments.

11 The proposed estimate includes nine fiscal
12 years for a total of \$10,785,532. This averages to
13 almost \$1.2 million annually in costs for the state.
14 Staff recommends that the Commission adopt the proposed
15 estimate. If adopted, it will be reported to the
16 legislature.

17 Will the parties and representatives please
18 state their names for the record?

19 MR. BLOCK: Elliot Block, acting chief counsel
20 for the Integrated Waste Management Board.

21 MR. O'SHAUGHNESSY: Trevor O'Shaughnessy,
22 program staff.

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

25 MS. CASTAÑEDA: Carla Castañeda, Department of

1 Finance.

2 MR. BLOCK: Well, since you've all actually
3 taken a few minutes to read the letter, I'm not sure that
4 it makes much sense for me to make my speech, which was a
5 summary of the letter, other than to reiterate that --

6 CHAIR SHEEHAN: Well, actually, it would be
7 helpful, you know, so you can briefly go through --

8 MR. BLOCK: Sure.

9 CHAIR SHEEHAN: -- why you feel that . . .

10 MR. BLOCK: Okay. Well, fairly simply, as was
11 noted, the draft -- there was a draft analysis quite a
12 few months ago that was submitted requesting assistance
13 from the Board based on the Commission staff's note that
14 the claims appeared, on their face, to be inaccurate.
15 We did provide some information at that prehearing
16 conference. As we have now recently found out, that's
17 not the kind of information apparently that's useful in
18 adjusting those claims.

19 And so what we have compiled here in the last
20 few days is some other information that specifically does
21 connect to the P's & G's that were adopted, which does
22 allow offsets for revenues generated from the sale of
23 recycled materials.

24 Again, we have not had -- we don't have the
25 claims in front of us. In fact, we didn't actually even

1 know the name of all -- the names of all the claimants
2 until about ten days ago. The original analysis had a
3 selection of eight that were analyzed.

4 And as noted in the information provided, the
5 dollar amount attributable to the revenues that could be
6 generated from recyclable materials, given the amounts
7 that had been reported by community college districts as
8 being diverted, is about \$22 million for a five-year
9 period. And, of course, the claim is for an eight-year
10 period. And we believe that essentially wipes out that
11 \$10 million estimate.

12 Alternatively as well we provided some
13 additional detailed information on the avoided disposal
14 cost as well. We understand that staff's analysis is
15 that that's not appropriate as an offset, although for
16 reasons we've outlined in the letter we believe that's a
17 fairly narrow reading of the P's & G's since avoided
18 disposal costs occur automatically from the diversion of
19 these materials.

20 And again, based on the tonnage amounts that
21 we're looking at for a five-year period, that's around
22 \$21, \$22 million in avoided disposal costs. So again,
23 more than accounts for -- accommodates the claimed
24 \$10 million in additional cost to implement these
25 programs.

1 So for that reason, as strange as it sounds, we
2 are actually requesting that the estimate be zero for the
3 statewide cost.

4 CHAIR SHEEHAN: Based on the offset. Okay.
5 Finance, did you want to -- I know you just got
6 the letter, also.

7 MS. GEANACOU: I did. Susan Geanacou,
8 Department of Finance. In fact, I'm just reading it now.

9 I don't know that I'm in a position to provide
10 any official testimony regarding the assertion of the
11 value of recyclables and how it may or may not completely
12 negate the estimated cost of the claim. I'd like to be
13 able to do so. I haven't had the opportunity to speak to
14 what those revenues are, how they can be used, if there's
15 statutory authority for how they're used and/or
16 appropriated. I really don't know. I'm sorry.

17 CHAIR SHEEHAN: That's okay.

18 Camille, did you want to address some of the --
19 before we open it up?

20 MS. SHELTON: Yes. First, it would not be
21 appropriate for the Commission to adopt a statewide cost
22 estimate of zero because that would contradict the
23 statement of decision which found that there are
24 increased costs mandated by the state as a matter of law.
25 So you cannot, you know, come up with a statewide cost

1 estimate of zero.

2 A lot of the arguments that the Board is making
3 were made before the Commission when the Commission
4 adopted the Parameters and Guidelines. They do have a
5 request on file to amend the P's & G's which is not
6 before you today.

7 Anything that has to do with these issues are
8 questions of law that have to be dealt with at another
9 hearing and don't reflect the amount claimed for purposes
10 of the statewide cost estimate.

11 The purpose of the statewide cost estimate is
12 just to notify the legislature of the amount claimed
13 currently. We are questioning the amount claimed and it
14 does appear to be high, but we don't have any solid data
15 to be able to reduce that figure. But notice still needs
16 to be provided to the legislature.

17 MEMBER WORTHLEY: I just have a question,
18 Camille.

19 As I understood it, there's sort of a statute
20 of limitations issue here, and the older claims are fixed
21 and cannot be altered, even whatever we do today.

22 And my question really is: Relative -- this is
23 a notice -- we're talking about notice to the state
24 legislature. Does that then fix these costs for these
25 other years after the statute of limitations does not

1 apply?

2 MS. HIGASHI: Not necessarily. And I say that
3 just based on recent experience with the legislature.
4 Once our report is made to the legislature, the leg.
5 analyst has a duty to evaluate our report, look at the
6 statement of decision and the P's & G's.

7 What may occur at that point is a
8 recommendation is required to be made during the budget
9 process, and that recommendation might be: Fund it, it's
10 fine; two, amend the statute; three, request
11 reconsideration by the legislature.

12 MEMBER WORTHLEY: So there's an opportunity for
13 a second shot at this?

14 MS. HIGASHI: There is an opportunity.

15 MEMBER WORTHLEY: This is not the proper forum
16 to do that.

17 MS. HIGASHI: That's correct. It's not within
18 our jurisdiction at this time.

19 The other point that I just wanted to make is
20 that the issue that's raised here has to do with offsets
21 and offsetting savings.

22 And I want to ask the Board, from their
23 correspondence it says that the revenues -- the income
24 derived from the resale "can be" used, but it does not
25 say it's "required" to be used by the jurisdictions to go

1 right back into the same program. It says "can be" used.
2 But is there a statutory requirement that says they are
3 required to use these funds solely for the purpose of
4 paying for this program?

5 MR. BLOCK: And you're talking about the
6 revenues generated now or the avoided disposal costs?

7 MEMBER WORTHLEY: Revenues.

8 MS. HIGASHI: I'm just reading from your
9 letter. Because it was my understanding -- and
10 Mr. Feller and Ms. Jefferson can correct me -- that some
11 of these issues were addressed in the previous hearing,
12 and because there was not a statutory requirement for
13 these revenues to be used exclusively for the cost of
14 this program, that it's not what we would term as staff
15 as a mandatory offset.

16 MEMBER WORTHLEY: In other words, it could go
17 into their general fund? It could be used to fund other
18 things?

19 MS. HIGASHI: Right. However, if a program did
20 use those revenues for the cost of this program, then
21 they would reduce their claim.

22 Another point just to note is that there's
23 72 community college districts, and the SCE represents
24 about a third of them, so the number is low from that
25 respect as well.

1 CHAIR SHEEHAN: Did you want to address the
2 issue of whether they -- what they can use those revenues
3 for? I mean, is it specifically for this or can it just
4 go into the general fund and . . .

5 MR. O'SHAUGHNESSY: I think, in part, if I may
6 answer, within the statute of AB 75 it states that the
7 revenues generated are to be used to enhance the
8 recycling programs. That's not a direct quote. I
9 apologize for not having it in front of me.

10 Additionally, within the Public Contract Code
11 it does state that the revenues generated by the sale of
12 the materials and the keeping of those revenues need to
13 be approved by the Integrated Waste Management Board up
14 to \$2,000. Anything above and beyond \$2,000 must not
15 only be approved by the Board but also appropriated by
16 the legislature.

17 So the funds cannot roll back into an agency's
18 fund of operations. It either needs to go back into the
19 recycling program and the efforts of that program or it
20 goes to the state's general fund for then allocation
21 through that process.

22 But if you -- so if you generated and/or sold a
23 commodity, the cardboard or anything else listed in our
24 letter here, those revenues would have to either be --
25 they have to be recognized. They can't just go back into

1 the general funding for that facility or in this case
2 campus.

3 CHAIR SHEEHAN: Okay. So it could go back into
4 the recycling activity?

5 MR. O'SHAUGHNESSY: The program and activities
6 to offset the cost. Yes, ma'am.

7 CHAIR SHEEHAN: Okay. Oh, did you want to. . .

8 MS. SHELTON: Just a clarification. You're
9 talking about two separate things. One is offsetting
10 revenue and -- which are identified in the Parameters and
11 Guidelines, and the other is an alleged offsetting
12 savings argument, which has been denied before but is the
13 subject of a request to amend the P's & G's. So I just
14 want to make sure that we're not confusing the issues.

15 CHAIR SHEEHAN: Okay.

16 MEMBER WORTHLEY: Well, Madam Chairman, it just
17 seems to me they just defeated their argument, because if
18 the money that's generated has to go back to the state
19 general fund, then there's no benefit to this college --
20 community college district, so how do they -- how do they
21 benefit?

22 CHAIR SHEEHAN: I think the --

23 MR. O'SHAUGHNESSY: They do benefit from it
24 because they're allowed to use those funds per the
25 statute. And the direction, they just need to go to the

1 legislature and ask for that to be allocated, because
2 it's revenue that they generated. It's revenue they
3 generated.

4 MEMBER WORTHLEY: Okay. But isn't that a
5 discretionary act on the legislature? They don't have to
6 do that.

7 MR. O'SHAUGHNESSY: In part, yes.

8 MEMBER WORTHLEY: So if they didn't -- if they
9 elected not to, to put it back into the community
10 colleges, then they're out the money.

11 MEMBER OLSEN: I think that what we really need
12 to talk about is the avoided cost part of this, the
13 savings part rather than the revenue part, because it
14 seems to me that the fact that the legislature has to
15 approve the use of the revenues means that it's not --
16 the linkage is not complete for the local. So can you
17 speak to the savings issue in your letter?

18 MR. BLOCK: Certainly. Although, I mean, in
19 all fairness, as has been noted, it -- certainly that was
20 an argument we did make previously and was rejected.
21 But just to keep this as short and sweet as possible, I
22 think that analysis, as indicated in the final analysis,
23 is based on a clause in our statute that says the
24 offsetting savings, it must be applied to the program to
25 the extent feasible. And that language Claude just

1 reviewed in the abstract is viewed as making that
2 discretionary.

3 The argument that we are making is, in the
4 context of avoided disposal costs there's no discretion
5 involved. The very fact that those materials are
6 diverted avoids the disposal cost. There's no decision
7 that needs to be made to move that money around, to
8 request permission. It happens automatically. That's
9 the substance.

10 Obviously, as has been mentioned, you know,
11 this is something that you've looked at before, but --
12 and we understand that your process is set out a certain
13 way.

14 We felt an obligation to at the very least get
15 this information into the record because, again, this
16 information is then getting forwarded to the legislature
17 to decide what to do about this.

18 Certainly, the Waste Board's feeling is that
19 these programs not only don't in the long run cost
20 community colleges, they, in fact, result in -- they're
21 revenue-generating for community colleges.

22 CHAIR SHEEHAN: Did that address your --
23 because that issue -- as I understand, that is the issue
24 that you have filed to amend the P's & G's, and that will
25 be discussed as part of that process.

1 Am I correct, Camille?

2 MS. SHELTON: Yes. It was already discussed
3 and the Commission already adopted the Parameters and
4 Guidelines.

5 CHAIR SHEEHAN: Right.

6 MS. HIGASHI: They've renewed it.

7 MS. SHELTON: They're bringing it up again.

8 CHAIR SHEEHAN: And you have that filed,
9 bringing it up again, if there's information that, you
10 know, we can go back with new information.

11 MEMBER OLSEN: So this Board will get a chance
12 to discuss it?

13 CHAIR SHEEHAN: Well, they -- yes. Well, go
14 ahead.

15 MS. SHELTON: Yes. They have filed a request
16 to amend the P's & G's. That request goes in line behind
17 all the other Parameters and Guidelines amendments. So
18 when we get to it, it will definitely be noticed for
19 hearing.

20 CHAIR SHEEHAN: So that issue on the one that
21 you had discussed, there is a forum to discuss that if
22 they feel they have new, compelling arguments, evidence,
23 whatever, to do that. So then the issue -- go ahead.

24 MR. BLOCK: Well, I was just going to say, just
25 for clarification, but my understanding is that any

1 change to the P's & G's would only be effective from 2005
2 forward. They would not change the ones that have
3 already been claimed.

4 MS. SHELTON: That is correct. 17557 governs
5 the timing of a request to amend P's & G's. If they had
6 filed it earlier, within the claim -- the initial claims
7 filing, then it would have impacted possibly the entire
8 population of claims, but they filed it after that date,
9 so they get it back to the previous fiscal year.

10 So we do have -- you know, we're still bound by
11 the Parameters and Guidelines that have been adopted, and
12 that's what this statewide cost estimate and the claims
13 that have been filed under this set of Parameters and
14 Guidelines reflect.

15 CHAIR SHEEHAN: Any other -- and with regard to
16 the -- on the revenue issue, that is, they go through the
17 claiming and the Controller's Office can recognize
18 offsets as part of the claims if they use those.

19 MS. SHELTON: Yes. The Controller can deny if
20 they find -- or reduce costs if they find that it's
21 unreasonable or excessive.

22 CHAIR SHEEHAN: So there is a mechanism on the
23 revenue side to address the issue, because we do have two
24 separate issues here. And there is a mechanism, even if
25 we adopt this, to recognize those revenues and reduce the

1 cost of the claimed amount from that. Okay.

2 MS. HIGASHI: And essentially what's in the
3 staff analysis is what ends up being reported to the
4 legislature.

5 CHAIR SHEEHAN: Mm-hmm. Okay. Any other
6 questions or . . .

7 MEMBER WORTHLEY: Well, I guess I did have one
8 question for staff. Given the fact that this is a
9 reporting requirement only and the opportunity to
10 actually review the -- when you had this hearing before
11 and you invited Waste Management, what was the purpose of
12 that hearing? Was that for the consideration of the
13 modification of the Parameters and Guidelines separate
14 and apart from this or . . .

15 MS. SHELTON: That was for the adoption of the
16 Parameters and Guidelines. Are you talking about the
17 hearing before the Commission, the last hearing that
18 we're referring to?

19 MEMBER WORTHLEY: No. You said that you had a
20 meeting, I believe --

21 MS. HIGASHI: We had a prehearing.

22 CHAIR SHEEHAN: It was a prehearing.

23 MEMBER WORTHLEY: Right.

24 MS. HIGASHI: Perhaps Ms. Jefferson can
25 respond.

1 MS. JEFFERSON: Yes, we did have a prehearing
2 in July where the Waste Board was invited as well as
3 other state agencies and interested parties, and we had
4 asked specifically for information for -- to help us
5 identify what offsets could be used and just information
6 to help us develop a more accurate estimate, because we
7 did, in the draft, identify some inaccuracies that we
8 found in looking at the claims, but we didn't get enough
9 information to help us reduce the claims.

10 MEMBER WORTHLEY: Well, if you had gotten the
11 right information from them, would we be having different
12 results here today or would we have the same result?

13 MS. HIGASHI: We don't know.

14 MS. SHELTON: Other than it can't be zero. And
15 it has to fall within the decisions and findings that the
16 Commission has already made. You have to keep in mind
17 that the Board is still making legal arguments that have
18 been previously denied. So depending on what facts they
19 would have presented had there been another situation, we
20 really can't answer.

21 MEMBER WORTHLEY: Well, because it seemed like
22 one option would be for us to continue this matter to
23 give the opportunity for this information to be properly
24 considered by staff, and then you would come back with a
25 different -- perhaps a different recommendation.

1 MS. HIGASHI: The danger in that is that we are
2 not auditors and we are not -- it's not our duty to
3 review the reimbursement claims. That is the duty of the
4 State Controller's Office. And that's that you would, in
5 fact, have us doing.

6 CHAIR SHEEHAN: And that's why I brought up the
7 other issue that there is a mechanism to address or
8 recognize those offsets and what could be used through
9 that claiming process.

10 I think it could be a burden on the staff to
11 have to go through and see this -- you know, go through
12 the numbers and see, okay, could we come up with a
13 different conclusion in terms of that.

14 MS. GEANACOU: May I ask a question here? Is
15 there -- for the Commission staff -- is part of the focus
16 of the concern or confusion or disagreement on offsetting
17 savings the issue of whether or not the savings are in
18 a -- the offsetting savings are in a program that was
19 previously mandated or part of the mandate?

20 I note in the final staff analysis of the
21 statewide cost estimate on pages 8 and 9 there's the
22 issue of -- the boilerplate language says that "Any
23 offsetting savings the claimant experiences in the same
24 program as a result of the same statutes or executive
25 orders found to contain the mandate, shall be deducted

1 from the cost claimed." Is that perhaps something that
2 we're not focusing appropriately on or enough on?

3 MS. SHELTON: As I recall the arguments -- and,
4 you know, Eric can correct me if I'm wrong -- that when
5 the Parameters and Guidelines were discussed, they were
6 wanting a requirement for identification of cost savings,
7 you know, recycling fees that they are saving from not
8 having -- or I guess not having to go through certain
9 activities.

10 There was no requirement in law that they keep
11 that data. And it becomes very similar to arguments made
12 in the graduation requirements case where you had the
13 argument of offsetting savings.

14 And so since there's no requirement for those
15 entities to take those savings by law, we couldn't
16 provide specific language in that the Board has requested
17 previously. I believe there's boilerplate language and
18 that's all there is.

19 MS. HIGASHI: Actually, the P's & G's section
20 is on offsetting revenues and reimbursements.

21 MS. SHELTON: Which that language is consistent
22 with the Commission's regulations as they currently
23 state.

24 There was just no legal requirement for them to
25 keep data on offsetting savings or cost savings when the

1 Commission found that the activities were -- constituted
2 a new program or higher level of service.

3 MS. HIGASHI: I was going to say, if you want
4 to see this, it's the last exhibit. It's in the
5 Parameters and Guidelines. It's page 164. And it's
6 where the Parameters and Guidelines identify all of the
7 types of fees or revenues that -- the kinds of revenues
8 we've been talking about here.

9 MEMBER WORTHLEY: So the language is in there
10 that was just referred to --

11 MS. HIGASHI: Exactly.

12 MEMBER WORTHLEY: -- as far as the \$2,000 is
13 already accounted for and it's only the other part, which
14 is appropriate, which goes back to state legislature, so
15 there's really no argument about that, I wouldn't think.

16 MS. HIGASHI: And so these are included as part
17 of the claiming instructions.

18 CHAIR SHEEHAN: I don't think the Waste Board
19 sees it that way.

20 I don't want to put words in your mouth.

21 MR. BLOCK: Well, again -- and I'm sorry,
22 because I don't mean to belabor this. I mean, it's
23 fairly obvious what staff's recommendation is going to
24 be, and we understand how your process is set up, but
25 just to again clarify that, remember, we're talking about

1 two different issues. One is avoided disposal costs, one
2 is revenue generating. So the \$2,000 is related to the
3 revenue generating.

4 In terms of that issue, we've got fairly
5 partial information that we've gotten, but the
6 information in the analysis we've gotten is the claimant's
7 don't report that. But based on the numbers that we
8 have, there is, you know, over \$20 million worth of
9 potential revenues there.

10 Again, the prehearing conference that we had
11 two to three months ago, I mean, the request in the draft
12 analysis was requesting assistance from us in helping to
13 figure out how the offset -- how to find offsets.

14 It's difficult to provide that information if
15 we don't have any information given to us nor are we
16 asked any particular questions as to what information is
17 necessary.

18 We have a lot of information that all these
19 community college districts submit to us on tonnages and
20 dollar amounts and the like.

21 The avoided disposal costs, again, there is not
22 specifically in the statute the words that say "Thou
23 shalt report the avoided disposal costs." There are
24 words in the statute that say "Thou shalt report the
25 reduced disposal tonnage." And you can fairly easily

1 figure out how much that cost is.

2 It's not a -- again, it's virtually automatic.

3 I mean, you can see that we pulled this together just on
4 what's been submitted to us. So both of those issues are
5 floating around.

6 Again, as has been stated a couple of times,
7 the Commission has already said "No" to the avoided
8 disposal costs. We understand that. But we felt some
9 obligation to provide that information again because it
10 has continued to be fairly mysterious to us as to what
11 information is or isn't relevant to this process.

12 And then in terms of the revenue generating, as
13 has been stated, none of those were even reported to us,
14 which is a little bit mind-boggling.

15 So in the context of this hearing, which is
16 about coming up with a statewide cost estimate, so it's
17 not specific to each claims, seems to me that there's
18 some value in your having that information to try to
19 adjust that overall statewide claim which to us seems
20 fairly outrageous in terms of dollar amounts.

21 CHAIR SHEEHAN: Camille.

22 MS. SHELTON: Can I just mention that if the
23 Commission adopts the statewide cost estimate this
24 analysis goes to the legislature, and the analysis does
25 say that three out of the eight community college.

1 districts reviewed did not report any offsetting
2 revenues. So the legislature is going to be aware that
3 no offsetting revenue was reported to the Controller's
4 Office. They'll have that information.

5 MS. HIGASHI: But ultimately it's the
6 responsibility of the Controller's Office reviewing the
7 claims to determine if they're excessive or unreasonable.

8 CHAIR SHEEHAN: And, you know, the -- oh, go
9 ahead.

10 MEMBER OLSEN: So our action today does not
11 preclude the Controller's Office from taking -- wait, let
12 me get the statement out there, because I want to make
13 sure I'm getting the answer to what I'm asking -- does
14 not preclude the Controller's Office from taking into
15 consideration the kind of information that the Waste
16 Management Board is talking about now when it decides
17 what size check to cut for which community college
18 district. They retain that ability to do that at the
19 Controller's Office.

20 MS. HIGASHI: That is correct.

21 MEMBER WORTHLEY: And if they happen to
22 disagree with it, they would come back and say that that
23 was an inappropriate reduction of claims.

24 MS. HIGASHI: Right. Then it would be an
25 incorrect reduction claim, which you've had a few of

1 those.

2 MEMBER OLSEN: Okay. Thank you.

3 MEMBER WORTHLEY: That deals, I believe, with
4 the issue of --

5 CHAIR SHEEHAN: The revenue.

6 MEMBER WORTHLEY: -- revenue.

7 CHAIR SHEEHAN: Setting revenue.

8 MEMBER WORTHLEY: On the avoided cost issue,
9 we're just basing that on the law, the legal reading of
10 that? Is that our argument there?

11 MS. SHELTON: Well, the Commission already made
12 that finding, and I don't want the Commission to make any
13 findings on a statewide cost estimate hearing, because
14 those are still the subject of another hearing that was
15 not noticed today, first of all.

16 CHAIR SHEEHAN: That will come back before us.

17 I recognize it's in the queue, and the timing
18 in terms of all that, I understand that. But
19 differentiating between the two issues that were raised,
20 one, the offsetting revenue, and I guess, at least for
21 this member, there is a mechanism for the Controller's
22 Office to query the districts, to adjust those claims
23 depending on that. The other issue will come before us
24 in the -- in the claim to, you know, amend the P's & G's
25 on that one.

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MR. BLOCK: I understand.

CHAIR SHEEHAN: Any other questions? What is the will of the Commission then on this one?

MEMBER OLSEN: Sort of grudgingly I will move the staff recommendation.

CHAIR SHEEHAN: And do I have a grudging second?

MEMBER WORTHLEY: Second.

CHAIR SHEEHAN: All right. So the motion is to approve the staff recommendation. All those in favor?

(A chorus of "ayes" was heard.)

CHAIR SHEEHAN: Opposed?

(No audible response.)

CHAIR SHEEHAN: Motion carries. Thank you. And the minutes will reflect it was grudgingly.

MEMBER OLSEN: Thank you.

MEMBER WORTHLEY: Curmudgeonly.

MEMBER OLSEN: The cranky public member.

CHAIR SHEEHAN: Okay.

MS. HIGASHI: We're up to item 20.

MS. SHELTON: One minor note, that the hearing that is reflected on the report has been changed from December 15th to January 5th.

CHAIR SHEEHAN: Oh, okay. All right. Nothing else?

1 REPORTER'S CERTIFICATE

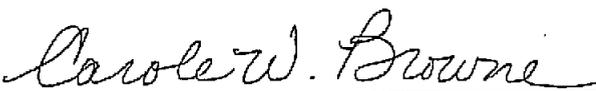
2 ---o0o---

3 I hereby certify that the foregoing proceedings
4 were duly reported by me at the time and place herein
5 specified;

6 That the proceedings were reported by me, a duly
7 certified shorthand reporter and a disinterested person,
8 and were thereafter transcribed into typewriting.

9 I further certify that I am not of counsel or
10 attorney for either or any of the parties to said
11 proceedings, nor in any way interested in the outcome of
12 the cause named herein.

13 IN WITNESS WHEREOF, I subscribe my name on this
14 7th day of November, 2006.

15 

16 Carole W. Browne, RPR, CSR
17 Certificate No. 7351

18 ---o0o---

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
October 26, 2006

Present: Member Anne Sheehan, Chairperson
Representative of the Director of the Department of Finance
Member Amy Hair, Vice Chairperson
Representative of the State Controller
Member Francisco Lujano
Representative of the State Treasurer
Member John Fillmore
Representative of the Director of the Office of Planning and Research
Member J. Steven Worthley
County Supervisor
Member Paul Glaab
City Council Member
Member Sarah Olsen
Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Sheehan called the meeting to order at 9:30 a.m.

APPROVAL OF MINUTES

Item 1 October 4, 2006

Item 1 was postponed to the December hearing.

PROPOSED CONSENT CALENDAR

HEARINGS AND DECISIONS ON CLAIMS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (Gov. Code, §§ 17551 and 17559) (action)

INCORRECT REDUCTION CLAIMS

Item 10 State Controller's Resubmission and Correction to Reevaluation of Reimbursement Claims on *Graduation Requirements*
Education Code Section 51225.3
Statutes 1983, Chapter 498
San Diego Unified School District, Claimant (CSM 4435-I-01 and 4435-I-37)
San Jose Unified School District, Claimant (CSM 4435-I-04)
Sweetwater Union High School District, Claimant (CSM 4435-I-05)
Castro Valley Unified School District, Claimant (CSM 4435-I-13 and 4435-I-39)
Clovis Unified School District, Claimant (CSM 4435-I-06 and 4435-I-38)

On Remand from the Sacramento County Superior Court,
*San Diego Unified School District, et al. v. Commission on State
Mandates et al.*, Case No. 03CS01401 (Consolidated with Nos.
03CS01568, 03CS01569, 03CS01570, 03CS01702, 04CS00028)

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES AND PROPOSED
PARAMETERS AND GUIDELINES AMENDMENTS

- Item 11 Proposed Parameters and Guidelines
Domestic Violence Arrests and Victims Assistance, 98-TC-14
Penal Code Sections 264.2 and 13701
Statutes 1998, Chapters 698 (AB 1201) and 702 (AB 2177)
County of Los Angeles, Claimant
- Item 12 Proposed Parameters and Guidelines
Missing Children Reports, 01-TC-09
Education Code Sections 38139 (former § 40048), 49068.5, 49068.6, 49370
and Section 14 of Statutes 1986; Chapter 249 (AB 606),
Statutes 1986, Chapter 249 (AB 606); Statutes 1994, Chapter 922
(AB 2587); Statutes 1996, Chapter 277 (SB 1562); Statutes 1999,
Chapters 832 (AB 646) and 1013 (SB 570)
San Jose Unified School District, Claimant
And
Request to Consolidate *Missing Children Reports with Law Enforcement
Agency Notifications*, 04-PGA-03 (4505)
Education Code Section 48902, Subdivision (c)
Statutes 1989, Chapter 1117 (SB 1275)
San Jose Unified School District, Requestor
- Item 13 Request to Consolidate Parameters and Guidelines
Handicapped and Disabled Students (04-RL-4282-10);
Handicapped and Disabled Students II (02-TC-40/02-TC-49); and
*Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental
Health Services* (97-TC-05)
Government Code Sections 7570-7588
Statutes 1984, Chapter 1747 (Assem. Bill No. 3632)
Statutes 1985, Chapter 1274 (Assem. Bill No. 882)
Statutes 1994, Chapter 1128 (Assem. Bill No. 1892)
Statutes 1996, Chapter 654 (Assem. Bill No. 2726)
California Code of Regulations, Title 2, Sections 60000-60610
(Emergency regulations effective January 1, 1986 [Register 86, No. 1], and
re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No.
28]; and Emergency regulations effective July 1, 1998 [Register 98, No. 26],
final regulations effective August 9, 1999 [Register 99, No. 33])

- Item 15 Request to Amend Parameters and Guidelines
Health Benefits for Survivors of Peace Officers and Firefighters,
 05-PGA-06 (97-TC-25)
 Labor Code Section 4856; Government Code Section 26135
 Statutes 1996, Chapter 1120 (AB 3478); Statutes 1997, Chapter 193
 (SB 563)
 Department of Finance, Requestor
- Item 16 Request to Amend Parameters and Guidelines
Sex Offenders: Disclosure by Law Enforcement Officers,
 05-PGA-09 (97-TC-15)
 Penal Code Sections 290 and 290.4
 Statutes 1996, Chapters 908 (AB 1562) and 909 (SB 1378)
 Statutes 1997, Chapters 17 (SB 947), 80 (SB 115), 817 (AB 59), 818
 (AB 1303), 819 (SB 314), 820 (SB 882), 821 (AB 290), and 822
 (SB 1078)
 Statutes 1998, Chapters 485 (AB 2803), 550 (AB 2799), 927 (AB 796) 928
 (AB 1927), 929 (AB 1745), and 930 (AB 1078)
 Department of Finance, Requestor
- Item 17 Request to Amend Parameters and Guidelines
Law Enforcement College Jurisdiction Agreements,
 05-PGA-10 (98-TC-20)
 Education Code 67381
 Statutes 1998, Chapter 284 (SB 1729)
 Department of Finance, Requestor

ADOPTION OF COMMISSION ORDER TO INITIATE RULEMAKING

- Item 19 Incorrect Reduction Claims Process
 Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5,
 Article 5. Incorrect Reduction Claims, commencing with Section 1185

A motion was made to adopt items 10, 11, 12, 13, 15, 16, 17, and 19 on the consent calendar.
 With a second by Member Glaab, the items were unanimously adopted.

APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA
 CODE OF REGULATIONS, TITLE 2, SECTION 1181, SUBDIVISION (c)

- Item 3 Staff Report (if necessary)

No appeals were filed.

HEARINGS AND DECISIONS ON TEST CLAIMS, PURSUANT TO CALIFORNIA
 CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (Gov. Code, §§ 17551
 and 17559) (action)

Ms. Higashi swore in the parties and witnesses participating in the hearing of items 4, 5, 6, and 7.

TEST CLAIMS

- Item 4 *Racial Profiling: Law Enforcement Training*, 01-TC-01
Penal Code Section 13519.4.
Statutes 2000, Chapter 684 (SB 1102)
County of Sacramento, Claimant

Deborah Borzelleri, Senior Commission Counsel, presented this item. She stated that the test claim legislation prohibits law enforcement officers from engaging in racial profiling and establishes training requirements for law enforcement officers with the curriculum developed by the Commission on Peace Officer Standards and Training, or POST. Ms. Borzelleri explained that the test claim statutes, as interpreted by POST, require a one-time, five-hour initial racial profiling training course and a two-hour refresher course every five years. She noted that POST certifies both courses to allow local agencies to apply the training hours toward their 24-hour continuing professional training courses.

Staff recommended that the Commission partially approve the test claim for the initial five-hour training under the limited circumstances as specified in the analysis, and deny reimbursement for the two-hour refresher course.

Parties were represented as follows: Nancy Gust, on behalf of the Sacramento County Sheriff's Department; and Susan Geanacou, Donna Ferebee, and Carla Castaneda, with the Department of Finance.

Ms. Gust stated no objection to the staff analysis.

Ms. Geanacou concurred with the staff analysis.

Member Glaab made a motion to adopt the staff recommendation. With a second by Member Worthley, the motion carried unanimously.

- Item 5 Proposed Statement of Decision
Racial Profiling: Law Enforcement Training, 01-TC-01
See Above

Deborah Borzelleri, Senior Commission Counsel, presented this item. She stated that the only issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision on the *Racial Profiling: Law Enforcement Training* test claim. She noted that staff would make minor changes in the final Statement of Decision to reflect the hearing testimony and vote count.

Member Olsen made a motion to adopt the proposed Statement of Decision, which was seconded by another member. The motion carried unanimously.

Member Worthley commented that the Commission makes findings that where a mandated activity could be absorbed into an existing program, the activity is not reimbursable. He stated his concern that at some point, it becomes almost ludicrous in terms of trying to actually perform the responsibilities within the allocated time allotments. He noted that he has heard anecdotal information indicating that point in time was approaching.

Chairperson Sheehan stated that it was a point well taken and encouraged those with the same concern to discuss the issue with members of the Legislature.

Item 6 *Racial Profiling, Law Enforcement Training (K-14)*, 02-TC-05
Penal Code Section 13519.4
Statutes 1990, Chapter 480 (SB 2680); Statutes 1992, Chapter 1267
(AB 401); Statutes 2000, Chapter 901 (SB 739); Statutes 2001,
Chapter 854 (SB 205)
Santa Monica Community College District, Claimant

Deborah Borzelleri, Senior Commission Counsel, presented this item. She stated that the test claim legislation prohibits law enforcement officers in K-14 school districts from engaging in racial profiling and establishes training curriculum developed by the Commission on Peace Officer Standards and Training, or POST, to include a one-time, five-hour initial racial profiling training course and a two-hour refresher course every five years.

Staff recommended that the Commission deny this test claim because it does not mandate any activities on K-14 school districts. Ms. Borzelleri explained that there was no legal requirement on K-14 school districts to establish police departments and there was no other evidence to support a finding that reimbursement should be allowed for this test claim when the training requirements are triggered by the K-14 school districts' discretionary decision to establish a police department.

Parties were represented as follows: Susan Geanacou and Carla Castaneda, with the Department of Finance; and Art Palkowitz, on behalf of the San Diego Unified School District.

Nancy Patton, Assistant Executive Director, noted that the claimant's representative, Keith Petersen, was unable to be present but notified staff that it was ok to proceed with the item because his objections were noted in the record. However, Mr. Petersen requested that the item be continued if any new issues were raised.

Ms. Geanacou supported the staff analysis.

Member Glaab asked why the constitutional provision requiring safe schools does not apply to community colleges. Ms. Borzelleri responded that the specific provision only applies to K-12. Camille Shelton, Chief Legal Counsel, added that the provision was an initiative adopted by the voters.

Member Glaab requested clarification as to whether a K-12 school district was required to complete the training requirements if it had a police department. Ms. Borzelleri said yes, noting that it was up to the district to decide what they need or how to carry out what they need to do to provide security. Member Glaab then asked how many school districts have elected to have their own police department. Ms. Shelton stated that staff did not have a number.

Member Worthley commented that many school districts contract with local police departments to get around the problem.

Mr. Palkowitz indicated that while many districts do contract, larger districts in urban areas such as San Diego and Los Angeles have their own police agency. He stated that it was necessary because of the lack of response time from a local agency to deal with problems at school districts. He pointed out that even though the law does not require a school district to have a police agency, various requirements must be followed once one is established. He noted that the Education Code does not require a school district to have a teacher, and thus, the activity in question, rather than the position or job title, should be examined.

Mr. Palkowitz noted that with suspension and expulsion cases, the act of suspending or expelling a student was discretionary, but if it was done, downstream related costs such as hearings were required, which is reimbursable. In this case, he argued that the required training should be reimbursable as well.

Member Worthley appreciated Mr. Palkowitz's comments but stated that in Fresno, police officers were stationed at the school so that response time was not an issue. He suggested that districts contract with the local jurisdiction for that type of service to make sure that the costs are reimbursed at the municipality level.

Mr. Palkowitz agreed, but contended that the cost of such service was an issue.

Ms. Shelton explained that in the *San Diego Unified School District* case, the Supreme Court found that certain discretionary expulsions may be considered mandatory but not reimbursable and left the mandate issue unanswered. She stated that in this particular case, the same facts in earlier cases were not present to suggest that it should be a reimbursable state-mandated program.

Mr. Palkowitz commented that very few things say "required" in the Education Code.

Member Worthley made a motion to adopt the staff recommendation, which was seconded by Member Olsen. The motion carried 6-1, with Member Glaab voting "No."

- Item 7 Proposed Statement of Decision
Racial Profiling: Law Enforcement Training (K-14), 02-TC-05
See Above

Deborah Borzelleri, Senior Commission Counsel, presented this item. She stated that the only issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision in the *Racial Profiling: Law Enforcement Training (K-14)* test claim. She noted that staff would make minor changes to the final Statement of Decision, including hearing testimony and vote count.

Member Olsen made a motion to adopt the proposed Statement of Decision. With a second by Member Worthley, the motion carried unanimously.

- Item 8 *Pupil Safety Notices*, 02-TC-13
Education Code Sections 32242, 32243, 32245, 46010.1; 48904, 48904.3, 48987 and Welfare and Institutions Code Section 18285
Statutes 1983, Chapter 498 (SB 813); Statutes 1984, Chapter 482 (AB 3757); Statutes 1984, Chapter 948 (AB 2549); Statutes 1986, Chapter 196 (AB 1541); Statutes 1986, Chapter 332 (AB 2824); Statutes 1992, Chapter 445 (AB 3257); Statutes 1992, Chapter 1317 (AB 1659); Statutes 1993, Chapter 589 (AB 2211); Statutes 1994, Chapter 1172 (AB 2971); Statutes 1996, Chapter 1023 (SB 1497); Statutes 2002, Chapter 492 (AB 1859)
Title 5; California Code of Regulations, Section 11523
San Jose Unified School District, Claimant

- Item 9 Proposed Statement of Decision
Pupil Safety Notices, 02-TC-13
See Above

Items 8 and 9 were postponed to the December hearing.

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES AND PROPOSED PARAMETERS AND GUIDELINES AMENDMENTS

- Item 14 Request to Amend Parameters and Guidelines
Handicapped and Disabled Students, 00-PGA-03/04 (CSM 4282)
Government Code Sections 7570-7588
Statutes 1984, Chapter 1747 (Assem. Bill No. 3632);
Statutes 1985, Chapter 1274 (Assem. Bill No. 882)

California Code of Regulations, Title 2, Sections 60000-60610
(Emergency Regulations filed December 31, 1985, designated effective January 1, 1986 (Register 86, No. 1) and re-filed June 30, 1986, designated effective July 12, 1986 (Register 86, No. 28))
Counties of Los Angeles and Stanislaus, Requestors

Item 14 was postponed to the December hearing.

PROPOSED STATEWIDE COST ESTIMATE

- Item 18 *Integrated Waste Management*, 00-TC-07
Public Resources Code Sections 40148, 40196.3, 42920-42928
Public Contract Code Sections 12167 and 12167.1
Statutes 1999, Chapter 764 (AB 75);
Statutes 1992, Chapter 1116 (AB 3521)
State Agency Model Integrated Waste Management Plan (February 2000)
Santa Monica and Lake Tahoe Community College Districts, Claimants

The California Integrated Waste Management Board submitted a late filing at the hearing.¹ Chairperson Sheehan stated that in the future, the members would appreciate receiving filings prior to the hearing.

[A few minutes were taken to review the letter.]

Cathy Cruz-Jefferson, Senior Program Analyst, presented this item. She stated that on March 25, 2004, the Commission adopted its Statement of Decision finding that the *Integrated Waste Management* program constituted a higher level of service for community college districts. She indicated that staff reviewed the claims data submitted by the claimants and compiled by the State Controller's Office. The data showed that 27 community college districts filed 142 claims for fiscal years 1999-2000 through 2004-2005 for a total of over \$6 million.

Ms. Jefferson stated that on January 9, 2006, staff issued its draft staff analysis and requested additional information regarding the costs associated with diversion of solid waste and complying with the program that may assist in the development of a more accurate statewide cost estimate. On July 27, 2006, staff conducted a prehearing conference so the parties could assist in identifying offsets and developing a more accurate statewide cost estimate. Ms. Jefferson noted that the California Integrated Waste Management Board and the Department of Finance provided

¹ The California Integrated Waste Management Board submitted comments to the final staff analysis. The letter was dated October 26, 2006, addressed to Executive Director, Paula Higashi, and signed by Elliott Block, Acting Chief Counsel.

comments; however, they did not provide enough evidence to help staff reduce the proposed estimate by deducting offsets that should have been realized but were not reported in claims.

Ms. Jefferson explained that, in general, the Board's comments focused on its request to amend the parameters and guidelines. She noted that because the reimbursement claims for fiscal years 1999-2000 through 2004-2005 were already submitted, the Board's suggestion to add additional information to the parameters and guidelines regarding offsetting savings would not affect the claims. Thus, staff was unable to improve the proposed estimate for the initial years based on the Board's comments.

Staff recommended that the Commission adopt the proposed estimate, which includes nine fiscal years for a total of \$10,785,532, averaging to almost \$1.2 million annually in costs for the state. If adopted, the estimate will be reported to the Legislature.

Parties were represented as follows: Elliot Block and Trevor O'Shaughnessy, on behalf of the California Integrated Waste Management Board; and Susan Geanacou and Carla Castaneda, with the Department of Finance.

Mr. Block noted that the Board provided information at the prehearing conference and just learned that it was not the kind of information that is useful in adjusting the claims. Thus, in the last few days, he compiled other information that specifically connects to the adopted parameters and guidelines, which allows offsets for revenues generated from the sale of recycled materials. He explained that the dollar amount attributable to the revenues that could be generated from recyclable materials, given the amounts reported by community college districts as being diverted, is about \$22 million for a five-year period. He asserted that this amount essentially wipes out the \$10 million statewide cost estimate.

In addition, Mr. Block stated that additional information on the avoided disposal cost issue was provided as well. He noted that staff's analysis states that avoided disposal costs are not an appropriate offset; however, he asserted that staff took a fairly narrow reading of the parameters and guidelines. He argued that avoided disposal costs occur automatically from the diversion of these materials. Mr. Block requested that the statewide cost estimate be reduced to zero.

Ms. Geanacou stated that at this time, she was not in a position to provide official testimony regarding the assertion of the value of recyclables and how it may or may not completely negate the proposed estimate, but would like the opportunity to comment.

Ms. Shelton stated that it would not be appropriate for the Commission to adopt a statewide cost estimate of zero because it would contradict the Statement of Decision, which found that there are increased costs mandated by the state as a matter of law. She added that a lot of the Board's comments were made before the Commission during the parameters and guidelines phase, and noted that their request to amend the parameters and guidelines is on file but not before the Commission at this time. Thus, anything having to do with the offset issue is a question of law that has to be dealt with at another hearing.

Ms. Shelton explained that the purpose of the statewide cost estimate is to notify the Legislature of the amount currently claimed. Staff questions the amount but does not have solid data to be able to reduce the figure. However, notice must still be provided to the Legislature.

Member Worthley asked if the estimate fixes the cost for future years. Ms. Higashi stated not necessarily, noting that once the report is made to the Legislature, the Legislative Analyst's Office has a duty to evaluate the report. A recommendation is required during the budget

process, and that recommendation may be to: 1) fund it, 2) amend the statute, or 3) request a reconsideration by the Legislature.

Ms. Higashi asked if there was a statutory requirement to use the revenue from recycled material solely for the purpose of paying for this program. She recalled that these issues were addressed in a previous hearing because there was no statutory requirement that the revenues be used exclusively for the cost of the program, and thus, they were not a mandatory offset. She also pointed out that there are 72 community college districts and the proposed estimate only represents about a third of them.

Mr. O'Shaughnessy responded that Assembly Bill 75 states that revenues generated are to be used to enhance the recycling programs. Additionally, he stated that within the Public Contract Code, it states that the revenues generated by the sale of the materials and the keeping of those revenues need to be approved by the Integrated Waste Management Board up to \$2,000. Anything above \$2,000 must also be appropriated by the Legislature. Thus, the funds cannot roll back into an agency's fund of operations - it either needs to go back into the recycling program or to the state's general fund for allocation.

Ms. Shelton clarified that there were two separate issues being discussed. One is about offsetting revenue, which are identified in the parameters and guidelines, and the other is an alleged offsetting savings argument, which was denied before, but is the subject of a request to amend the parameters and guidelines.

Member Worthley commented that Mr. O'Shaughnessy just defeated their argument because if the money that is generated has to go back through the state's general fund, then the community college districts do not benefit.

Mr. O'Shaughnessy responded that the districts benefit because they are allowed to use those funds per the statute. They just need to request that the Legislature allocate the money because it is revenue that they generated.

Member Worthley pointed out that the allocation is a discretionary act of the Legislature. Thus, if the Legislature elects not to appropriate the money, the community college districts lose out.

Member Olsen commented that they needed to discuss the avoided disposal cost issue.

Mr. Block stated that staff's analysis was based on a clause in their statute that says that offsetting savings must be applied to the program to the extent feasible. He argued that staff viewed this as discretionary. He asserted that in the context of avoided disposal costs, there is no discretion involved because the very fact that the materials are diverted avoids the disposal cost. He acknowledged that the Commission's process is set out a certain way, but he felt an obligation to at least get the information into the record, especially since it will be forwarded to the Legislature. He maintained that in the long run, these programs are revenue-generating for community college districts.

Chairperson Sheehan stated her understanding that this issue will be addressed in the request to amend the parameters and guidelines. Ms. Shelton clarified that the issue was already addressed when the Commission adopted the parameters and guidelines, but it will be revisited with the new information provided when the request to amend comes up in the queue.

Mr. Block requested clarification that any changes to the parameters and guidelines would only be effective from 2005 forward. Ms. Shelton affirmed, noting that Government Code section 17557 governs the timing of a request to amend the parameters and guidelines. Because

the Board's request was filed after the initial claims filing period, it would not impact the initial years' claims. She stated that the State Controller's Office can reduce costs if they find that they are unreasonable or excessive.

Chairperson Sheehan noted that there was a mechanism on the revenue side to address the issue.

Member Worthley asked the purpose of the July prehearing. Ms. Jefferson responded that the Board and affected state agencies and interested parties were invited to provide information to help identify offsets and to help develop a more accurate estimate because inaccuracies were identified in the claims.

Member Worthley wondered if the results would have been different if staff received the Board's new information in July. Ms. Shelton noted that the Board was still making legal arguments that were previously denied. Thus, depending on what facts they would have presented, staff could not answer that question.

Member Olsen requested clarification that a Commission action today would not preclude the Controller's Office from taking into consideration the kind of information that the Board is talking about when reviewing and paying reimbursement claims. Ms. Higashi affirmed.

After further discussion about the two issues, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Worthley, the motion carried unanimously.

STAFF REPORTS

Item 20 Chief Legal Counsel's Report (info)
Recent Decisions, Litigation Calendar

Ms. Shelton reported that the hearing in the *CSBA v. State of California* case was changed from December 15th to January 5th.

Item 21 Executive Director's Report (info/action)
Workload, Budget, Legislation, and Next Hearing

Ms. Higashi reported the following:

- *Next Hearing.* The December hearing will be on December 4th at 1:30 at a location to be determined.
- *Other Meetings.* Ms. Higashi will be attending an annual meeting with various organizations to go over future scheduling issues. Later in November, she will participate in a panel discussion at the California League of Cities Conference for a financial management seminar.

PUBLIC COMMENT

There was no public comment.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

PERSONNEL

Report from Personnel Subcommittee and to confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

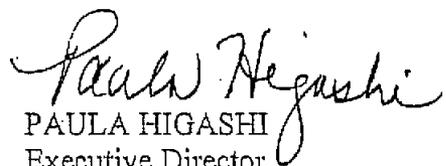
Hearing no further comments, Chairperson Sheehan adjourned into closed executive session pursuant to Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Sheehan reported that the Commission met in closed executive session pursuant to Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

Hearing no further business, and with a motion by Member Hair and second by Member Glaab, Chairperson Sheehan adjourned the meeting at 10:54 a.m.


PAULA HIGASHI
Executive Director

FILED / ENDORSED

MAY 29 2008

Christa Beebout

By Christa Beebout, Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

STATE OF CALIFORNIA, DEPARTMENT,
OF FINANCE, CALIFORNIA INTEGRATED
WASTE MANAGEMENT BOARD,

Dept. 33

No. 07CS00355

Petitioners,

v.

RULING ON SUBMITTED MATTER

COMMISSION ON STATE MANDATES,

Respondent.

SANTA MONICA COMMUNITY COLLEGE
DISTRICT, LAKE TAHOE COMMUNITY
COLLEGE DISTRICT,

Real Parties in Interest.

In this mandate proceeding, the court must determine the extent to which the reimbursement of a California Community College under section 6 of article XIII B of the California Constitution for the costs that the College incurs in implementing a state-mandated integrated waste management plan pursuant to Public Resources Code section 42920 et seq. is subject to offset by cost savings realized and revenues received during implementation of the plan. For the reasons set forth below, the court determines that the college's reimbursement is subject to such offset.

1 BACKGROUND

2 Public Resources Code section 42920 et seq. was enacted to require each state
3 agency to adopt and implement an integrated waste management plan (IWM plan) that would
4 reduce solid waste, reuse materials whenever possible, recycle recyclable materials and procure
5 products with recycled content in all agency offices and facilities. (Pub. Resources Code §
6 42920, subd. (b). See Stats. 1999, ch. 764 (A.B. 75).) These statutory provisions require that
7 each state agency, in implementing the plan, divert at least 25 percent of its solid waste from
8 landfill disposal by January 1, 2002, and divert at least 50 percent of its solid waste from landfill
9 disposal on and after January 1, 2004. (Pub. Resources Code § 42921.) Each agency must also
10 submit an annual report to petitioner Integrated Waste Management Board summarizing its
11 progress in reducing solid waste pursuant to Public Resources Code section 42921 and providing
12 related information, including calculations of its annual disposal reduction.

13 Any cost savings realized as a result of the state agency's IWM plan must, to the
14 extent feasible, be redirected to the plan to fund the implementation and administrative costs of
15 the plan in accordance with Public Contract Code sections 12167 and 12167.1. (Pub. Resources
16 Code § 42925, subd. (a).) Public Contract Code sections 12167 and 12167.1 are part of the State
17 Assistance for Recycling Markets Act, which was originally enacted in 1989 for the purpose of
18 fostering the procurement and use of recycled paper products and other recycled resources in
19 daily state operations (See Pub. Contract Code §§ 12153, 12160; Stats. 1989, ch. 1094.) As
20 amended in 1992, sections 12167 and 12167.1 provide for the deposit of revenues received from
21 the collection and sale of recyclable materials in state and legislative offices in specified accounts
22 for the purpose of offsetting recycling costs; revenues not exceeding \$2000 annually are
23 continuously appropriated without regard to fiscal years for expenditure by state agencies to
24 offset the recycling costs; and revenues exceeding \$2000 annually are available for expenditure
25 by the state agencies upon appropriation by the Legislature.

26 The IWM plan requirements under Public Resources Code section 42920 et seq.
27 apply to the California Community Colleges pursuant to Public Resources Code sections 40148
28 and 40196, which include California Community Colleges and their campuses in the definitions

1 of "large state facility" and "state agency" for purposes of IWM plan requirements. The
2 provisions of the State Assistance for Recycling Markets Act, including the provisions of Public
3 Contract Code sections 12167 and 12167.1, apply to California Community Colleges only to the
4 limited extent that sections 12167 and 12167.1 are referenced in Public Resources Code section
5 42925; California Community Colleges are not defined as state agencies or otherwise subject to
6 the Act's provisions for the procurement and use of recycled products in daily state operations.

7 For purposes of section 6 of article XIII B of the California Constitution and the
8 statutes implementing section 6 (Gov. Code § 17500 et seq.), California Community Colleges are
9 defined as school districts and treated as local governments eligible for reimbursement of any
10 state-mandated costs that they incur in carrying out statutory IWM plan requirements. (See Gov.
11 Code §§ 17514, 17519.) Section 6 and Government Code section 17514 provide for the
12 reimbursement of a local government's increased costs of carrying out new programs or higher
13 levels of service that are mandated by the state pursuant to a statute enacted on or after January 1,
14 1975, or an executive order implementing a statute enacted on or after January 1, 1975. Such
15 reimbursement is precluded pursuant to Government Code section 17556, subdivision (e), if the
16 statute or executive order provides for offsetting savings that result in no net costs to the local
17 government or includes additional revenue specifically intended to fund the costs of the state
18 mandated program in an amount sufficient to cover the costs.

19 Real parties in interest Santa Monica Community College District and Tahoe
20 Community College District sought section 6 reimbursement of their IWM plan costs pursuant to
21 Public Resources Code section 42920 et seq. by filing a test claim with respondent pursuant to in
22 March 2001. (Administrative Record, pp. 51-74 (AR 51-93). See Gov. Code § 17550 et seq.)
23 Respondent adopted a statement of decision granting the test claim in part on March 25, 2004
24 (AR 1135-1176), after receiving and considering public comments on the test claim, including
25 comments from petitioners opposing the claim. (AR 351-356, 359-368.) Respondent found that
26 specified IWM plan requirements under Public Resources Code section 42920 et seq. imposes a
27 reimbursable state-mandated program on California Community Colleges within the meaning of
28 section 6 and Government Code section 17514. Respondent further found that the requirement

1 of Public Resources Code section 42925, that cost savings realized as a result of an IWM plan b
2 redirected to plan implementation and administrative costs, did not preclude a reimbursable
3 mandate pursuant to subdivision (e) of Government Code section 17556 because there was
4 neither evidence of offsetting savings that would result in "no net costs" to a California
5 Community College implementing an IWM plan nor evidence of revenues received from plan
6 implementation "in an amount sufficient to fund" the cost of the state-mandated program.
7 Respondent noted that the \$2000 in revenue available annually to a community college pursuant
8 to Public Contract Code section 12167.1 would be insufficient to offset the college's costs of
9 plan implementation and that any revenues would be identified as offsets in the parameters and
10 guidelines to be adopted for reimbursement of claims by California Community Colleges for the
11 IWM plan mandates imposed by Public Resources Code section 42920 et seq.

12 Thereafter, on March 30, 2005, respondent adopted parameters and guidelines
13 pursuant to Government Code section 17556 based on a proposal by real parties and public
14 comments, including comments by petitioners. (AR 1483-1496.) Section VII of the parameters
15 and guidelines, concerning offsetting revenues and reimbursements, indicates that a claim by a
16 California Community College for reimbursement of costs incurred in implementing an IWM
17 plan must identify and deduct from the claim all reimbursement received from any source for the
18 mandate. Section VII further indicates that the revenues specified in Public Resources Code
19 section 42925 and Public Contract Code sections 12167 and 12167.1 must offset the costs
20 incurred by a California Community College for the recycling mandated by Public Resources
21 Code section 42920 et seq. These offsetting revenues include, pursuant to section 12167.1,
22 revenues up to \$2000 annually from the college's sale of recyclable materials which are
23 continuously appropriated for expenditure by the college to offset its recycling costs and
24 revenues in excess of \$2000 annually when appropriated by the Legislature.

25 In adopting section VII of the parameters and guidelines, respondent rejected the
26 position of petitioner Integrated Waste Management Board that the parameters and guidelines
27 should require California Community Colleges to identify in their reimbursement claims any
28 offsetting savings in reduced or avoided landfill disposal costs likely to result from their

1 diversion of solid waste from landfills pursuant to the mandates of Public Resources Code
2 section 42921. (AR 1194-1199.) This rejection was based on three grounds: that "cost savings"
3 in Public Resources Code section 42925 meant "revenues" received and directed "in accordance
4 with Sections 12167 and 12167.1 of the Public Contract Code"; reduced or avoided disposal
5 costs could not qualify as offsetting cost savings for the diversion costs because the disposal
6 costs had not previously been reimbursed by the state and were not included in the reimbursable
7 mandates of Public Resources Code section 42920 et seq.; and the redirection of cost savings to
8 IWM plan implementation and administration costs under section 42925 was "only to the extent
9 feasible" and not mandatory, thus allowing a California Community College to redirect cost
10 savings to other campus programs upon a finding that it was not feasible to use the savings for
11 IWM plan implementation. (AR 98-1199.) On these grounds, respondent omitted from section
12 VII of the parameters and guidelines any language about offsetting savings, including a
13 boilerplate provision stating "Any offsetting savings the claimant experiences in the same
14 program as a result of the same statutes or executive orders found to contain the mandate shall be
15 deducted from the costs claimed."

16 On October 26, 2006, respondent adopted a statewide cost estimate for the
17 reimbursement of costs incurred by California Community Colleges in implementing IWM plan
18 mandates pursuant to Public Resources Code section 42920 et seq. (AR 1641-1650.)
19 Respondent noted comments by petitioners that the lack of a requirement in the parameters and
20 guidelines for information on offsetting cost savings by the community colleges had resulted in
21 an inaccurate Statewide Cost Estimate. (AR 1647.) A request by petitioner Integrated Waste
22 Management Board to amend the parameters and guidelines to include additional information
23 about offsetting savings was distributed for public comment. (AR 1647-1648, 1859-873.)

24 ANALYSIS

25 Section 6 of article XIII B of the California Constitution, as implemented by
26 Government Code section 17514, provides for the reimbursement of actual increased costs
27 incurred by a local government or school district in implementing a new program or higher level
28 of service of an existing program mandated by statute, such as the IWM plan requirements of

1 Public Resources Code section 42920 et seq. (See *County of Fresno v. State of California* (1991)
2 51 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates*, (2000) 84 Cal.App.4th
3 1264, 1283-1284.) Reimbursement is not available under section 6 and section 17514 to the
4 extent that the local government or school district is able to provide the mandated program or
5 increased service level without actually incurring increased costs. (*Ibid.*) For example,
6 reimbursement is not available if the statute mandating the new program or increased service
7 level provides for offsetting savings which result in no net costs to the local government or
8 school district or includes revenues sufficient to fund the state mandate. (See Gov. Code §
9 17556, subd. (e). See also Cal. Code Regs., tit. 2, § 1183.1(a)(7), (a)(8) (requiring parameters
10 and guidelines for claiming reimbursable costs to identify offsetting revenues and savings
11 resulting from implementation of state-mandated program).) Because section VII of the IWM
12 plan parameters and guidelines adopted by respondent do not require a California Community
13 College to identify and deduct offsetting cost savings from its claimed reimbursable costs and
14 unduly limit the deduction of offsetting revenues, section VII contravenes the rule of section 6
15 and section 17514 that only actual increased costs of a state mandate are reimbursable.¹

16 Cost Savings

17 In complying with the mandated solid waste diversion requirements of Public
18 Resources Code section 42921, California Community Colleges are likely to experience cost
19 savings in the form of reduced or avoided costs of landfill disposal. The reduced or avoided
20 costs are a direct result and an integral part of the IWM plan mandates under Public Resources
21 Code section 42920 et seq.: as solid waste diversion occurs, landfill disposal of the solid waste
22 and associated landfill disposal costs are reduced or avoided. Indeed, diversion is defined in
23 terms of landfill disposal for purposes of the IWM plan mandates. (See Pub. Resources Code §§
24 40124 (“‘diversion’ means activities which reduce or eliminate the amount of solid waste from
25 solid waste disposal for purposes of this division [i.e., division 30, including § 42920 et seq.]”),

26
27 ¹ There is no indication in the administrative record or in the legal authorities provided to the court that, as
28 respondent argues, a California Community College might not receive the full reimbursement of its actual increased
costs required by section 6 if its claims for reimbursement of IWM plan costs were offset by realized cost savings
and all revenues received from plan activities.

1 40192, subd. (b) (for purposes of Part 2 (commencing with Section 40900), 'disposal' means the
2 management of solid waste through landfill disposal or transformation at a permitted solid waste
3 facility.".)

4 Such reduction or avoidance of landfill fees and costs resulting from solid waste
5 diversion activities under § 42920 et seq. represent savings which must be offset against the costs
6 of the diversion activities to determine the reimbursable costs of IWM plan
7 implementation -- i.e., the actual increased costs of diversion -- under section 6 and section
8 17514. Similarly, under Public Resources Code section 42925, such offsetting savings must be
9 redirected to fund IWM plan implementation and administration costs in accordance with Public
10 Contract Code section 12167. The amount or value of the savings may be determined from the
11 calculations of annual solid waste disposal reduction or diversion which California Community
12 Colleges must annually report to petitioner Integrated Waste Management Board pursuant to
13 subdivision (b)(1) of Public Resources Code section 42926.

14 Respondent's three grounds for omitting offsetting savings from section VII of the
15 IWM plan parameters and guidelines are flawed. First, as explained above, the reduced or
16 avoided costs of landfill disposal are an integral part of the IWM diversion mandates under
17 Public Resources Code section 42920 et seq. Therefore, respondent's conclusion that reduced or
18 avoided disposal costs could not qualify as offsetting cost savings for diversion costs, based on
19 the erroneous premise that the reduced or avoided disposal costs were not part of the
20 reimbursable mandates of Public Resources Code section 42920 et seq., is wrong.

21 Second, respondent incorrectly interpreted the phrase "to the extent feasible" in
22 Public Resources Code section 42925 to mean that the redirection of cost savings resulting from
23 diversion activities by California Community Colleges to fund their IWM plan implementation
24 and administration costs was not mandatory and that the colleges could direct the cost savings to
25 other campus programs upon a finding of infeasibility. Respondent's interpretation is contrary to
26 the manifest legislative intent and purpose of section 42925, that cost savings be used to fund
27 IWM plan costs. In light of this legislative purpose, the phrase "to the extent feasible"
28 reasonably refers to situations where, as a practical matter, the reductions in landfill fees and

1 costs saved as a result of diversion activities by the colleges may not be available for redirection.
2 For example, a college may not have budgeted or allocated funds for landfill fees and costs
3 which they did not expect to incur as a result of their diversion activities.

4 Third, respondent incorrectly interpreted "cost savings realized as a result of the state
5 agency integrated waste management plan" in Public Resources Code section 42925 to mean
6 "revenues received from [a recycling] plan and any other activity involving the collection and
7 sale of recyclable materials" under Public Contract Code sections 12167 and 12167.1. This
8 interpretation, based in turn on a strained interpretation of the phrase "in accordance with
9 Sections 12167 and 12167.1 of the Public Contract Code" at the end of section 42925, used the
10 substantive content of sections 12167 and 12167.1 to redefine "cost savings" in a manner directly
11 contradicting its straightforward description in section 42925. The consequences of this
12 redefinition are unreasonable: the interpretation effectively denies the existence of cost savings
13 resulting from IWM plan implementation and eliminates any possibility of redirecting such cost
14 savings to fund IWM plan implementation and administration costs, thereby defeating the
15 express legislative purpose of section 42925.

16 The reference to Public Contract Code sections 12167 and 12167.1 in Public
17 Resources Code section 42925 may be reasonably interpreted in a manner that preserves section
18 42925's straightforward description of "cost savings" and legislative purpose. The reference to
19 sections 12167 and 12167.1 in section 42925 reflects an effort by the Legislature to coordinate
20 the procedures of two programs involving recycling activities exclusively or primarily by state
21 agencies, the State Assistance for Recycling Markets Act set forth at Public Contracts Code
22 section 12150 et seq. and the IWM provisions of Public Resources Code section 42920 et seq.
23 (See Senate Committee on Environmental Quality, Bill Analysis of A.B. 75, 1999-2000 Reg.
24 Sess., as amended April 27, 1999, p. 6 (need to ensure consistency and avoid conflicts between
25 A.B. 75 and Public Contract Code provisions relating to state agency reporting on recycling,
26 depositing revenues from recycled materials etc.)) By requiring the redirection of cost savings
27 from state agency IWM plans to fund plan implementation and administration costs "in
28 accordance with Sections 12167 and 12167.1 of the Public Contract Code," section 42925

1 assures that cost savings realized from state agencies' IWM plans are handled in a manner
2 consistent with the handling of revenues received from state agencies' recycling plans under the
3 State Assistance for Recycling Markets Act. Thus, in accordance with section 12167, state
4 agencies, along with California Community Colleges which are defined as state agencies for
5 purposes of IWM plan requirements in Public Resources Code section 42920 et seq. (Pub.
6 Resources Code §§ 40196, 40148), must deposit cost savings resulting from IWM plans in the
7 Integrated Waste Management Account in the Integrated Waste Management Fund; the funds
8 deposited in the Integrated Waste Management Account, upon appropriation by the Legislature,
9 may be expended by the Integrated Waste Management Board for the purpose of offsetting IWM
10 plan costs. In accordance with section 12167.1 and notwithstanding section 12167, cost savings
11 from the IWM plans of the agencies and colleges that do not exceed \$2000 annually are
12 continuously appropriated for expenditure by the agencies and colleges for the purpose of
13 offsetting IWM plan implementation and administration costs; cost savings resulting from IWM
14 plans in excess of \$2000 annually are available for such expenditure by the agencies and colleges
15 when appropriated by the Legislature.

16 Accordingly, respondent had no proper justification for omitting offsetting cost
17 savings from the parameters and guidelines for claiming reimbursable costs of IWM plan
18 implementation under Public Resources Code section 42920 et seq. The court will order the
19 issuance of a writ of mandate requiring respondent to correct this omission through an
20 amendment of the parameters and guidelines.

21 Revenues

22 As indicated previously in this ruling, section VII of the parameters and guidelines
23 for claiming reimbursement of IWM plan costs provides for offsetting revenues that are governed
24 by Public Contract Code sections 12167 and 12167.1. Revenues derived from the sale of
25 recyclable materials by a California Community College are deposited in the Integrated Waste
26 Management Account. Revenues that do not exceed \$2000 annually are continuously
27 appropriated for expenditure by the college for the purpose of offsetting recycling program costs
28 upon approval by the Integrated Waste Management Board, and revenues exceeding \$2000

1 annually are available for such expenditure by the college when appropriated by the Legislature.
2 To the extent so approved by the board or appropriated by the Legislature, these revenue amounts
3 offset or reduce the reimbursable costs incurred by the college in implementing an IWM plan
4 under Public Resources Code section 42920 et seq.

5 Although Public Contract Code sections 12167 and 12167.1 apply to California
6 Community Colleges for the purpose of offsetting savings pursuant to the terms of Public
7 Resources Code section 42925, sections 12167 and 12167.1 do not apply to the colleges for the
8 purpose of offsetting revenues or, indeed, any other purpose. Sections 12167 and 12167.1 apply
9 exclusively to state agencies and institutions; the colleges, which are school districts rather than
10 state agencies, are not specially defined as state agencies for purposes of the State Assistance for
11 Recycling Markets Act of which sections 12167 and 12167.1 are a part. Therefore, sections
12 12167 and 12167.1 do not properly govern the revenues generated by the colleges' recycling
13 activities pursuant to their IWM plans. The limits and conditions placed by sections 12167 and
14 12167.1 on the expenditure of recycling revenues for the purpose of offsetting recycling program
15 costs are simply inapplicable to the revenues generated by the colleges' recycling activities.

16 The provisions of Public Resources Code section 42920 et seq. do not address the
17 use of revenues generated by recycling activities of California Community Colleges under IWM
18 plans to offset reimbursable plan costs. Thus, use of the revenues to offset reimbursable IWM
19 plan costs is governed by the general principles of state mandates, that only the actual increased
20 costs of a state-mandated program are reimbursable and, to that end, revenues provided for by the
21 state-mandated program must be deducted from program costs. (See Cal. Const., art. XIII B, § 6;
22 Gov. Code §§ 17514, 17556, subd. (e); *County of Fresno v. State of California* (1991) 51 Cal.3d
23 482, 487; *County of Sonoma v. Commission on State Mandates*, (2000) 84 Cal.App.4th 1264,
24 1284.) These principles are reflected in respondent's regulation which requires, without
25 limitation or exception, the identification of offsetting revenues in the parameters and guidelines
26 for reimbursable cost claims. (Cal. Code Regs., tit. 2, § 1183.1(a)(7).)

27 In sum, respondent erred in adopting parameters and guidelines which, pursuant to
28 Public Contract Code sections 12167 and 12167.1, limited and conditioned the use of revenues

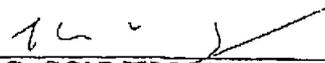
1 generated by recycling activities of California Community Colleges under IWM plans to offset
2 the colleges' reimbursable plan costs. Because the use of revenues to offset the reimbursable
3 costs of IWM plan are properly governed by section 6 principles without the limitations and
4 conditions imposed by sections 12167 and 12167.1, the court will order the issuance of a writ of
5 mandate requiring respondent to correct its error through an amendment of the parameters and
6 guidelines.

7 RELIEF

8 The petition is granted. Counsel for petitioners is directed to prepare a proposed
9 judgment and proposed writ of mandate consistent with this ruling, serve it on counsel for
10 respondent for approval as to form, and then submit it to the court pursuant to rule 3.1312 of the
11 California Rules of Court.

12 Dated: May 29, 2008



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LLOYD G. CONNELLY
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D Schaber Courthouse
720 Ninth STREET
Sacramento, CA 95814-1311

SHORT TITLE: ST OF CA DEPT OF FINANCE. ETAL VS. COMMISSION ON ST MANDATES

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
07CS00355

I certify that I am not a party to this cause. I certify that a true copy of the attached was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at Sacramento, California, on 05/30/2008.

Clerk of the Court, by: /s/ C Beehont *Chubert*, Deputy

Leslie R Lopez
P.O.Box 944255
Sacramento, CA 94244

Camille Shelton
980 Ninth Street # 300
Sacramento, CA 95814

Jack C Woodside
P.O.Box 944255
Sacramento, CA 94244

Lisa Rose
Santa Monica Community College Dist.
1900 Pico Blvd
Santa Monica

Eric Feller
980 9th Street # 300
Commission on State Mandates
Sacramento, CA 95814

Roberta Mason
Lake Tahoe Community College Dist.
One College Dr.
South Lake Tahoe, CA 96150

Additional names and address attached.

ORIGINAL

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California Integrated Waste Management Board



9
10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF SACRAMENTO

12
13 STATE OF CALIFORNIA DEPARTMENT OF
FINANCE, CALIFORNIA INTEGRATED
14 WASTE MANAGEMENT BOARD,

Case No: 07CS00355

~~PROPOSED~~ PEREMPTORY
WRIT OF MANDATE

15 Petitioner,

16 v.

17 COMMISSION ON STATE MANDATES,

18 Respondent,

Judge: The Honorable
Lloyd G. Connelly
Dept: 33

19 SANTA MONICA COMMUNITY COLLEGE
DISTRICT, LAKE TAHOE COMMUNITY
20 COLLEGE DISTRICT,

21 Real Parties in Interest.
22

23 TO RESPONDENT COMMISSION ON STATE MANDATES:

24 WHEREAS, Judgment having been entered in this action, ordering that a Peremptory
25 Writ of Mandate be issued from this court, YOU ARE COMMANDED TO:

26 1. Amend the parameters and guidelines in Test Claim No. 00-TC-07 to require
27 community college districts claiming reimbursable costs of an integrated waste management
28 plan under Public Resources Code section 42920, et seq. to identify and offset from their claims,

1 consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1,
2 cost savings realized as a result of implementing their plans; and

3 2. Amend the parameters and guidelines in Test Claim No. 00-TC-07 to require
4 community college districts claiming reimbursable costs of an integrated waste management plan
5 under Public Resources Code section 42920, et seq. to identify and offset from their claims all of
6 the revenue generated as a result of implementing their plans, without regard to the limitations or
7 conditions described in sections 12167 and 12167.1 of the Public Contract Code.

8 3. File a Return to the writ within 120 days of service of the writ.

9
10 Dated: JUN 30 2008



11 *C. Beebout* C. BEEBOUT
12 Clerk of the Superior Court

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: State of California Dept. of Finance, et al. v. Commission on State Mandates
Sacramento County Superior Court No.: 07CS00355

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On June 18, 2008, I served the attached [PROPOSED] JUDGMENT GRANTING PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS; by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Eric Feller
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814
Respondent *Commission on State Mandates*

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 18, 2008, at Sacramento, California.

Christine A. McCartney
Declarant


Signature

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **State of California Dept. of Finance, et al. v. Commission on State Mandates**
Sacramento County Superior Court No.: 07CS00355

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On July 8, 2008, I served the attached **PEREMPTORY WRIT OF MANDATE**; by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Eric Feller
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814
Respondent *Commission on State Mandates*

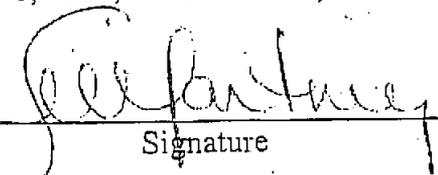
Lisa Rose
Santa Monica Community College District
Clerk of the Board of Trustees
1900 Pico Boulevard
Santa Monica, CA 90404
Real Party in Interest

Roberta Mason
Lake Tahoe Community College District
Clerk of the Board of Trustees
One College Drive
South Lake Tahoe, CA 96150
Real Party in Interest

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 8, 2008, at Sacramento, California.

Christine A. McCartney

Declarant



Signature

Hearing Date: September 26, 2008
j:\Mandates\2000\tc\00tc07\PsGs\Post-Litigation\FSA

ITEM 8

**FINAL STAFF ANALYSIS
PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES**

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

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

State Agency Model Integrated Waste Management Plan (February 2000)

Integrated Waste Management
00-TC-07

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

On Remand from the Sacramento County Superior Court
State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.
(Case No. 07CS00355)

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ITEM 8
FINAL STAFF ANALYSIS
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00-TC-07

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

On Remand from the Sacramento County Superior Court
State of California, Department of Finance, California Integrated Waste Management Board
v. Commission on State Mandates, et al.
(Case No. 07CS00355)

EXECUTIVE SUMMARY

Background

The test claim statutes at issue in this case require community college districts to develop and adopt, in consultation with the Integrated Waste Management Board, an integrated waste management plan. Each community college is required to divert from landfills at least 25 percent of generated solid waste by January 1, 2002, and at least 50 percent by January 1, 2004.

Parameters and guidelines were adopted by the Commission in March 2005. The parameters and guidelines do not identify any offsetting cost savings for avoided disposal costs as a result of the mandate to divert solid waste. In addition, the offsetting revenues identified in the parameters and guidelines are limited by Public Contract Code sections 12167 and 12167.1; revenues that do not exceed \$2000 are continuously appropriated by the Legislature for the expenditure by the community colleges on this program, and revenues exceeding \$2000 can be used only upon appropriation by the Legislature.

The Department of Finance and the Integrated Waste Management Board filed a petition for writ of mandate in March 2007, asking the court to set aside the Commission's decision granting the test claim and to require the Commission to issue a new Statement of Decision and parameters and guidelines that give full consideration to the community colleges' cost savings (e.g. avoided landfill disposal fees) and revenues (from recyclables) by complying with the test claim statutes. They contended that the Commission did not properly account for all the offsetting cost savings

from avoided disposal costs, or offsetting revenues from the sale of recyclable materials in the Statement of Decision or parameters and guidelines.

On May 29, 2008, the Sacramento County Superior Court issued its Ruling on Submitted Matter, finding that the Commission's rationale for the treatment of cost savings and revenues in the parameters and guidelines was erroneous and required that the parameters and guidelines be amended.

With regard to cost savings, the court found that the reduction or avoidance of costs resulting from solid waste diversion activities represent savings that must be offset and deducted from the claim for costs incurred as a result of the mandated activities in accordance with Public Contract Code section 12167 and 12167.1. Cost savings may be calculated from the calculations of annual solid waste disposal reduction or diversion that community colleges must annually report to the Board pursuant to Public Resources Code section 42926, subdivision (b)(1).¹ The court further concluded that offsetting savings are limited by Public Contract Code section 12167 and 12167.1, which require community colleges to deposit cost savings into the Integrated Waste Management Account in the Integrated Waste Management Fund. These funds may, on appropriation by the Legislature, be spent by the Board to offset integrated waste management plan implementation costs. The cost savings that do not exceed \$2000 annually are continuously appropriated for the colleges to spend to offset implementing and administering the costs of the integrated waste management plan. Cost savings in excess of \$2000 annually are available for this same purpose when appropriated by the Legislature.²

The court further concluded that revenues from the sale of recyclable materials are free from the limitations of Public Contract Codes section 12167 and 12167.1. Thus, community colleges are required to identify and offset the total amount of revenue received from the sale of recyclable materials.³

Accordingly, the court's ruling is that a writ of mandate would issue requiring the Commission to correct the errors through an amendment to the parameters and guidelines. The court's decision does not affect the Statement of Decision.

The judgment and a writ of mandate were issued on June 30, 2008, ordering the Commission to:

1. Amend the parameters and guidelines in Test Claim No. 00-TC-07 to require community college districts claiming reimbursable costs of an integrated waste management plan under Public Resources Code section 42920, et seq. to identify and offset from their claims, consistent with the directions for revenue in Public Contract code sections 12167 and 12167.1, cost savings realized as a result of implementing their plans.
2. Amend the parameters and guidelines in Test Claim No. 00-TC-07 to require community college districts claiming reimbursable costs of an integrated waste management plan under Public Resources Code section 42920, et seq. to identify

¹ Ruling, page 7.

² Ruling, pages 8-9.

³ Ruling, page 10.

and offset from their claims all of the revenue generated as a result of implementing their plans, without regard to the limitations or conditions described in sections 12167 and 12167.1 of the Public Contract Code.

In compliance with the writ, a draft staff analysis and proposed amendments to the parameters and guidelines tracking the language in the court's judgment and writ were issued for comment. On August 26, 2008, the Integrated Waste Management Board filed comments, requesting that the Commission include additional language in Section VIII of the parameters and guidelines addressing offsetting cost savings. The Commission has not received any comments from the community college districts.

Comments from the Integrated Waste Management Board

The Integrated Waste Management Board requests that the parameters and guidelines include the following two changes to the offsetting cost savings section:

1. Claimants should be required to provide offsetting savings information *whether or not* the amount of offsetting savings generated in a fiscal year exceeds the \$2000 continuous appropriation. The Board argues as follows: "We understand that these amounts would not offset the costs until the appropriation were to occur, but if the information is not provided in the first instance, the Legislature will not be in a position to make the additional appropriation." The Board proposes the following change (reflected in strike-through language):

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed.

Reduced or avoided costs realized from implementation of the community college districts' Integrated Waste Management plans shall be identified and offset from this claim as cost savings, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1. Subject to the approval of the California Integrated Waste Management Board, cost savings by a community college that do not exceed two thousand dollars (\$2,000) annually are continuously appropriated for expenditure by the community college for the purpose of offsetting Integrated Waste Management program costs. Cost savings exceeding two thousand dollars (\$2,000) annually may be available for expenditure by the community college only when appropriated by the Legislature. ~~To the extent so approved or appropriated and applied to the college,~~ these amounts shall be identified and offset from the costs claimed for implementing the Integrated Waste Management Plan.

2. Additional guidance should be provided in Section VIII of the parameters and guidelines to assist claimants in determining what would be considered a cost savings that should be offset. The Board proposes the following language:

Claimants shall analyze the following items in determining what to include in their claims:

Staffing:

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

Overhead:

Costs incurred for overhead, such as benefits, for the PYs identified under "staffing."

Materials:

Through the implementation of the program being claimed a reduction or elimination of supplies and materials may have been achieved. This could include, and is not limited to: White office paper, mixed office paper, cardboard, printed catalogs, postage, envelopes, and other office supplies.

Storage:

Through the implementation of this program being claimed a reduction or elimination of storage of supplies and materials may have been achieved. The elimination of storage is a cost savings that must be allotted to offset any costs association to the implementation of the identified program(s) being claimed by the claimant.

Transportation Costs:

The transportation of supplies and waste materials has a cost. The claimant should determine how many trips staff was making to purchase, pick-up and deliver supplies needed for the program being claimed and the current level of the activity.

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

Equipment:

Any costs associated with new/replacement equipment, including any costs avoided for maintenance of obsolete equipment.

Sale of Commodities:

This would include any and all revenues generated due to the sale of materials collected through the implementation of the specific program being claimed. This could include, but is not limited to white office paper, mixed office paper, cardboard, beverage containers, ferrous and nonferrous metals, glass, plastic, resale of used text books, compost, mulch, and firewood.

Avoided disposal fees:

Through the implementation of the AB 75 program(s) a facility will see a direct reduction in the amount of materials that would have been placed into a landfill or a trash dumpster on the campus. These direct savings are to be credited to the program based on today's disposal costs.

Sale of obsolete equipment:

Proceeds of any sales of obsolete equipment.

Other revenue related to program:

Dependent on the particular program or activity being submitted to the Commission for reimbursement several other factors can and will generate a cost savings.

The Board argues that "this change is consistent with the Commission's statutes which provide that the 'reasonable reimbursement methodology' used should identify the costs to implement the mandate in a cost-efficient manner."

Discussion and Staff Analysis

Staff reviewed the Superior Court's writ and judgment, and comments from the Integrated Waste Management Board, and made the following changes to comply with the court's order.

I. Summary of the Mandate

Staff added a paragraph to describe the judgment and writ.

III. Period of Reimbursement

The court's decision in this case interprets the test claim statutes as a question of law. Thus, the amendments to the parameters and guidelines required by the court's writ apply retroactively to the original period of reimbursement.⁴ No changes were made to the initial date of reimbursement.

Staff, however, deleted a reference to filing "Estimated Reimbursement Claims" consistent with current law.

IV. Reimbursable Activities. F. Annual Recycled Material Reports

Staff deleted a reference to "Section VII. regarding offsetting revenues from recyclable materials" on page 10, section IV. F. The placement of this reference under one activity is inconsistent with the writ which requires community college districts claiming reimbursable costs of an integrated waste management plan under Public Resources Code section 42920 et seq. to identify and offset from their claims all of the revenue generated as a result of implementing their plans...."

VII. Offsetting Revenues and Reimbursements

Staff corrected this section to strike references to Public Contract Code sections 12167 and 12167.5 consistent with the judgment and writ.

⁴ *McManigal v. City of Seal Beach* (1985) 166 Cal.App.3d 975, 981.

VIII. Offsetting Cost Savings

A new section VIII. regarding offsetting cost savings has been added pursuant to the court's judgment and writ. Staff further finds, for the reasons below, that the requests of the Integrated Waste Management Board to amend the parameters and guidelines to further require community college districts to provide offsetting savings information in their claims *whether or not* the amount of offsetting savings generated in a fiscal year exceeds the \$2000 continuous appropriation, and to require community college districts to analyze additional categories of cost savings, goes beyond the scope of the test claim statutes, the court's judgment and writ, and the Commission's jurisdiction on remand.

A. *The Board's request to require community college districts to provide offsetting savings information whether or not the offsetting savings generated exceeds the \$2000 continuous appropriation*

The court's writ directs the Commission to amend the parameters and guidelines "to require community college districts claiming reimbursable costs of an integrated waste management plan under Public Resources Code section 42920, et seq. to identify and offset from their claims, consistent with the directions for revenue in Public Contract code sections 12167 and 12167.1, cost savings realized as a result of implementing their plans."

The Board requests that the Commission add language to the parameters and guidelines to "require community college districts to provide offsetting savings information whether or not the amount of offsetting savings generated in a fiscal year exceeds the \$2000 continuous appropriation." The Board argues as follows: "We understand that these amounts would not offset the costs until the appropriation were to occur, but if the information is not provided in the first instance, the Legislature will not be in a position to make the additional appropriation." The Board proposes the following change to the draft proposed parameters and guidelines (reflected in strike-through language):

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed.

Reduced or avoided costs realized from implementation of the community college districts' Integrated Waste Management plans shall be identified and offset from this claim as cost savings, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1. Subject to the approval of the California Integrated Waste Management Board, cost savings by a community college that do not exceed two thousand dollars (\$2,000) annually are continuously appropriated for expenditure by the community college for the purpose of offsetting Integrated Waste Management program costs. Cost savings exceeding two thousand dollars (\$2,000) annually may be available for expenditure by the community college only when appropriated by the Legislature. ~~To the extent so approved or appropriated and applied to the college,~~ these amounts shall be identified and offset from the costs claimed for implementing the Integrated Waste Management Plan.

The Commission's jurisdiction on this item is limited by the court's judgment and writ. The court interpreted Public Resources Code section 42925 and Public Contract Code sections 12167

and 12167.1, but did not direct the Commission in the writ to require community college districts to provide additional offsetting savings information when filing their claims.

Rather, as described below, the court interpreted the plain language of these statutes as requiring community college districts to deposit all cost savings resulting from their Integrated Waste Management plans in the Integrated Waste Management Account in the Integrated Waste Management Fund. The funds deposited in the Integrated Waste Management Account, upon appropriation by the Legislature, and approval of the Integrated Waste Management Board, may be appropriated for the expenditure by those community college districts for the purposes of offsetting program costs.

Public Resources Code section 42925, subdivision (a), states the following:

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

Public Contract Code section 12167 states:

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

Public Contract Code section 12167.1 states:

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

The court interpreted these statutes as follows:

By requiring the redirection of cost savings from state agency IWM plans to fund plan implementation and administration costs "in accordance with Sections 12167 and 12167.1 of the Public Contract Code," section 42925 assures that cost savings realized from state agencies' IWM plans are handled in a manner

consistent with the handling of revenues received from state agencies' recycling plans under the State Assistance for Recycling Markets Act. Thus, in accordance with section 12167, state agencies, along with California Community Colleges which are defined as state agencies for purposes of IWM plan requirements in Public Resources Code section 42920 et seq. [citations omitted], must deposit cost savings resulting from IWM plans in the Integrated Waste Management Account in the Integrated Waste Management Fund; the funds deposited in the Integrated Waste Management Account, upon appropriation by the Legislature, may be expended by the Integrated Waste Management Board for the purpose of offsetting IWM plan costs. In accordance with section 12167.1 and notwithstanding section 12167, cost savings from the IWM plans of the agencies and colleges that do not exceed \$2000 annually are continuously appropriated for expenditure by the agencies and colleges for the purpose of offsetting IWM plan implementation and administration costs; cost savings resulting from IWM plans in excess of \$2000 annually are available for such expenditure by the agencies and colleges when appropriated by the Legislature.⁵

Accordingly, the Board's request is not consistent with these statutes or the court's judgment and writ. Thus, the Commission does not have jurisdiction to make the changes requested by the Board.

However, staff proposes further clarifying amendments to the language contained in the draft proposed amendment. Staff finds that the language that states that "any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed," is overly broad and not consistent with the limitations in Public Contract Code sections 12167 and 12167.1. Thus, staff recommends that this language be deleted. Staff further recommends that the language in section VIII. of the parameters and guidelines track the statutory language of Public Contract Code sections 12167 and 12167 more closely and, thus, staff has added the language underlined below.

~~Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed.~~

Reduced or avoided costs realized from implementation of the community college districts' Integrated Waste Management plans shall be identified and offset from this claim as cost savings, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1. Pursuant to these statutes, community college districts are required to deposit cost savings resulting from their Integrated Waste Management plans in the Integrated Waste Management Account in the Integrated Waste Management Fund; the funds deposited in the Integrated Waste Management Account, upon appropriation by the Legislature, may be expended by the California Integrated Waste Management Board for the purpose of offsetting Integrated Waste Management plan costs. Subject to the approval of the California Integrated Waste Management Board, cost savings by a community college

⁵ Ruling, page 9.

that do not exceed two thousand dollars (\$2,000) annually are continuously appropriated for expenditure by the community college for the purpose of offsetting Integrated Waste Management program costs. Cost savings exceeding two thousand dollars (\$2,000) annually may be available for expenditure by the community college only when appropriated by the Legislature. To the extent so approved or appropriated and applied to the college, these amounts shall be identified and offset from the costs claimed for implementing the Integrated Waste Management Plan.

B. The Board's request to require community college districts to analyze specified categories of potential cost savings when filing their claims

The Integrated Waste Management Board requests the Commission to add language to the parameters and guidelines requiring community college districts to analyze specified categories of potential cost savings in staffing, overhead, materials, etc., as a result of their diversion programs when filing their claims for reimbursement.

The Commission's jurisdiction on this item is limited by the court's judgment and writ. The court's judgment and writ do not direct the Commission to include the additional language requested by the Board in the parameters and guidelines.

The court agreed with the Board that community college districts are required by Public Resources Code section 42925, subdivision (a), to redirect any cost savings realized as a result of the diversion activities to fund the district's implementation and administration of the integrated waste management plan. But the court determined that the amount or value of cost savings is already available from the annual report the community colleges provide to the Board pursuant to Public Resources Code section 42926, subdivision (b).⁶ This report is required to include the district's "calculations of annual disposal reduction" and "information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors." The court's writ requires the Commission to amend the parameters and guidelines as follows:

Amend the parameters and guidelines in Test Claim No. 00-TC-07 to require community college districts claiming reimbursable costs of an integrated waste management plan under Public Resources Code section 42920, et seq. to identify and offset from their claims, consistent with the directions for revenue in Public Contract code sections 12167 and 12167.1, cost savings realized as a result of implementing their plans.

The writ does not direct the Commission to amend the parameters and guidelines to require community college districts to analyze the potential categories of cost savings identified by the Board.

Staff notes, however, that on March 30, 2006, the Board filed a request to amend the parameters and guidelines pursuant to Government Code section 17557, requesting that the same language included in the Board's comments on this item be included in the parameters and guidelines. The Board's 2006 request is still pending with the Commission. Any action taken by the Commission under the 2006 request by the Board is governed by Government Code

⁶ Ruling, page 7.

section 17557. If the Board's request is approved, the amendments would be effective on July 1, 2005, pursuant to Government Code section 17557, subdivision (d), and, *unlike* the amendments made by the Commission under the court's writ, would not apply retroactively to the initial period of reimbursement for this claim (Jan. 1, 2000).

Accordingly, the proposed amendment to section VIII. of the parameters and guidelines is consistent with the court's ruling, judgment, and writ, and tracks the statutory language of Public Resources Code section 42925 and Public Contract Code sections 12167 and 12167.1.

IX. State Controller's Claiming Instructions

Staff added language to describe the duty of the State Controller and the rights of claimants when revised claiming instructions are issued after adoption of amended parameters and guidelines.

Staff Recommendation

Staff recommends that the Commission adopt the proposed amendments to the parameters and guidelines, beginning on page 11.

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

Amended: September 26, 2008
Adopted: March 30, 2005

PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES

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

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

State Agency Model Integrated Waste Management Plan (February 2000)

Integrated Waste Management
00-TC-07

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

On Remand from the Sacramento County Superior Court

*State of California, Department of Finance, California Integrated Waste Management Board v.
Commission on State Mandates, et al.*
(Case No. 07CS00355)

I. SUMMARY OF THE MANDATE

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

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

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

Parameters and Guidelines Amendment
Integrated Waste Management

management plan, and acting as a liaison to other state agencies (as defined by section 40196.3) and coordinators.

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

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

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

(5) The community college must also submit a plan of correction that demonstrates that it will meet the requirements of Section 42921 [the 25 and 50 percent diversion requirements] before the time extension expires, including the source reduction, recycling, or composting steps the community college will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, the existing programs that it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.

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

State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al. (Sacramento County Superior Court, Case No. 07CS00355)

The Department of Finance and the Integrated Waste Management Board filed a petition for writ of mandate in March 2007, asking the court to set aside the Commission's decision granting the test claim and to require the Commission to issue a new Statement of Decision and parameters and guidelines that give full consideration to the community colleges' cost savings (e.g. avoided landfill disposal fees) and revenues (from recyclables) by complying with the test claim statutes. Petitioners' position was that the Commission had not properly accounted for all the offsetting cost savings from avoided disposal costs, or offsetting revenues from the sale of recyclable materials, in the Statement of Decision or parameters and guidelines. The Judgment and a Writ of Mandate were issued on June 30, 2008, ordering the Commission to:

1. amend the parameters and guidelines in Test Claim No. 00-TC-07 to require community college districts claiming reimbursable costs of an integrated waste management plan under Public Resources Code section 42920, et seq. to identify and offset from their claims, consistent with the directions for revenue in Public Contract code sections 12167 and 12167.1, cost savings realized as a result of implementing their plans; and
2. amend the parameters and guidelines in Test Claim No. 00-TC-07 to require community college districts claiming reimbursable costs of an integrated waste management plan under Public Resources Code section 42920, et seq. to identify and offset from their claims all of the revenue generated as a result of implementing their plans, without regard to the limitations or conditions described in sections 12167 and 12167.1 of the Public Contract Code.

II. ELIGIBLE CLAIMANTS

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

III. PERIOD OF REIMBURSEMENT

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

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

Actual costs for one fiscal year should be included in each claim. ~~Estimated costs for the subsequent year may be included on the same claim, if applicable.~~ Pursuant to Government Code section 17561, subdivision (d), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the claiming instructions by the State Controller.

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

IV. REIMBURSABLE ACTIVITIES

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

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and

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

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

For each eligible claimant, the following activities are reimbursable:

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

1. Develop the necessary district policies and procedures for the implementation of the integrated waste management plan.
2. Train district staff on the requirements and implementation of the integrated waste management plan (one-time per employee). Training is limited to the staff working directly on the plan.

B. Ongoing Activities (*Reimbursable starting January 1, 2000*)

1. Complete and submit to the Board the following as part of the State Agency Model Integrated Waste Management Plan (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000.):
 - a. state agency or large state facility information form;
 - b. state agency list of facilities;
 - c. state agency waste reduction and recycling program worksheets that describe program activities, promotional programs, and procurement activities, and other questionnaires; and
 - d. state agency integrated waste management plan questions.

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

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

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

4. Designate one solid waste reduction and recycling coordinator ("coordinator") for each college in the district to perform new duties imposed by chapter 18.5 (Pub. Resources Code, §§ 42920 – 42928). The coordinator shall implement the integrated waste management plan. The coordinator shall act as a liaison to other state agencies (as defined by section 40196.3) and coordinators. (Pub. Resources Code, § 42920, subd. (c).)
5. Divert at least 25 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2002, and at least 50 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2004, through source reduction, recycling, and composting activities. Maintain the required level of reduction, as approved by the Board. (Pub. Resources Code, §§ 42921 & 42922, subd. (i).)

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

1. Seek either an alternative requirement or time extension if a community college is unable to comply with the January 1, 2002 deadline to divert 25 percent of its solid waste, by doing the following: (Pub. Resources Code, §§ 42927 & 42923 subds. (a) & (c).)
 - a. Notify the Board in writing, detailing the reasons for its inability to comply.
 - b. Request of the Board an alternative to the January 1, 2002 deadline.
 - c. Provide evidence to the Board that the college is making a good faith effort to implement the source reduction, recycling, and composting programs identified in its integrated waste management plan.
 - d. Provide information that describes the relevant circumstances that contributed to the request for extension, such as lack of markets for recycled materials, local efforts to implement source reduction, recycling and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed of by the community college.
 - e. Submit a plan of correction that demonstrates that the college will meet the requirements of Section 42921 [the 25 and 50 percent diversion requirements] before the time extension expires, including the source reduction, recycling, or composting steps the community college will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, the existing programs that it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.
2. Seek either an alternative requirement or time extension if a community college is unable to comply with the January 1, 2004 deadline to divert 50 percent of its solid waste, by doing the following: (Pub. Resources Code, §§ 42927 & 42922, subds. (a) & (b).)
 - a. Notify the Board in writing, detailing the reasons for its inability to comply.
 - b. Request of the Board an alternative to the 50-percent requirement.
 - c. Participate in a public hearing on its alternative requirement.
 - d. Provide the Board with information as to:

- (i) the community college's good faith efforts to 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;
- (ii) the community college's inability to meet the 50 percent diversion requirement despite implementing the measures in its plan;
- (iii) how the alternative source reduction, recycling, and composting requirement represents the greatest diversion amount that the community college may reasonably and feasibly achieve; and,
- (iv) the circumstances that support the request for an alternative requirement, such as waste disposal patterns and the types of waste disposed by the community college.

D. Accounting System (*Reimbursable starting January 1, 2000*)

Developing, implementing, and maintaining an accounting system to enter and track the college's source reduction, recycling and composting activities, the cost of those activities, the proceeds from the sale of any recycled materials, and such other accounting systems which will allow it to make its annual reports to the state and determine waste reduction. Note: only the pro-rata portion of the costs incurred to implement the reimbursable activities can be claimed.

E. Annual Report (*Reimbursable starting January 1, 2000*)

Annually prepare and 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 must encompass the previous calendar year and shall contain, at a minimum, the following as outlined in section 42926, subdivision (b): (Pub. Resources Code, §§ 42926, subd. (a) & 42922, subd. (i).)

1. calculations of annual disposal reduction;
2. information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors;
3. a summary of progress made in implementing the integrated waste management plan;
4. the extent to which the 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.

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

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

V. **CLAIM PREPARATION AND SUBMISSION**

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

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

4. Fixed Assets and Equipment

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

5. Travel

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

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

B. Indirect Cost Rates

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

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

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

VI. RECORD RETENTION

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

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Reimbursement for this mandate from any source, including but not limited to, services fees collected, federal funds, and other state funds allocated to any service provided under this program, shall be identified and ~~deducted~~ offset from this claim. Offsetting revenue shall include all revenues generated from implementing the Integrated Waste Management Plan. the revenues cited in Public Resources Code section 42925 and Public Contract Code sections 12167 and 12167.1.

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

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

VIII. OFFSETTING COST SAVINGS

~~Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed.~~

Reduced or avoided costs realized from implementation of the community college districts' Integrated Waste Management plans shall be identified and offset from this claim as cost savings, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1. Pursuant to these statutes, community college districts are required to deposit cost savings resulting from their Integrated Waste Management plans in the Integrated Waste Management Account in the Integrated Waste Management Fund; the funds deposited in the Integrated Waste Management Account, upon appropriation by the Legislature, may be expended by the California Integrated Waste Management Board for the purpose of offsetting Integrated Waste Management plan costs. Subject to the approval of the California Integrated Waste Management Board, cost savings by a community college that do not exceed two thousand dollars (\$2,000) annually are continuously appropriated for expenditure by the community college for the purpose of offsetting Integrated Waste Management program costs. Cost savings exceeding two thousand dollars (\$2,000) annually may be available for expenditure by the community college only when appropriated by the Legislature. To the extent so approved or appropriated and applied to the college, these amounts shall be identified and offset from the costs claimed for implementing the Integrated Waste Management Plan.

VIII. IX. STATE CONTROLLER'S REVISED CLAIMING INSTRUCTIONS

~~Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission. Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.~~

The Controller shall, within 60 days after receiving amended parameters and guidelines prepare and issue revised claiming instructions for mandates that require state reimbursement after any decision or order of the commission pursuant to section 17559. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission. Pursuant to Government Code section 17561, subdivision (d)(2), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission. In preparing revised claiming instructions, the Controller may request the assistance of other state agencies. (Gov. Code, § 17558, subdivision (c).)

If revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

IX. REMEDIES BEFORE THE COMMISSION

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

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

XI. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

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

FILED / ENDORSED
 MAY 29 2008
Christa Beebout
 By Christa Beebout, Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SACRAMENTO

STATE OF CALIFORNIA, DEPARTMENT,
 OF FINANCE, CALIFORNIA INTEGRATED
 WASTE MANAGEMENT BOARD,

Dept. 33

No. 07CS00355

Petitioners,

v.

RULING ON SUBMITTED MATTER

COMMISSION ON STATE MANDATES,

Respondent.

SANTA MONICA COMMUNITY COLLEGE
 DISTRICT, LAKE TAHOE COMMUNITY
 COLLEGE DISTRICT,

Real Parties in Interest.

In this mandate proceeding, the court must determine the extent to which the reimbursement of a California Community College under section 6 of article XIII B of the California Constitution for the costs that the College incurs in implementing a state-mandated integrated waste management plan pursuant to Public Resources Code section 42920 et seq. is subject to offset by cost savings realized and revenues received during implementation of the plan. For the reasons set forth below, the court determines that the college's reimbursement is subject to such offset.

1 BACKGROUND

2 Public Resources Code section 42920 et seq. was enacted to require each state
3 agency to adopt and implement an integrated waste management plan (IWM plan) that would
4 reduce solid waste, reuse materials whenever possible, recycle recyclable materials and procure
5 products with recycled content in all agency offices and facilities. (Pub. Resources Code §
6 42920, subd. (b). See Stats. 1999, ch. 764 (A.B. 75).) These statutory provisions require that
7 each state agency, in implementing the plan, divert at least 25 percent of its solid waste from
8 landfill disposal by January 1, 2002, and divert at least 50 percent of its solid waste from landfill
9 disposal on and after January 1, 2004. (Pub. Resources Code § 42921.) Each agency must also
10 submit an annual report to petitioner Integrated Waste Management Board summarizing its
11 progress in reducing solid waste pursuant to Public Resources Code section 42921 and providing
12 related information, including calculations of its annual disposal reduction.

13 Any cost savings realized as a result of the state agency's IWM plan must, to the
14 extent feasible, be redirected to the plan to fund the implementation and administrative costs of
15 the plan in accordance with Public Contract Code sections 12167 and 12167.1. (Pub. Resources
16 Code § 42925, subd. (a).) Public Contract Code sections 12167 and 12167.1 are part of the State
17 Assistance for Recycling Markets Act, which was originally enacted in 1989 for the purpose of
18 fostering the procurement and use of recycled paper products and other recycled resources in
19 daily state operations (See Pub. Contract Code §§ 12153, 12160; Stats. 1989, ch. 1094.) As
20 amended in 1992, sections 12167 and 12167.1 provide for the deposit of revenues received from
21 the collection and sale of recyclable materials in state and legislative offices in specified accounts
22 for the purpose of offsetting recycling costs; revenues not exceeding \$2000 annually are
23 continuously appropriated without regard to fiscal years for expenditure by state agencies to
24 offset the recycling costs; and revenues exceeding \$2000 annually are available for expenditure
25 by the state agencies upon appropriation by the Legislature.

26 The IWM plan requirements under Public Resources Code section 42920 et seq.
27 apply to the California Community Colleges pursuant to Public Resources Code sections 40148
28 and 40196, which include California Community Colleges and their campuses in the definitions

1 of "large state facility" and "state agency" for purposes of IWM plan requirements. The
2 provisions of the State Assistance for Recycling Markets Act, including the provisions of Public
3 Contract Code sections 12167 and 12167.1, apply to California Community Colleges only to the
4 limited extent that sections 12167 and 12167.1 are referenced in Public Resources Code section
5 42925; California Community Colleges are not defined as state agencies or otherwise subject to
6 the Act's provisions for the procurement and use of recycled products in daily state operations.

7 For purposes of section 6 of article XIII B of the California Constitution and the
8 statutes implementing section 6 (Gov. Code § 17500 et seq.), California Community Colleges are
9 defined as school districts and treated as local governments eligible for reimbursement of any
10 state-mandated costs that they incur in carrying out statutory IWM plan requirements. (See Gov.
11 Code §§ 17514, 17519.) Section 6 and Government Code section 17514 provide for the
12 reimbursement of a local government's increased costs of carrying out new programs or higher
13 levels of service that are mandated by the state pursuant to a statute enacted on or after January 1,
14 1975, or an executive order implementing a statute enacted on or after January 1, 1975. Such
15 reimbursement is precluded pursuant to Government Code section 17556, subdivision (e), if the
16 statute or executive order provides for offsetting savings that result in no net costs to the local
17 government or includes additional revenue specifically intended to fund the costs of the state
18 mandated program in an amount sufficient to cover the costs.

19 Real parties in interest Santa Monica Community College District and Tahoe
20 Community College District sought section 6 reimbursement of their IWM plan costs pursuant to
21 Public Resources Code section 42920 et seq. by filing a test claim with respondent pursuant to in
22 March 2001. (Administrative Record, pp. 51-74 (AR 51-93). See Gov. Code § 17550 et seq.)
23 Respondent adopted a statement of decision granting the test claim in part on March 25, 2004
24 (AR 1135-1176), after receiving and considering public comments on the test claim, including
25 comments from petitioners opposing the claim. (AR 351-356, 359-368.) Respondent found that
26 specified IWM plan requirements under Public Resources Code section 42920 et seq. imposes a
27 reimbursable state-mandated program on California Community Colleges within the meaning of
28 section 6 and Government Code section 17514. Respondent further found that the requirement

1 of Public Resources Code section 42925, that cost savings realized as a result of an IWM plan
2 redirected to plan implementation and administrative costs, did not preclude a reimbursable
3 mandate pursuant to subdivision (e) of Government Code section 17556 because there was
4 neither evidence of offsetting savings that would result in "no net costs" to a California
5 Community College implementing an IWM plan nor evidence of revenues received from plan
6 implementation "in an amount sufficient to fund" the cost of the state-mandated program.
7 Respondent noted that the \$2000 in revenue available annually to a community college pursuant
8 to Public Contract Code section 12167.1 would be insufficient to offset the college's costs of
9 plan implementation and that any revenues would be identified as offsets in the parameters and
10 guidelines to be adopted for reimbursement of claims by California Community Colleges for the
11 IWM plan mandates imposed by Public Resources Code section 42920 et seq.

12 Thereafter, on March 30, 2005, respondent adopted parameters and guidelines
13 pursuant to Government Code section 17556 based on a proposal by real parties and public
14 comments, including comments by petitioners. (AR 1483-1496.) Section VII of the parameters
15 and guidelines, concerning offsetting revenues and reimbursements, indicates that a claim by a
16 California Community College for reimbursement of costs incurred in implementing an IWM
17 plan must identify and deduct from the claim all reimbursement received from any source for the
18 mandate. Section VII further indicates that the revenues specified in Public Resources Code
19 section 42925 and Public Contract Code sections 12167 and 12167.1 must offset the costs
20 incurred by a California Community College for the recycling mandated by Public Resources
21 Code section 42920 et seq. These offsetting revenues include, pursuant to section 12167.1,
22 revenues up to \$2000 annually from the college's sale of recyclable materials which are
23 continuously appropriated for expenditure by the college to offset its recycling costs and
24 revenues in excess of \$2000 annually when appropriated by the Legislature.

25 In adopting section VII of the parameters and guidelines, respondent rejected the
26 position of petitioner Integrated Waste Management Board that the parameters and guidelines
27 should require California Community Colleges to identify in their reimbursement claims any
28 offsetting savings in reduced or avoided landfill disposal costs likely to result from their

1 diversion of solid waste from landfills pursuant to the mandates of Public Resources Code
2 section 42921. (AR 1194-1199.) This rejection was based on three grounds: that "cost savings"
3 in Public Resources Code section 42925 meant "revenues" received and directed "in accordance
4 with Sections 12167 and 12167.1 of the Public Contract Code"; reduced or avoided disposal
5 costs could not qualify as offsetting cost savings for the diversion costs because the disposal
6 costs had not previously been reimbursed by the state and were not included in the reimbursable
7 mandates of Public Resources Code section 42920 et seq.; and the redirection of cost savings to
8 IWM plan implementation and administration costs under section 42925 was "only to the extent
9 feasible" and not mandatory, thus allowing a California Community College to redirect cost
10 savings to other campus programs upon a finding that it was not feasible to use the savings for
11 IWM plan implementation. (AR 98-1199.) On these grounds, respondent omitted from section
12 VII of the parameters and guidelines any language about offsetting savings, including a
13 boilerplate provision stating "Any offsetting savings the claimant experiences in the same
14 program as a result of the same statutes or executive orders found to contain the mandate shall be
15 deducted from the costs claimed."

16 On October 26, 2006, respondent adopted a statewide cost estimate for the
17 reimbursement of costs incurred by California Community Colleges in implementing IWM plan
18 mandates pursuant to Public Resources Code section 42920 et seq. (AR 1641-1650.)

19 Respondent noted comments by petitioners that the lack of a requirement in the parameters and
20 guidelines for information on offsetting cost savings by the community colleges had resulted in
21 an inaccurate Statewide Cost Estimate. (AR 1647.) A request by petitioner Integrated Waste
22 Management Board to amend the parameters and guidelines to include additional information
23 about offsetting savings was distributed for public comment. (AR 1647-1648, 1859-873.)

24 ANALYSIS

25 Section 6 of article XIII B of the California Constitution, as implemented by
26 Government Code section 17514, provides for the reimbursement of actual increased costs
27 incurred by a local government or school district in implementing a new program or higher level
28 of service of an existing program mandated by statute, such as the IWM plan requirements of

1 Public Resources Code section 42920 et seq. (See *County of Fresno v. State of California* (199
2 51 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates*, (2000) 84 Cal.App.4th
3 1264, 1283-1284.) Reimbursement is not available under section 6 and section 17514 to the
4 extent that the local government or school district is able to provide the mandated program or
5 increased service level without actually incurring increased costs. (*Ibid.*) For example,
6 reimbursement is not available if the statute mandating the new program or increased service
7 level provides for offsetting savings which result in no net costs to the local government or
8 school district or includes revenues sufficient to fund the state mandate. (See Gov. Code §
9 17556, subd. (e). See also Cal. Code Regs., tit. 2, § 1183.1(a)(7), (a)(8) (requiring parameters
10 and guidelines for claiming reimbursable costs to identify offsetting revenues and savings
11 resulting from implementation of state-mandated program).) Because section VII of the IWM
12 plan parameters and guidelines adopted by respondent do not require a California Community
13 College to identify and deduct offsetting cost savings from its claimed reimbursable costs and
14 unduly limit the deduction of offsetting revenues, section VII contravenes the rule of section 6
15 and section 17514 that only actual increased costs of a state mandate are reimbursable.¹

16 Cost Savings

17 In complying with the mandated solid waste diversion requirements of Public
18 Resources Code section 42921, California Community Colleges are likely to experience cost
19 savings in the form of reduced or avoided costs of landfill disposal. The reduced or avoided
20 costs are a direct result and an integral part of the IWM plan mandates under Public Resources
21 Code section 42920 et seq.: as solid waste diversion occurs, landfill disposal of the solid waste
22 and associated landfill disposal costs are reduced or avoided. Indeed, diversion is defined in
23 terms of landfill disposal for purposes of the IWM plan mandates. (See Pub. Resources Code §§
24 40124 (“diversion” means activities which reduce or eliminate the amount of solid waste from
25 solid waste disposal for purposes of this division [i.e., division 30, including § 42920 et seq.]”),

26
27 ¹ There is no indication in the administrative record or in the legal authorities provided to the court that, as
28 respondent argues, a California Community College might not receive the full reimbursement of its actual increased
costs required by section 6 if its claims for reimbursement of IWM plan costs were offset by realized cost savings
and all revenues received from plan activities.

1 40192, subd. (b) (for purposes of Part 2 (commencing with Section 40900), 'disposal' means the
2 management of solid waste through landfill disposal or transformation at a permitted solid waste
3 facility.".)

4 Such reduction or avoidance of landfill fees and costs resulting from solid waste
5 diversion activities under § 42920 et seq. represent savings which must be offset against the costs
6 of the diversion activities to determine the reimbursable costs of IWM plan
7 implementation -- i.e., the actual increased costs of diversion -- under section 6 and section
8 17514. Similarly, under Public Resources Code section 42925, such offsetting savings must be
9 redirected to fund IWM plan implementation and administration costs in accordance with Public
10 Contract Code section 12167. The amount or value of the savings may be determined from the
11 calculations of annual solid waste disposal reduction or diversion which California Community
12 Colleges must annually report to petitioner Integrated Waste Management Board pursuant to
13 subdivision (b)(1) of Public Resources Code section 42926.

14 Respondent's three grounds for omitting offsetting savings from section VII of the
15 IWM plan parameters and guidelines are flawed. First, as explained above, the reduced or
16 avoided costs of landfill disposal are an integral part of the IWM diversion mandates under
17 Public Resources Code section 42920 et seq. Therefore, respondent's conclusion that reduced or
18 avoided disposal costs could not qualify as offsetting cost savings for diversion costs, based on
19 the erroneous premise that the reduced or avoided disposal costs were not part of the
20 reimbursable mandates of Public Resources Code section 42920 et seq., is wrong.

21 Second, respondent incorrectly interpreted the phrase "to the extent feasible" in
22 Public Resources Code section 42925 to mean that the redirection of cost savings resulting from
23 diversion activities by California Community Colleges to fund their IWM plan implementation
24 and administration costs was not mandatory and that the colleges could direct the cost savings to
25 other campus programs upon a finding of infeasibility. Respondent's interpretation is contrary to
26 the manifest legislative intent and purpose of section 42925, that cost savings be used to fund
27 IWM plan costs. In light of this legislative purpose, the phrase "to the extent feasible"
28 reasonably refers to situations where, as a practical matter, the reductions in landfill fees and

1 costs saved as a result of diversion activities by the colleges may not be available for redirection
2 For example, a college may not have budgeted or allocated funds for landfill fees and costs
3 which they did not expect to incur as a result of their diversion activities.

4 Third, respondent incorrectly interpreted "cost savings realized as a result of the state
5 agency integrated waste management plan" in Public Resources Code section 42925 to mean
6 "revenues received from [a recycling] plan and any other activity involving the collection and
7 sale of recyclable materials" under Public Contract Code sections 12167 and 12167.1. This
8 interpretation, based in turn on a strained interpretation of the phrase "in accordance with
9 Sections 12167 and 12167.1 of the Public Contract Code" at the end of section 42925, used the
10 substantive content of sections 12167 and 12167.1 to redefine "cost savings" in a manner directly
11 contradicting its straightforward description in section 42925. The consequences of this
12 redefinition are unreasonable: the interpretation effectively denies the existence of cost savings
13 resulting from IWM plan implementation and eliminates any possibility of redirecting such cost
14 savings to fund IWM plan implementation and administration costs, thereby defeating the
15 express legislative purpose of section 42925.

16 The reference to Public Contract Code sections 12167 and 12167.1 in Public
17 Resources Code section 42925 may be reasonably interpreted in a manner that preserves section
18 42925's straightforward description of "cost savings" and legislative purpose. The reference to
19 sections 12167 and 12167.1 in section 42925 reflects an effort by the Legislature to coordinate
20 the procedures of two programs involving recycling activities exclusively or primarily by state
21 agencies, the State Assistance for Recycling Markets Act set forth at Public Contracts Code
22 section 12150 et seq. and the IWM provisions of Public Resources Code section 42920 et seq.
23 (See Senate Committee on Environmental Quality, Bill Analysis of A.B. 75, 1999-2000 Reg.
24 Sess., as amended April 27, 1999, p. 6 (need to ensure consistency and avoid conflicts between
25 A.B. 75 and Public Contract Code provisions relating to state agency reporting on recycling,
26 depositing revenues from recycled materials etc.)) By requiring the redirection of cost savings
27 from state agency IWM plans to fund plan implementation and administration costs "in
28 accordance with Sections 12167 and 12167.1 of the Public Contract Code," section 42925

1 assures that cost savings realized from state agencies' IWM plans are handled in a manner
2 consistent with the handling of revenues received from state agencies' recycling plans under the
3 State Assistance for Recycling Markets Act. Thus, in accordance with section 12167, state
4 agencies, along with California Community Colleges which are defined as state agencies for
5 purposes of IWM plan requirements in Public Resources Code section 42920 et seq. (Pub.
6 Resources Code §§ 40196, 40148), must deposit cost savings resulting from IWM plans in the
7 Integrated Waste Management Account in the Integrated Waste Management Fund; the funds
8 deposited in the Integrated Waste Management Account, upon appropriation by the Legislature,
9 may be expended by the Integrated Waste Management Board for the purpose of offsetting IWM
10 plan costs. In accordance with section 12167.1 and notwithstanding section 12167, cost savings
11 from the IWM plans of the agencies and colleges that do not exceed \$2000 annually are
12 continuously appropriated for expenditure by the agencies and colleges for the purpose of
13 offsetting IWM plan implementation and administration costs; cost savings resulting from IWM
14 plans in excess of \$2000 annually are available for such expenditure by the agencies and colleges
15 when appropriated by the Legislature.

16 Accordingly, respondent had no proper justification for omitting offsetting cost
17 savings from the parameters and guidelines for claiming reimbursable costs of IWM plan
18 implementation under Public Resources Code section 42920 et seq. The court will order the
19 issuance of a writ of mandate requiring respondent to correct this omission through an
20 amendment of the parameters and guidelines.

21 Revenues

22 As indicated previously in this ruling, section VII of the parameters and guidelines
23 for claiming reimbursement of IWM plan costs provides for offsetting revenues that are governed
24 by Public Contract Code sections 12167 and 12167.1. Revenues derived from the sale of
25 recyclable materials by a California Community College are deposited in the Integrated Waste
26 Management Account. Revenues that do not exceed \$2000 annually are continuously
27 appropriated for expenditure by the college for the purpose of offsetting recycling program costs
28 upon approval by the Integrated Waste Management Board, and revenues exceeding \$2000

1 annually are available for such expenditure by the college when appropriated by the Legislature
2 To the extent so approved by the board or appropriated by the Legislature, these revenue amounts
3 offset or reduce the reimbursable costs incurred by the college in implementing an IWM plan
4 under Public Resources Code section 42920 et seq.

5 Although Public Contract Code sections 12167 and 12167.1 apply to California
6 Community Colleges for the purpose of offsetting savings pursuant to the terms of Public
7 Resources Code section 42925, sections 12167 and 12167.1 do not apply to the colleges for the
8 purpose of offsetting revenues or, indeed, any other purpose. Sections 12167 and 12167.1 apply
9 exclusively to state agencies and institutions; the colleges, which are school districts rather than
10 state agencies, are not specially defined as state agencies for purposes of the State Assistance for
11 Recycling Markets Act of which sections 12167 and 12167.1 are a part. Therefore, sections
12 12167 and 12167.1 do not properly govern the revenues generated by the colleges' recycling
13 activities pursuant to their IWM plans. The limits and conditions placed by sections 12167 and
14 12167.1 on the expenditure of recycling revenues for the purpose of offsetting recycling program
15 costs are simply inapplicable to the revenues generated by the colleges' recycling activities.

16 The provisions of Public Resources Code section 42920 et seq. do not address the
17 use of revenues generated by recycling activities of California Community Colleges under IWM
18 plans to offset reimbursable plan costs. Thus, use of the revenues to offset reimbursable IWM
19 plan costs is governed by the general principles of state mandates, that only the actual increased
20 costs of a state-mandated program are reimbursable and, to that end, revenues provided for by the
21 state-mandated program must be deducted from program costs. (See Cal. Const., art. XIII B, § 6;
22 Gov. Code §§ 17514, 17556, subd. (e); *County of Fresno v. State of California* (1991) 51 Cal.3d
23 482, 487; *County of Sonoma v. Commission on State Mandates*, (2000) 84 Cal.App.4th 1264,
24 1284.) These principles are reflected in respondent's regulation which requires, without
25 limitation or exception, the identification of offsetting revenues in the parameters and guidelines
26 for reimbursable cost claims. (Cal. Code Regs., tit. 2, § 1183.1(a)(7).)

27 In sum, respondent erred in adopting parameters and guidelines which, pursuant to
28 Public Contract Code sections 12167 and 12167.1, limited and conditioned the use of revenues

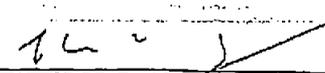
1 generated by recycling activities of California Community Colleges under IWM plans to offset
2 the colleges' reimbursable plan costs. Because the use of revenues to offset the reimbursable
3 costs of IWM plan are properly governed by section 6 principles without the limitations and
4 conditions imposed by sections 12167 and 12167.1, the court will order the issuance of a writ of
5 mandate requiring respondent to correct its error through an amendment of the parameters and
6 guidelines.

7 RELIEF

8 The petition is granted. Counsel for petitioners is directed to prepare a proposed
9 judgment and proposed writ of mandate consistent with this ruling, serve it on counsel for
10 respondent for approval as to form, and then submit it to the court pursuant to rule 3.1312 of the
11 California Rules of Court.

12 Dated: May 29, 2008



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LLOYD G. CONNELLY
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D Schaber Courthouse
720 Ninth STREET
Sacramento, CA 95814-1311

SHORT TITLE: ST OF CA DEPT OF FINANCE. ETAL VS. COMMISSION ON ST MANDATES

CLERK'S CERTIFICATE OF SERVICE BY MAIL

**CASE NUMBER:
07CS00355**

I certify that I am not a party to this cause. I certify that a true copy of the attached was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at Sacramento, California, on 05/30/2008.

Clerk of the Court, by: /s/ C Bee Gould *Chubert*, Deputy

Leslie R Lopez
P.O.Box 944255
Sacramento, CA 94244

Camille Shelton
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Sacramento, CA 95814

Jack C Woodside
P.O.Box 944255
Sacramento, CA 94244

Lisa Rose
Santa Monica Community College Dist.
1900 Pico Blvd
Santa Monica

Eric Faller
980 9th Street # 300
Commission on State Mandates
Sacramento, CA 95814

Roberta Mason
Lake Tahoe Community College Dist.
One College Dr.
South Lake Tahoe, CA 96150

Additional names and address attached.

1 EDMUND G. BROWN JR.
 Attorney General of the State of California
 2 CHRISTOPHER E. KRUEGER
 Senior Assistant Attorney General
 3 DOUGLAS J. WOODS
 Supervising Deputy Attorney General
 4 JACK WOODSIDE, State Bar No. 189748
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 E-mail: Jack.Woodside@doj.ca.gov
 8 Attorneys for Petitioners Department of Finance and
 California Integrated Waste Management Board
 9

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF SACRAMENTO

13 STATE OF CALIFORNIA DEPARTMENT OF
 FINANCE, CALIFORNIA INTEGRATED
 14 WASTE MANAGEMENT BOARD,

15 Petitioner,

16 v.

17 COMMISSION ON STATE MANDATES,

18 Respondent,

19 SANTA MONICA COMMUNITY COLLEGE
 DISTRICT, LAKE TAHOE COMMUNITY
 20 COLLEGE DISTRICT,

21 Real Parties in Interest.

Case No: 07CS00355

NOTICE OF ENTRY OF
 JUDGMENT GRANTING
 PETITION FOR WRIT OF
 ADMINISTRATIVE
 MANDAMUS

Judge: The Honorable
 Lloyd G. Connelly
 Dept: 33

23 To Respondent Commission on State Mandates:

24 Notice is hereby given that on June 30, 2008, judgment was entered in the above-
 25 entitled proceeding, granting petitioners Department of Finance and California Integrated Waste
 26 Management Board a peremptory writ of mandamus directing respondent Commission on State
 27 Mandates to amend the parameters and guidelines in Test Claim No. 00-TC-07.

28 ///

1 A true and correct copy of the Judgment Granting Petition for Writ of Administrative
2 Mandamus is attached hereto as Exhibit A.

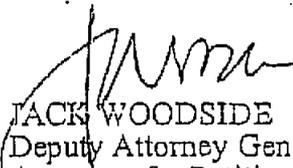
3 Dated: July 8, 2008

4 Respectfully submitted,

5 EDMUND G. BROWN JR.
6 Attorney General of the State of California

7 CHRISTOPHER E. KRUEGER
8 Senior Assistant Attorney General

9 DOUGLAS J. WOODS
10 Supervising Deputy Attorney General

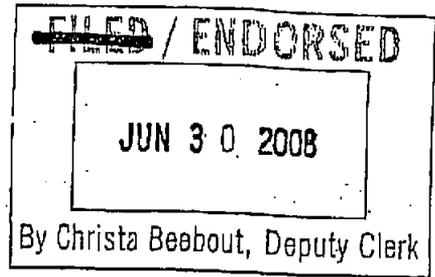
11 
12 JACK WOODSIDE
13 Deputy Attorney General
14 Attorneys for Petitioners Department of
15 Finance and the California Integrated Waste
16 Management Board
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EXHIBIT A

1 EDMUND G. BROWN JR.
Attorney General of the State of California
2 CHRISTOPHER E. KRUEGER
Senior Assistant Attorney General
3 DOUGLAS J. WOODS
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7 Fax: (916) 324-8835
E-mail: Jack.Woodside@doj.ca.gov
8 Attorneys for Petitioners Department of Finance and
California Integrated Waste Management Board
9



10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SACRAMENTO
12

13 STATE OF CALIFORNIA DEPARTMENT OF
FINANCE, CALIFORNIA INTEGRATED
14 WASTE MANAGEMENT BOARD,

15 Petitioner,

16 v.

17 COMMISSION ON STATE MANDATES,

18 Respondent,

19 SANTA MONICA COMMUNITY COLLEGE
DISTRICT, LAKE TAHOE COMMUNITY
20 COLLEGE DISTRICT,

21 Real Parties in Interest.
22

Case No: 07CS00355

~~PROPOSED~~ JUDGMENT
GRANTING PETITION FOR
WRIT OF ADMINISTRATIVE
MANDAMUS

Judge: The Honorable
Lloyd G. Connelly
Dept: 33

23 This matter came before this Court on February 29, 2008, for hearing in Department 33
24 of the above court, the Honorable Lloyd G. Connelly presiding. Eric Feller appeared on behalf of
25 Respondent Commission on State Mandates, and Jack C. Woodside appeared on behalf of
26 Petitioners California Department of Finance and California Integrated Waste Management
27 Board.
28

///

1 The Administrative Record having been admitted into evidence and considered by the
2 Court, and the Court having read and considered the pleadings and files, argument having been
3 presented and the Court having issued its Ruling on Submitted Matter on May 29, 2008;

4 IT IS HEREBY ORDERED that:

5 1. The Petition for Writ of Administrative Mandamus is GRANTED;

6 2. A Peremptory Writ of Mandate shall issue from this Court remanding the matter
7 to Respondent Commission and commanding Respondent Commission to amend the parameters
8 and guidelines in Test Claim No. 00-TC-07 to require community college districts claiming
9 reimbursable costs of an integrated waste management plan under Public Resources Code section
10 42920, et seq. to identify and offset from their claims, consistent with the directions for revenue
11 in Public Contract Code sections 12167 and 12167.1, cost savings realized as a result of
12 implementing their plans; and

13 3. The Writ shall further command Respondent Commission to amend the
14 parameters and guidelines in Test Claim No. 00-TC-07 to require community college districts
15 claiming reimbursable costs of an integrated waste management plan under Public Resources
16 Code section 42920, et seq. to identify and offset from their claims all of the revenue generated
17 as a result of implementing their plans, without regard to the limitations or conditions described
18 in sections 12167 and 12167.1 of the Public Contract Code.

19
20 Dated: JUN 30 2008

LLOYD G. CONNELLY

The Honorable Lloyd G. Connelly
Judge of the Sacramento County Superior Court

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: State of California Dept. of Finance, et al. v. Commission on State Mandates
Sacramento County Superior Court No.: 07CS00355

I declare:

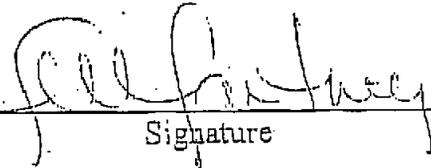
I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On June 18, 2008, I served the attached [PROPOSED] PEREMPTORY WRIT OF MANDATE; by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Eric Feller
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814
Respondent *Commission on State Mandates*

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 18, 2008, at Sacramento, California.

Christine A. McCartney
Declarant


Signature

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: State of California Dept. of Finance, et al. v. Commission on State Mandates
Sacramento County Superior Court No.: 07CS00355

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On July 8, 2008, I served the attached **NOTICE OF ENTRY OF JUDGMENT GRANTING PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS**; by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255; Sacramento, CA 94244-2550, addressed as follows:

Eric Feller
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814
Respondent *Commission on State Mandates*

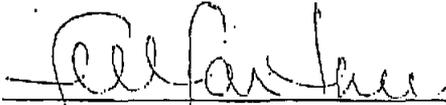
Lisa Rose
Santa Monica Community College District
Clerk of the Board of Trustees
1900 Pico Boulevard
Santa Monica, CA 90404
Real Party in Interest

Roberta Mason
Lake Tahoe Community College District
Clerk of the Board of Trustees
One College Drive
South Lake Tahoe, CA 96150
Real Party in Interest

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 8, 2008, at Sacramento, California.

Christine A. McCartney

Declarant



Signature

ORIGINAL

1 EDMUND G. BROWN JR.
Attorney General of the State of California
2 CHRISTOPHER E. KRUEGER
Senior Assistant Attorney General
3 DOUGLAS J. WOODS
Supervising Deputy Attorney General
4 JACK WOODSIDE, State Bar No. 189748
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8 Attorneys for Petitioners Department of Finance and
California Integrated Waste Management Board



9
10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SACRAMENTO

12
13 STATE OF CALIFORNIA DEPARTMENT OF
FINANCE, CALIFORNIA INTEGRATED
14 WASTE MANAGEMENT BOARD,

Case No: 07CS00355

~~PROPOSED~~ PEREMPTORY
WRIT OF MANDATE

15 Petitioner,

16 v.

17 COMMISSION ON STATE MANDATES,

18 Respondent,

Judge: The Honorable
Lloyd G. Connelly
Dept: 33

19 SANTA MONICA COMMUNITY COLLEGE
DISTRICT, LAKE TAHOE COMMUNITY
20 COLLEGE DISTRICT,

21 Real Parties in Interest.

22
23 TO RESPONDENT COMMISSION ON STATE MANDATES:

24 WHEREAS, Judgment having been entered in this action, ordering that a Peremptory
25 Writ of Mandate be issued from this court, YOU ARE COMMANDED TO:

- 26 1. Amend the parameters and guidelines in Test Claim No. 00-TC-07 to require
27 community college districts claiming reimbursable costs of an integrated waste management
28 plan under Public Resources Code section 42920, et seq. to identify and offset from their claims,

1 consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1,
2 cost savings realized as a result of implementing their plans; and

3 2. Amend the parameters and guidelines in Test Claim No. 00-TC-07 to require
4 community college districts claiming reimbursable costs of an integrated waste management plan
5 under Public Resources Code section 42920, et seq. to identify and offset from their claims all of
6 the revenue generated as a result of implementing their plans, without regard to the limitations or
7 conditions described in sections 12167 and 12167.1 of the Public Contract Code.

8 3. File a Return to the writ within 120 days of service of the writ.

9
10 Dated: JUN 30 2008



11 *C. Beebout* C. BEEBOUT
12 Clerk of the Superior Court

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21 SA2007100793

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 600
 SACRAMENTO, CA 95814
 (916) 923-3662
 (916) 445-0278
 E-mail: osmirfo@osm.ca.gov



August 5, 2008

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

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

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

Dear Mr. Petersen:

The draft staff analysis and proposed parameters and guidelines amendment as directed by the court in *State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al* are complete and enclosed for your review.

Written Comments

Any party or interested party may file written comments on the draft staff analysis and proposed parameters and guidelines amendment by **August 26, 2008**. The Commission's regulations require comments filed with the Commission to be simultaneously served on the parties and interested parties and to be accompanied by a proof of service. To request an extension of time to file comments, please refer to section 1183.01, subdivision (c), of the Commission's regulations.

Commission Hearing

The proposed parameters and guidelines are tentatively set for hearing on Friday, **September 26, 2008** at 9:30 a.m., State Capitol, Room 447, Sacramento, California. This matter is proposed for the consent calendar. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear.

If you have any questions, please contact Nancy Patton at (916) 323-8217.

Sincerely,

PAULA HIGASHI
 Executive Director
 Enclosures

ITEM _____

**DRAFT STAFF ANALYSIS
PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES**

Public Resources Code Sections 40148, 40196.3, 42920-42928

Public Contract Code Sections 12167 and 12167.1

Statutes 1999, Chapter 764 (A.B. 75)

Statutes 1992, Chapter 1116 (A.B. 3521)

State Agency Model Integrated Waste Management Plan (February 2000)

Integrated Waste Management

00-TC-07

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

EXECUTIVE SUMMARY

*State of California, Department of Finance, California Integrated Waste Management Board
v. Commission on State Mandates, et al.*

The Department of Finance and the Integrated Waste Management Board filed a petition for writ of mandate in March 2007, asking the court to set aside the Commission's decision granting the test claim and to require the Commission to issue a new Statement of Decision and parameters and guidelines that give full consideration to the community colleges' cost savings (e.g. avoided landfill disposal fees) and revenues (from recyclables) by complying with the test claim statutes. Petitioners' position was that the Commission had not properly accounted for all the offsetting cost savings from avoided disposal costs, or offsetting revenues from the sale of recyclable materials, in the Statement of Decision or parameters and guidelines.

The Judgment and a Writ of Mandate were issued on June 30, 2008, ordering the Commission to:

1. amend the parameters and guidelines in Test Claim No. 00-TC-07 to require community college districts claiming reimbursable costs of an integrated waste management plan under Public Resources Code section 42920, et seq. to identify and offset from their claims, consistent with the directions for revenue in Public Contract code sections 12167 and 12167.1, cost savings realized as a result of implementing their plans; and
2. amend the parameters and guidelines in Test Claim No. 00-TC-07 to require community college districts claiming reimbursable costs of an integrated waste management plan under Public Resources Code section 42920, et seq. to identify and offset from their claims all of the revenue generated as a result of implementing their plans, without regard to the limitations or conditions described in sections 12167 and 12167.1 of the Public Contract Code.

Discussion

Staff reviewed the Superior Court's Writ and Judgment and made the following changes to comply with the court's order.

I. Summary of the Mandate

Staff added a paragraph to describe the Judgment and Writ.

III. Period of Reimbursement

Staff deleted a reference to filing "Estimated Reimbursement Claims" consistent with current law.

IV. Reimbursable Activities, F. Annual Recycled Material Reports

Staff deleted a reference to "Section VII. regarding offsetting revenues from recyclable materials" on page 10, section IV. F. The placement of this reference under one activity is inconsistent with the Writ which requires community college districts claiming reimbursable costs of an integrated waste management plan under Public Resources Code section 42920 et seq. to identify and offset from their claims all of the revenue generated as a result of implementing their plans...."

VII. Offsetting Revenues and Reimbursements

Staff corrected this section to strike references to Public Contract Code sections 12167 and 12167.5 consistent with the Writ.

VIII. Offsetting Cost Savings

Staff added a new section VIII to track the language of the Writ, including references to Public Contract Code sections 12167 and 12167.1.

IX. State Controller's Claiming Instructions

Staff added language to describe the duty of the State Controller and the rights of claimants when revised claiming instructions are issued after adoption of amended parameters and guidelines.

Staff Recommendation

Staff recommends that the Commission adopt the proposed amendments to the parameters and guidelines, beginning on page 3.

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

PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES

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

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

State Agency Model Integrated Waste Management Plan (February 2000)

Integrated Waste Management
00-TC-07

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

I. SUMMARY OF THE MANDATE

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

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

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

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

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

- o **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.
- o **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.

State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.

The Department of Finance and the Integrated Waste Management Board filed a petition for writ of mandate in March 2007, asking the court to set aside the Commission's decision granting the test claim and to require the Commission to issue a new Statement of Decision and parameters and guidelines that give full consideration to the community colleges' cost savings (e.g. avoided landfill disposal fees) and revenues (from recyclables) by complying with the test claim statutes. Petitioners' position was that the Commission had not properly accounted for all the offsetting cost savings from avoided disposal costs, or offsetting revenues from the sale of recyclable materials, in the Statement of Decision or parameters and guidelines. The Judgment and a Writ of Mandate were issued on June 30, 2008, ordering the Commission to:

1. amend the parameters and guidelines in Test Claim No. 00-TC-07 to require community college districts claiming reimbursable costs of an integrated waste management plan under Public Resources Code section 42920, et seq. to identify and offset from their claims, consistent with the directions for revenue in Public Contract code sections 12167 and 12167.1, cost savings realized as a result of implementing their plans; and

2. amend the parameters and guidelines in Test Claim No. 00-TC-07 to require community college districts claiming reimbursable costs of an integrated waste management plan under Public Resources Code section 42920, et seq. to identify and offset from their claims all of the revenue generated as a result of implementing their plans, without regard to the limitations or conditions described in sections 12167 and 12167.1 of the Public Contract Code.

II. ELIGIBLE CLAIMANTS

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

III. PERIOD OF REIMBURSEMENT

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

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

Actual costs for one fiscal year should be included in each claim. ~~Estimated costs for the subsequent year may be included on the same claim, if applicable.~~ Pursuant to Government Code section 17561, subdivision (d), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the claiming instructions by the State Controller.

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

IV. REIMBURSABLE ACTIVITIES

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

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

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

For each eligible claimant, the following activities are reimbursable:

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

1. Develop the necessary district policies and procedures for the implementation of the integrated waste management plan.
2. Train district staff on the requirements and implementation of the integrated waste management plan (one-time per employee). Training is limited to the staff working directly on the plan.

B. Ongoing Activities (*Reimbursable starting January 1, 2000*)

1. Complete and submit to the Board the following as part of the State Agency Model Integrated Waste Management Plan (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000.):
 - a. state agency or large state facility information form;
 - b. state agency list of facilities;
 - c. state agency waste reduction and recycling program worksheets that describe program activities, promotional programs, and procurement activities, and other questionnaires; and
 - d. state agency integrated waste management plan questions.

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

2. Respond to any Board reporting requirements during the approval process. (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000.)
3. Consult with the Board to revise the model plan, if necessary.¹ (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000.)
4. Designate one solid waste reduction and recycling coordinator ("coordinator") for each college in the district to perform new duties imposed by chapter 18.5 (Pub. Resources Code, §§ 42920-42928). The coordinator shall implement the integrated waste management plan. The coordinator shall act as a liaison to other state agencies (as defined by section 40196.3) and coordinators. (Pub. Resources Code, § 42920, subd. (c).)
5. Divert at least 25 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2002, and at least 50 percent of all solid waste from landfill

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

disposal or transformation facilities by January 1, 2004, through source reduction, recycling, and composting activities. Maintain the required level of reduction, as approved by the Board. (Pub. Resources Code, §§ 42921 & 42922, subd. (i).)

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

1. Seek either an alternative requirement or time extension if a community college is unable to comply with the January 1, 2002 deadline to divert 25 percent of its solid waste, by doing the following: (Pub. Resources Code, §§ 42927 & 42923 subds. (a) & (c).)
 - a. Notify the Board in writing, detailing the reasons for its inability to comply.
 - b. Request of the Board an alternative to the January 1, 2002 deadline.
 - c. Provide evidence to the Board that the college is making a good faith effort to implement the source reduction, recycling, and composting programs identified in its integrated waste management plan.
 - d. Provide information that describes the relevant circumstances that contributed to the request for extension, such as lack of markets for recycled materials, local efforts to implement source reduction, recycling and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed of by the community college.
 - e. Submit a plan of correction that demonstrates that the college will meet the requirements of Section 42921 [the 25 and 50 percent diversion requirements] before the time extension expires, including the source reduction, recycling, or composting steps the community college will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, the existing programs that it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.
2. Seek either an alternative requirement or time extension if a community college is unable to comply with the January 1, 2004 deadline to divert 50 percent of its solid waste, by doing the following: (Pub. Resources Code, §§ 42927 & 42922, subds. (a) & (b).)
 - a. Notify the Board in writing, detailing the reasons for its inability to comply.
 - b. Request of the Board an alternative to the 50-percent requirement.
 - c. Participate in a public hearing on its alternative requirement.
 - d. Provide the Board with information as to:
 - (i) the community college's good faith efforts to 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;
 - (ii) the community college's inability to meet the 50 percent diversion requirement despite implementing the measures in its plan;

- (iii) how the alternative source reduction, recycling, and composting requirement represents the greatest diversion amount that the community college may reasonably and feasibly achieve; and,
- (iv) the circumstances that support the request for an alternative requirement, such as waste disposal patterns and the types of waste disposed by the community college.

D. Accounting System (*Reimbursable starting January 1, 2000*)

Developing, implementing, and maintaining an accounting system to enter and track the college's source reduction, recycling and composting activities, the cost of those activities, the proceeds from the sale of any recycled materials, and such other accounting systems which will allow it to make its annual reports to the state and determine waste reduction. Note: only the pro-rata portion of the costs incurred to implement the reimbursable activities can be claimed.

E. Annual Report (*Reimbursable starting January 1, 2000*)

Annually prepare and 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 must encompass the previous calendar year and shall contain, at a minimum, the following as outlined in section 42926, subdivision (b): (Pub. Resources Code, §§ 42926, subd. (a) & 42922, subd. (i).)

1. calculations of annual disposal reduction;
2. information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors;
3. a summary of progress made in implementing the integrated waste management plan;
4. the extent to which the 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.

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

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

V. **CLAIM PREPARATION AND SUBMISSION**

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

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

4. Fixed Assets and Equipment

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

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules

of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

B. Indirect Cost Rates

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

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

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

VI. RECORD RETENTION

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

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Reimbursement for this mandate from any source, including but not limited to, services fees collected, federal funds, and other state funds allocated to any service provided under this program, shall be identified and deducted offset from this claim. Offsetting revenue shall include all revenues generated from implementing the Integrated Waste Management Plan. the revenues cited in Public Resources Code section 42925 and Public Contract Code sections 12167 and 12167.1.

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

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

VIII. OFFSETTING COST SAVINGS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed.

Reduced or avoided costs realized from implementation of the community college districts' Integrated Waste Management plans shall be identified and offset from this claim as cost savings, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1. Subject to the approval of the California Integrated Waste Management Board, cost savings by a community college that do not exceed two thousand dollars (\$2,000) annually are continuously appropriated for expenditure by the community college for the purpose of offsetting Integrated Waste Management program costs. Cost savings exceeding two thousand dollars (\$2,000) annually may be available for expenditure by the community college only when appropriated by the Legislature. To the extent so approved or appropriated and applied to the college, these amounts shall be identified and offset from the costs claimed for implementing the Integrated Waste Management Plan.

VIII. IX. STATE CONTROLLER'S REVISED CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission. Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the

Commissioner.

The Controller shall, within 60 days after receiving amended parameters and guidelines prepare and issue revised claiming instructions for mandates that require state reimbursement after any decision or order of the commission pursuant to section 17559. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission. Pursuant to Government Code section 17561, subdivision (d)(2), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission. In preparing revised claiming instructions, the Controller may request the assistance of other state agencies. (Gov. Code, § 17558, subdivision (c).)

If revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

IX. REMEDIES BEFORE THE COMMISSION

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

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

XI. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

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

Commission on State Mandates

Original List Date: 3/20/2001
Last Updated: 4/26/2007
Last Print Date: 08/05/2008
Claim Number: 00-TC-07
Issue: Integrated Waste Management

Mailing Information: Draft Staff Analysis.

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

EXHIBIT D

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August 26, 2008

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Commission on State Mandates
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Re: **Draft Staff Analysis and Proposed Parameters and Guidelines
Amendment**

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Integrated Waste Management Board 00-TC-07
Public Resources Code Sections 40148, 40196.3, 42920-42928
Public Contract Code Sections 12167 and 12167.1
Statutes 1999, Chapter 764; Statutes 1992, Chapter 1116
State Agency Model Integrated Waste Management Plan (February 2000)
Santa Monica and South Lake Tahoe Community College Districts, Co-
Claimants

CHERYL PEACE
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(916) 341-6010

Dear Ms. Higashi:

GARY PETERSEN
GPETERSEN@CIWMB.CA.GOV
(916) 341-6035

This letter is intended to provide comments on, and requests changes to, the Draft Staff Analysis and Proposed Parameters and Guidelines Amendment.

Initially, I would like to express my appreciation for your quick response to the Court's decision regarding this matter. We are encouraged that these claims can be moved forward in an appropriate manner without further delay.

However, I would like to request some changes in the Offsetting Cost Savings section of the proposed amendment. The specific changes are contained in the enclosure, which I will briefly explain here:

As you know, the California Integrated Waste Management Board (CIWMB) has consistently maintained that the Parameters and Guidelines for these claims needed to contain additional detail describing how to ascertain offsetting cost savings. We maintained that the mere mention that offsetting cost savings should be included, without further guidance, would result in very little or no cost savings being offset. That request was not granted, and in fact, the claims that



August 26, 2008

Paula Higashi

Page 2

were submitted did not approach any sort of adequate offsetting of cost savings (see CIWMB comments on the Final Statewide Cost Estimates). Commission staff's analysis for the Statewide Cost Estimate also acknowledged that the claims appeared to be inaccurate, but noted that they could not adjust them due to a lack of information provided. In order to avoid a repetition of this same problem under these amended Parameters and Guidelines, the CIWMB would like to see two changes to the Offsetting Cost Savings Section.

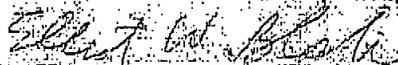
First, we believe that claimants should be required to provide offsetting savings information whether or not that amount exceeds the \$2,000 continuous appropriation. We understand that these amounts would not offset the costs until the appropriation were to occur, but if the information is not provided in the first instance, the Legislature will not be in a position to make the additional appropriation. We have therefore offered language in the enclosure that we believe will prevent this "chicken and egg" problem from occurring.

Second, we believe that additional guidance should be provided to assist claimants in determining what would be considered a cost savings that should be offset. We recognize that this level of detail may be unusual for Commission Parameters and Guidelines, but we believe that this claim, and the complexity involved in it, is unusual for the Commission. Therefore, we believe this circumstance deserves some additional detail and guidance to ensure a level of consistency among claims and to allow for adequate review of those claims. This change is consistent with the Commission's statutes which provide that the "reasonable reimbursement methodology" used should identify the costs to implement the mandate in a cost-efficient manner." (Government Code section 17518.5 [emphasis added]).

We believe these changes will be beneficial to all parties involved. As always, we remain ready to provide additional information from our databases that may be helpful in reviewing claims at your request. Thank you for your consideration.

I certify, under penalty of perjury, that I am an authorized representative of the California Integrated Waste Management Board and that the statements made in this document are true and correct to the best of my personal knowledge and belief.

Executed this 26th day of August, 2008 in Sacramento, California, by:



Elliot Block

Chief Counsel

California Integrated Waste Management Board

Enclosure

Attachment - Proposed to Revisions Parameters and Guidelines
Amendments (8/26/08)
[Strikeout/double underline from Commission Draft]

VIII. OFFSETTING COST SAVINGS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed.

Reduced or avoided costs realized from implementation of the community college districts' Integrated Waste Management plans shall be identified and offset from this claim as cost savings, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1. Subject to the approval of the California Integrated Waste Management Board, cost savings by a community college that do not exceed two thousand dollars (\$2,000) annually are continuously appropriated for expenditure by the community college for the purpose of offsetting Integrated Waste Management program costs. Cost savings exceeding two thousand dollars (\$2,000) annually may be available for expenditure by the community college only when appropriated by the Legislature. To the extent so approved or appropriated and applied to the college, these The amounts up to \$2,000 shall be identified and offset from the costs claimed for implementing the Integrated Waste Management Plan. The amounts in excess of \$2,000 shall also be identified to allow for potential offset from the costs claimed for implementing the Integrated Waste Management Plan upon appropriation by the Legislature.

Claimants shall analyze the following items in determining what to include in their claims:

- Staffing:
Through the implementation of the program being claimed a reduction in staff hours (PYs) can be achieved. In order to determine any cost increases or decreases the claimant will need to evaluate the total staff required to implement the program being claimed prior to AB 75 and the staff needed to implement and operate the current program. All values identified must be calculated based on a conversion to the dollar values for the particular year being claimed.
- Overhead:
Costs incurred for overhead, such as benefits, for the PYs identified under "staffing."
- Materials:
Through the implementation of the program being claimed a reduction or elimination of supplies and materials may have been achieved. This could include, and is not limited to: White office paper, mixed office paper, cardboard, printed catalogs, postage, envelopes, and other office supplies.

- Storage:
Through the implementation of the program being claimed a reduction or elimination of storage of supplies and materials may have been achieved. The elimination of storage is a cost savings that must be allocated to offset any costs associated to the implementation of the identified program(s) being claimed by the claimant.
- Transportation costs:
The transportation of supplies and waste materials has a cost. The claimant should determine how many trips staff was making to purchase, pick-up and deliver supplies needed for the program being claimed and the current level of the activity.

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

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

PROOF OF SERVICE

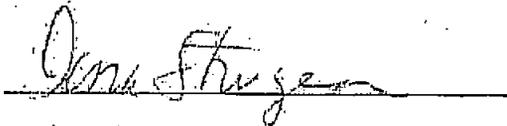
Draft Staff Analysis and Proposed Parameters and Guidelines Amendment
Integrated Waste Management Board 00-TC-07

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within-entitled cause; my business address is 1001 I Street, 23rd floor, Sacramento, California, 95814.

On August 26, 2008, I served the attached Comments on the Draft Staff Analysis and Proposed Parameters and Guidelines Amendment to the Commission on State Mandates and by placing a true copy thereof to the Commission and to all of those listed on the attached mailing list enclosed in a sealed envelope with postage thereon fully prepaid in the U. S. Mail at Sacramento, California, in the normal pickup location at 1001 I Street, 23rd floor, for Interagency Mail Service, addressed as follows:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 26, 2008 at Sacramento, California.



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DEC 30 2008

COMMISSION ON STATE MANDATES

December 26, 2008

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95864

Re: **Draft Staff Analysis, Comment Period and Hearing Date**
Request to Amend Parameters and Guidelines
Integrated Waste Management Board 05-PGA-16
Public Resources Code Sections 40148, 40196.3, 42920-42928
Public Contract Code Sections 12167 and 12167.1
Statutes 1999, Chapter 764; Statutes 1992, Chapter 1116
State Agency Model Integrated Waste Management Plan (February 2000)

Dear Ms. Higashi:

This letter is intended to provide comments on the Draft Staff Analysis for our request to amend Parameters and Guidelines.

As you know, our request to amend the Parameters and Guidelines was filed prior to the court ruling discussed in the analysis that resulted in the Parameters and Guidelines being amended a few months ago. In addition to the amendments that the Commission made as a direct result of that court ruling, we argued that additional changes needed to be made to the Parameters and Guidelines to ensure that correct and adequate claims were filed. The Commission rejected our arguments and did not make those additional changes. The Board still believes the Parameters and Guidelines should be further amended in the manner that we previously opined. However, since the Commission has already rejected our arguments, rather than reiterate them, we are simply incorporating by reference our earlier comment letter, dated August 26, 2008, and asking that they be included in the record, so that the record will reflect our arguments in the matter. (In order to save paper, I have not included another copy of that letter, which is already in your files, in this letter— particularly since I must serve a copy of this letter on numerous interested parties who have also already received a copy of that earlier letter. However, if you do need me to also provide a copy of the earlier letter, please let me know and I will do so).

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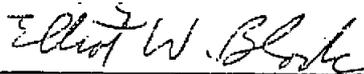
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In closing, I just want to note that the Board's position is that the Commission views its authority too narrowly in this matter and the result will be that it will receive a number of inaccurate claims that it and other state agencies will have to spend unnecessary time and resources reviewing. Furthermore, if those claims are not completely reviewed and/or audited, the State may end up paying for claims that it should not.

I certify, under penalty of perjury, that I am an authorized representative of the California Integrated Waste Management Board and that the statements made in this document are true and correct to the best of my personal knowledge and belief.

Executed this 26th day of December, 2008 in Sacramento, California, by:



Elliot Block
Chief Counsel
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PROOF OF SERVICE

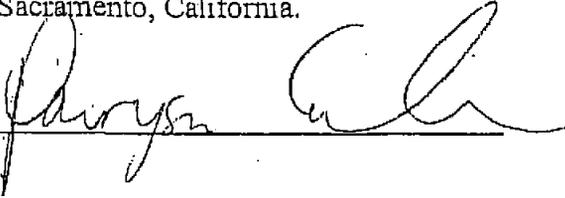
Draft Staff Analysis and Proposed Parameters and Guidelines Amendment
Integrated Waste Management Board 05-PGA-16

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