Hearing Date: March 23, 2012
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ITEM 4

PROPOSED PARAMETERS AND GUIDELINES
FINAL STAFF ANALYSIS

Education Code Sections 81820, 81821(a), (b), (e), and (f)

Statutes 1980, Chapter 910, Statutes 1981, Chapter 470,
Statutes 1981, Chapter 891, Statutes 1995, Chapter 758

Community College Construction
02-TC-47

Santa Monica Community College District, Claimant

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Exhibit A

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 70902(b)(1), 81663, 81800, 81805, 81807, 81808, 81820, 81821, 81822, 81823, 81836, 81837, 81839

Statutes 1980, Chapter 910, Statutes 1981, Chapter 470, Statutes 1981, Chapter 891, Statutes 1988, Chapter 973, Statutes 1990, Chapter 1372, Statutes 1991, Chapter 1038, Statutes 1995, Chapter 758

California Code of Regulations, Title 5, Sections 57001, 57001.5, 57001.7, 57002, 57010, 57011, 57013, 57014, 57015, 57016, 57033.1, 57050, 57051, 57052, 57053, 57054, 57055, 57060, 57061, 57062, 57063, 57150, 57152, 57154, 57156, 57158

Register 75, No. 40 (Oct. 4, 1975) page 673; Register 77, No. 45 (Nov. 6, 1977) pages 673-674; Register 80, No. 39 (Sept. 27, 1980) page 675-676.1; Register 80, No. 44 (Nov. 1, 1980) pages 676.5-676.6; Register 81, No. 3 (Jan. 17, 1981) pages 673-676.6; Register 83, No. 18 (April 30, 1983) pages 666.27 – 666.36; Register 91, No. 23 (June 7, 1991) pages 371 – 377; Register 91, No. 43 (Oct. 25, 1991) pages 371-372; Register 94, No. 38 (Sept. 23, 1994) page 371; Register 95, No. 23 (June 9, 1995) pages 371 – 389

Filed on June 27, 2003 by

Santa Monica Community College District, Claimant

No. 02-TC-47

Community College Construction

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 October 27, 2011

STATEMENT OF DECISION

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

Dated: November 1, 2011

Drew Bohan, Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Sections 70902(b)(1),[1] 81663, 81800, 81805, 81807, 81808, 81820, 81821, 81822, 81823, 81836, 81837, 81839; Statutes 1980, Chapter 910, Statutes 1981, Chapter 470, Statutes 1981, Chapter 891, Statutes 1988, chapter 973, Statutes 1990, Chapter 1372, Statutes 1991, chapter 1038, Statutes 1995, Chapter 758; California Code of Regulations, Title 5, Sections 57001, 57001.5, 57001.7, 57002, 57010, 57011, 57013, 57014, 57015, 57016, 57033.1, 57050, 57051, 57052, 57053, 57054, 57055, 57060, 57061, 57062, 57063, 57150, 57152, 57154, 57156, 57158; Register 75, No. 40 (Oct. 4, 1975) page 673; Register 77, No. 45 (Nov. 6, 1977) pages 673-674; Register 80, No. 39 (Sept. 27, 1980) page 675-676.1; Register 80, No. 44 (Nov. 1, 1980) pages 676.5-676.6; Register 81, No. 3 (Jan. 17, 1981) pages 673-676.6; Register 83, No. 18 (April 30, 1983) pages 666.27 – 666.36; Register 91, No. 23 (June 7, 1991) pages 371 – 377; Register 91, No. 43 (Oct. 25, 1991) pages 371-372; Register 94, No. 38 (Sept. 23, 1994) page 371; Register 95, No. 23 (June 9, 1995) pages 371 – 389. Filed on June 27, 2003 by Santa Monica Community College District, Claimant	Case No.: 02-TC-47 *Community College Construction* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted on October 27, 2011*)

STATEMENT OF DECISION

[1] This section was severed from the *Minimum Conditions for State Aid* test claim (02-TC-25 & 02-TC-31) in a May 6, 2011 letter from the Commission to the test claimant.

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on October 27, 2011. Keith Petersen appeared on behalf of the claimant. Susan Geanacou appeared on behalf of the Department of Finance.

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 to approve the test claim at the hearing by a vote of 5-0.

Summary of the Findings

Five-Year Plan for Capital Construction: The district governing board is required to establish policies for and approve current and long-range facilities plans and submit them to the board of governors for review and approval. The Commission finds that this does not impose a new program or higher level of service because it has been required continuously since before 1975.

The district governing board is required to prepare and submit to the Board of Governors a plan for capital construction that reflects the capital construction of the district for the five-year period commencing with the next proposed year of funding. The plan is subject to continuing review and is annually extended each year and any changes to it are annually submitted to the Board of Governors.

Although the requirement to prepare and submit a five-year plan is not a new program or higher level of service, some of the required contents of the plan were expanded by the test claim statutes. Thus, the Commission finds a state-mandated reimbursable program requiring districts to include the following in their five year plan, subject to continuing review, and report to the Board of Governors on any changes in the following:

- The plans of the district concerning its future student services programs, and the effect on estimated construction needs that may arise because of particular student services to be emphasized. (§ 81821(a).)
- The enrollment projections for each educational center within a community college district, made cooperatively by the Department of Finance and the district. (§ 81821(b).)
- An annual inventory of all land of the district using standard definitions, forms, and instructions adopted by the Board of Governors. (§ 81821(e).)
- An estimate of district funds which shall be made available for capital outlay matching purposes pursuant to regulations adopted by the board of governors. (§ 81821(f).)

Districts are authorized to submit the five-year plan on the basis of each college or educational center maintained by the district under specified circumstances. The Commission finds that this activity does not mandate a new program or higher level of service.

The Board of Governors is required to review and approve each district's capital construction plan. The Commission finds that this provision imposes no requirements on community college districts.

State-Funded Capital Outlay Projects: Districts may seek state funding for capital construction projects, as specified, that qualify for it by submitting an application for approval. Districts that seek these funds may be required to pay fees for plan review and approval, meet with local park

and recreational authorities on joint use of facilities, transfer unused funds, submit a final report to the Chancellor, be subject to state post-audit review, and submit to additional review for projects that equal or exceed $150,000.

Generally, seeking state funding for projects is a discretionary decision and not a state mandate. There is no evidence in the record of practical compulsion to seek this funding. Moreover, the requirements that districts must meet in order to obtain state funding are not a new program or higher level of service. They were all required under preexisting law.

District-Funded Construction Projects: These projects, which are paid for with non-state funds, only require review if they cost $150,000 or more. Activities required when these projects are undertaken include paying a fee for new school sites reviewed and approved, paying a fee for review of plans and specifications, and submitting an application for project approval to the Chancellor, as specified.

Although the activity to submit an application, including the plans and specifications, to the Chancellor's Office for approval of a district-funded project is mandated in certain situations, the requirement does not impose a new program or higher level of service. The review of plans and specification for projects that exceed a threshold amount (now $150,000, formerly $10,000) has been required since before 1975. In addition, the payment of the fees does not impose a new program or higher level of service.

Energy Efficient Facilities: Community colleges are authorized to enter into energy management agreements and borrow money to retrofit buildings for greater energy efficiency. The amount borrowed is not to exceed the amount to be repaid from energy cost savings. Claimant alleges various activities that are required when a districts seeks funding from the state for these energy retrofits.

The activities alleged by the claimant are downstream of the district's discretionary decision to enter into energy systems management agreements and seek funding for an energy conservation project. Thus, the Commission finds that they are not mandated by the state.

In sum, the Commission finds that Education Code sections 81820 and 81821(a), (b), (e), and (f) (Stats. 1980, ch. 910, Stats. 1981, ch. 470, Stats. 1981, ch. 891, Stats. 1995, ch. 758) constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution to include the following information in the five-year plan for capital construction:

- The plans of the district concerning its future student services programs, and the effect on estimated construction needs that may arise because of particular student services to be emphasized. (§ 81821(a).)
- The enrollment projections for each educational center within a community college district, made cooperatively by the Department of Finance and the district. (§ 81821(b).)
- An annual inventory of all land of the district using standard definitions, forms, and instructions adopted by the Board of Governors. (§ 81821(e).)
- An estimate of district funds which shall be made available for capital outlay matching purposes pursuant to regulations adopted by the Board of Governors. (§ 81821(f).)

Community college districts are also eligible for reimbursement to continually review the information bulleted above and to report by February 1 of each year any required modifications or changes with respect to the information to the Board of Governors.

COMMISSION FINDINGS

Chronology

06/27/2003	Test claim 02-TC-47 filed by the Santa Monica Community College District
02/18/2004	Department of Finance files comments
03/16/2004	Community Colleges Chancellor's Office files comments
04/01/2004	Claimant files rebuttal comments
05/06/2011	Commission staff severs Education Code section 70902(b)(1) from the *Minimum Conditions for State Aid* test claim (02-TC-25 & 02-TC-31) and consolidates it with this test claim
07/22/2011	Commission staff issues draft staff analysis
08/03/2011	Commission staff extends comment period on the draft staff analysis
08/23/2011	Claimant submits comments on the draft staff analysis

I. Background

This test claim addresses capital construction plans of community college districts; capital outlay projects funded with or without the assistance of the state; and state-supported energy conservation projects of a community college district.

The Community College Construction Act of 1980 ("1980 Act") is the source of most of the test claim statutes. The legislative intent for the 1980 Act was expressed as follows:

> The Legislature hereby declares that it is in the interest of the state and of the people thereof for the state to provide assistance to community college districts for the construction of community college facilities. The community college system is of general concern and interest to all the people of the state, and the education of community college students is a joint obligation and function of both the state and community college districts.
>
> In enacting this chapter, the Legislature considers that there is a need to provide adequate community college facilities that will be required to accommodate community college students resulting from growth in population and from legislative policies expressed through implementation of the Master Plan for Higher Education. (Education Code § 81800 (b), Stats. 1980, ch. 910.)[2]

The 1980 Act is "administered by the Board of Governors of the California Community Colleges, and for purposes of the administration the board of governors shall adopt all necessary rules and regulations." The Board of Governors assembles "state-wide data on facility and

[2] References are to the Education Code or to title 5 of the California Code of Regulations unless otherwise indicated.

construction costs, and … formulate[s] cost standards and construction standards …" (§ 81805) and allocates and disburses funds for district projects (§ 81807).

The genesis of the 1980 Act is the Junior College Construction Act of 1967 (Stats. 1967, ch. 1550, former Ed. Code, §§ 20050 et seq.). As enacted in 1967, its provisions were under the jurisdiction of the Department of Education. That same year, the Legislature created the Board of Governors of the California Community Colleges ("Board of Governors") and authorized the establishment of the Chancellor's Office (Stats. 1967, ch. 1549). It was not until 1971 that the Legislature amended the Community College Construction Act to make the Board of Governors and the Chancellor's Office responsible for its enforcement (Stats. 1971, ch. 1525). The Board of Governors (§§ 70901 & 71000), and the Chancellor's Office (§ 71090), are state entities.

Five-Year Plan for Capital Construction (§§ 70902(b)(1), 81820 – 81823): Community college district governing boards are required to:

> Establish policies for, and approve, current and long-range academic and *facilities plans* and programs, and promote orderly growth and development of the community colleges within the district. In doing so, the governing board shall, as required by law, establish policies for, develop, and approve, comprehensive plans. The governing board shall submit the comprehensive plans to the board of governors for review and approval. (§ 70902 (b)(1), Stats. 1988, ch. 973, emphasis added.)

More specifically, district governing boards prepare and submit to the Board of Governors, "a plan for capital construction for community college purposes of the district" as follows:

> The plan shall reflect capital construction for community college purposes of the district for the five-year period commencing with the next proposed year of funding. The five-year plan shall be subject to continuing review by the governing board and annually shall be extended one year, and there shall be submitted to the board of governors, on or before the first day of February in each succeeding year, a report outlining the required modifications or changes, if any, in the five-year plan. (§ 81820, Stats. 1990, ch. 1372.)

Districts may also submit the plan on the basis of each college or educational center maintained by the district, under specified circumstances. (§ 81823, Stats. 1980, ch. 910.)

The five-year plan sets forth the estimated capital construction needs of the district, and must include: (1) plans of the district concerning future academic and student services programs and their effect on estimated construction needs; (2) enrollment projections for each district as formulated by the Department of Finance; (3) current enrollment capacity of the district; (4) district office, library and supporting facility capacities; (5) an annual inventory of all facilities and land of the district; and (6) an estimate of district funds that would be available for capital outlay matching purposes. (§ 81821, Stats. 1995, ch. 758.) The Board of Governors reviews and evaluates the district's plan in terms of these elements of the capital construction program, and makes changes as appropriate, and notifies the district. (§ 81822, Stats. 1990, ch. 1372.) The Board of Governors similarly reviews and evaluates continuing five-year plans for capital construction submitted by the district governing boards, and notifies the district of the revised plan for capital construction. (*Ibid.*)

Capital Outlay Projects Funded with the Assistance from the State (§§ 81800-81808, 81836-81837, 81839, Cal. Code Regs, tit. 5, §§ 57001.5, 57010-57016, 57033.1, 57152): The legislative intent of the Community College Construction Act of 1980 is for, among other things, "the state to provide assistance to community college districts for the construction of community college facilities." (§ 81800, Stats. 1980, ch. 910.)

The Board of Governors is required to administer the 1980 Act and adopt "all necessary rules and regulations" and "assemble statewide data on facility and construction costs, and on the basis thereof formulate cost standards and construction standards." (§ 81805, Stats. 1980, ch. 910, Stats. 1990, ch. 1372.)[3]

"State-Funded Project" is defined as "a capital outlay project qualifying as a project pursuant to section 81805 of the Education Code that meets cost and construction standards formulated by the Board of Governors, and for which a district requests or receives State funding assistance." (Cal. Code Regs., tit. 5, § 57152(c).) Projects and the associated costs that qualify for state funding assistance include the following:

- Planning, acquisition, and improvement of community college sites.
- Planning, construction, reconstruction, or remodeling of any permanent structure necessary for use as a classroom, a laboratory, a library, a performing arts facility, a gymnasium, the basic outdoor physical education facilities, the basic food service facilities, or child development centers, pursuant to section 79120 of the Education Code; related facilities necessary for the instruction of students or for administration of the educational program; maintenance or utility facilities essential to the operation of the foregoing facilities and the initial acquisition of equipment.
- Initial furnishing of, and initial acquisition of equipment for any facility leased or lease-purchased by a community college district as of August 1, 1987, for educational purposes. (Cal. Code Regs., tit. 5, § 57001.5, emphasis added.)[4]

Section 57152 of the title 5 regulations defines "capital outlay project" to include the "purchase of land and costs related thereto, including court costs, condemnation costs, legal fees, title fees, etc.; construction projects, including working drawings; and equipment related to a construction project regardless of cost or timing."

The costs to plan or construct dormitories, student centers other than cafeterias, stadia, the improvement of sites for student or staff parking, or single-purpose auditoriums are not included in the definition of "projects" eligible for state funding. (Cal.Code Regs, tit. 5, § 57001.5(d).)

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[3] The regulations (Cal. Code Regs., tit. 5, §§57020-57032) concern standards for classroom use, laboratory use, classroom occupancy, laboratory occupancy, classroom space per station, capacity of future assignable space, capacity of future laboratory and service areas, office space, library space, and formulas. These regulations are not part of this test claim.

[4] Register 1991, No. 23 (April 5, 1991) page 371; Register 1991, No. 43 (Oct. 25, 1991) page 371; Register 1995, No. 23 (June 9, 1995) pages 371-372. This provision was in former Education Code section 20052 (Stats. 1967, ch. 1550, Stats. 1970, ch. 102).

Community college districts may submit proposed projects to the Chancellor for review and approval or disapproval. The proposed project is "an element of the district's plan for capital construction." (Cal. Code Regs., tit. 5, § 57014.)

When a community college district proposes to acquire new college sites, the Board of Governors is required to advise the community college district on the acquisition, and after a review of available plots, give the governing board of the district a written list of approved locations in the order of their merit. The list of approved locations shall take into account educational merit, reduction of traffic hazards, and conformity to the organized regional plans as presented in the master plan of the planning commission having jurisdiction. The Board of Governors shall charge the governing board of the community college district a reasonable fee for each 10 acres or fraction thereof of schoolsite reviewed. (§ 81836(a).)

In addition, any community college district planning, designing, or constructing new facilities funded with the assistance of the state is required to meet with appropriate local government recreation and park authorities and report to the Chancellors' Office plans to achieve: (a) a greater use of any joint or contiguous recreation and park facilities by the district; and (b) possible use by the total community of such facilities and sites and recreation and park facilities." (Cal. Code Regs., tit. 5, § 57013.)

The Chancellor is required to review and evaluate each proposed project with reference to the elements of the capital construction program specified in section 81821, the five-year plan elements described above. Review includes the following:

> (a) An architectural analysis to determine the costs of the various phases of the project, with particular attention to be directed to the type of construction, unit costs, and the efficiency of particular buildings and facilities in terms of effective utilization of area.
>
> (b) Determining the amount of federal funds available for the project, and taking appropriate measures to ensure that the project will qualify for the maximum amounts of federal funds practicable under the circumstances. [¶]. . . [¶]
>
> (c) Determining the total cost of the project, reducing the total cost by the amount of federal funds available thereof, and determining the remainder to be borne by the state, or, if the district has matching funds, by the state and by the district. [¶]. . . [¶] [Determining district ability to provide matching funds is based on Education Code section 57033.1]. Private funds available for specific projects may be used as a credit towards the district match.
>
> (d) Determining the total of funds required for the first phase of the project to be provided on a matching basis by the state and the district, and the total state appropriation required to be provided for the project or one or more of its phases. (Cal. Code Regs., tit. 5, § 57015.)

The Chancellor is required to adopt criteria for determining districts' matching shares of the cost of capital outlay projects. Based on those criteria, the Chancellor recommends each district's match, which is reviewed by the Board of Governors in forwarding its annual budget request to the Department of Finance for determination by the Legislature. (Cal. Code Regs., tit. 5, § 57033.1.)

A community college district may include a proposed site in its plans for a project and may enter into an agreement with the owner of property for an option to purchase, or lease with an option to purchase. This agreement "shall in no way affect the determination of the share of the cost of the project to be borne by the state . . . ." (Ed. Code, § 81839.)

If a proposed project is submitted by a district to the Chancellor by February 1 of each year, the regulations require the Chancellor to act on it "pursuant to section 57014 on or before the next succeeding May 1 of each year." (Cal. Code Regs., tit. 5, § 57016.)

Funds appropriated for a community college district's project are to be allocated and disbursed on order of the Board of Governors and by warrants of the Controller. (Ed. Code, § 81807.) If an existing community college district is included in a newly formed community college district, any unused funds appropriated or authorized to be appropriated for a finally approved project shall be transferred to the newly formed community college district on the date the district is effective for all purposes, or earlier if the governing boards agree. (Ed. Code, § 81808.) Federal funds subject to a federal grant are required to be prorated if "the physical detail and intent of a project subject to a federal grant differs materially from the physical detail and intent for which state funds are appropriated." (Cal. Code Regs., tit. 5, § 57002.)

On completion of a project, the district governing board is required to submit to the Chancellor, "within 30 days after the closure of the current fiscal year, a final report on all expenditures in connection with the source of the funds expended. The district shall be subject to a state post-audit review of fund claims for all such projects." (Cal. Code Regs., tit. 5, § 57011.)

Community college districts may appeal decisions of the Chancellor's Office in administering the Community College Construction Act to the Board of Governors. (Cal. Code Regs., tit. 5, § 57010.)

If a proposed project exceeds $150,000, additional review and approval of the plans and specifications by the Board of Governors is required. The governing board of each community college district, before letting any contract totaling $150,000 or more in the erection of any new community college facility, or for any addition to, or alteration of any existing community college facility, is required to submit the plans to the Board of Governors and obtain the written approval of the plans. (Ed. Code, § 81837.) The Board of Governors, for a reasonable fee charged to the district, is required to review the plans and specifications for these projects. The Board of Governors can either approve the plans and specifications as submitted, or return without approval and with recommendation for changes any plans that do not conform to established standards. (Ed. Code, § 81836.) No contract for construction made by any governing board of a community college district that exceeds $150,000 is valid without the approval of the Board of Governors. In addition, no public money shall be paid for erecting, adding to, or altering any facility without the approval of the Board of Governors when the cost of the project exceeds $150,000. (Ed. Code, § 81837.)

<u>District-Funded Capital Outlay Projects</u> (§§ 81836 & 81837, Cal. Code Regs, tit. 5, §§ 57150-57158): A district-funded project is defined as "a capital outlay project subject to the requirements of section 81837 of the Education Code [i.e., contracts that are $150,000 or more that are subject to the approval of the Board of Governors] for which any funds, other than state funds, are paid or to be paid for erecting, adding to, or altering any community college facility." (Cal. Code Regs, tit. 5, § 57150.)

A capital outlay project includes the purchase of land and the construction project. When a community college district proposes to acquire new college sites, the Board of Governors is required to advise the community college district on the acquisition, and after a review of available plots, give the governing board of the district a written list of approved locations in the order of their merit. The list of approved locations shall take into account educational merit, reduction of traffic hazards, and conformity to the organized regional plans as presented in the master plan of the planning commission having jurisdiction. The Board of Governors shall charge the governing board of the community college district a reasonable fee for each 10 acres or fraction thereof of schoolsite reviewed. (Ed. Code, § 81836(a).)

Additionally, in each case of a district funded project, the application for approval of plans shall be submitted to the Chancellor and be accompanied by the plans and full, complete, and accurate take-off of assignable and gross square feet of space, which shall comply with any and all requirements prescribed by the Chancellor. (Cal. Code Regs, tit. 5, § 57154.) The Chancellor is required to review and evaluate each district-funded project with reference to the elements of the capital construction program specified in Education Code section 81821; i.e., the plans of the district concerning its future academic and student services programs, enrollment projections, the current enrollment capacity, district supporting facility capacities, and an annual inventory of all facilities and land of the district. The Chancellor's review shall be "directed particularly to ascertain whether the locally funded project is of appropriate size, is appropriately timed and is justified in terms of the elements of the capital construction plan and where applicable, the standards adopted by the Board of Governors." (Cal. Code Regs., tit. 5, § 57156.)

The Chancellor is required to approve the district-funded plans when the analysis shows that approval of the plans for a proposed facility would not result in facilities that would be substantially at variance with space and utilization standards adopted by the Board of Governors.

When the Chancellor's analysis shows that the approval of the plans would result in facilities that would be substantially at variance with space and utilization standards adopted by the Board of Governors, the Chancellor is required to either impose conditions for the approval of the plans or find that despite the variance, the plans are acceptable and respond to the district with cautions or appraisal of the potential consequences of the variance. (Cal. Code Regs., tit. 5, § 57158.)

<u>Energy efficient facilities</u> (§ 81663, Cal. Code Regs, tit. 5, §§ 57050-57063): Any community college may enter into an agreement for solar, energy, or solar and energy management systems. (Ed. Code, § 81660.)

Community college districts are authorized to borrow funds from "federal or state regulated financial institutions" in order to retrofit buildings for more energy efficiency, but the "amount borrowed shall not exceed the amount that can be repaid from energy cost avoidance savings accumulated from the improvement of facilities." (§ 81663, Stats. 1991, ch. 1038, Cal. Code Regs, tit. 5, § 57061.)

The related regulations were originally enacted in 1980 "for the purpose of administration and implementation of Board of Governors Energy and Resources Policy under the Community College Construction Act" (Cal. Code Regs., tit. 5, § 57050). Part of the 1980 Community College Construction Act appropriated "from the Energy and Resources Fund to the Board of Governors of the California Community Colleges the sum of fifty thousand dollars ($50,000)." The funds were not to be allocated "prior to the approval by the Department of Finance of a

statewide priority listing of the projects proposed to be funded in the 1981-1982 Governor's Budget." (Stats. 1980, ch. 910, § 4, subds.(a) & (b).)

The legislative intent for the energy regulations (Cal. Code Regs., tit. 5, §§ 57050-57063) is stated as follows:

> The Board of Governors finds and declares that it is in the interest of the state and of the people thereof for the state to aid community college districts in finding cost-effective methods of conserving energy in buildings maintained by the districts. The Board of Governors also finds that while many districts may desire to participate in energy conservation programs designed to reduce the steadily rising costs of meeting the energy needs of district buildings, that the costs involved in improving existing facilities to become more energy efficient are often prohibitive.
> It is the intent of the Board of Governors in adopting this regulation to encourage community college districts to retrofit buildings so as to conserve energy and reduce the costs of supplying energy. (Cal. Code Regs, tit. 5, § 57060.)

Districts requesting a state-supported energy conservation project are required to provide "a summary of the district's Energy Conservation program as part of its five-year construction plan." (Cal. Code Regs, tit. 5, § 57052.) When the need for an energy conservation project[5] has been adequately established, the project must be submitted "as a project planning guide in accordance with established format to the Chancellor's Office." Energy conservation projects are ranked on the basis of criteria developed by the Chancellor's Office (Cal. Code Regs, tit. 5, § 57055). The criteria include the level of energy use, pay-back period, and "the extent to which the district has implemented an energy conservation program which meets the objectives specified in Board of Governor's Policy Statement on Energy and Resource Conservation." (Cal. Code Regs, tit. 5, § 57054.)

Districts are required to contract with "qualified businesses capable of retrofitting school buildings." (Cal. Code Regs, tit. 5, § 57063). In determining the lowest responsible bidder for the energy management system, the governing board of the community college district shall consider the net cost or savings of each system. "Net cost or savings" means "the cost of the system to the district, if any, less the projected energy savings to be realized from the energy management system." The governing board may require an independent evaluation of the projected energy savings. (Ed. Code, § 81661.)

II. Positions of Parties and Interested Parties

A. Claimant's Position

Claimant asserts that the test claim statutes and regulations constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6, and Government Code section 17514 for a community college district to do the following:

---

[5] "Energy Conservation Project" means: the acquisition, development, or modification of facilities and equipment which result in the conservation of energy; energy audits; energy conservation and operating procedures; energy conservation measures; water conservation measures; and redraft consisting of modifications made to existing equipment or structures. (Cal. Code Regs, tit. 5, § 57051(a).)

A. Transfer any unused project funds appropriated, or authorized for appropriation, when the existing district is incorporated into a newly formed district (Ed. Code, § 81808).

B. Prepare and submit a plan for capital construction to the Board of Governors of the California Community Colleges reflecting the five-year period commencing with the next proposed year of funding (Ed. Code, § 81820). The capital construction plan is subject to annual review by the Board and a report outlining any required changes must be submitted on or before the first day of February (Ed. Code, §§ 81820 & 81823, Cal . Code Regs. tit. 5, § 57014).

C. Set out the estimated capital construction needs of the district in its five-year capital construction plan including:

   1) The district's plans concerning its future academic and student services programs, and the effect on estimated construction needs arising from particular courses of instruction, subject matter areas or student services to be emphasized (Ed. Code, § 81821(a));

   2) The district's enrollment projections (Ed. Code, § 81821(b));

   3) The district's current enrollment capacity (Ed. Code, § 81821(c));

   4) The district's office, library and supporting facility capacities (Ed. Code, § 81821(d));

   5) The district's annual inventory of all facilities and land (Ed. Code, § 81821(e)); or

   6) The district's estimate of funds available for capital outlay matching purposes (Ed. Code, § 81821(f)).

D. Include justification and documentation in its capital construction plan when it is deemed necessary by the district to submit its plan for capital construction on the basis of each college or educational center maintained by it to better serve its students because:

   1)The students are isolated within the district in terms of distance or inadequacy of transportation, and the students are financially unable to meet the costs of transportation to an educational program (Ed. Code, § 81823(a)(1) & (b)); or

   2)The inability of the existing colleges and educational centers to meet the unique educational and cultural needs of a significant number of ethnic students (Ed. Code, § 81823(a)(2) & (b)).

E. Pay the Board of Governors any reasonable fees charged for the review of proposed new college sites (Ed. Code, § 81836).

F. Submit its capital construction plans for any new college facility, or for any addition to, or alteration of, an existing facility totaling more than $150,000 to the Board of Governors before contracting for such (Ed. Code, § 81837). No contract is valid, nor will any public money be paid out before the district receives written approval from the Board of Governors (Ed. Code, § 81837).

G. As may be necessary, include a proposed site in its capital construction plan, and enter into an option contract with the property owner whereby the district pays the consideration for the option (Ed. Code, § 81839).

H. Apply, as may be necessary, for project assistance under the Community College Construction Act of 1980, including:

1) The planning, acquisition, and improvement of community college sites (Cal.Code Regs., tit. 5, § 57001.5(a));

2) The planning, construction, reconstruction, or remodeling of any permanent structure necessary for use as a classroom, a laboratory, a library, a performing arts facility, a gymnasium, the basic outdoor physical education facilities, the basic food service facilities, or child development centers (Cal.Code Regs., tit. 5, § 57001.5(a));

3) Related facilities necessary for the instruction of students or for administration of the educational program (Cal.Code Regs., tit. 5, § 57001.5(a));

4) Maintenance or utility facilities essential to the operation of the foregoing facilities and the initial acquisition of equipment (Cal.Code Regs., tit. 5, § 57001.5(a));

5) The initial furnishing of, and initial acquisition of equipment for, any facility leased or lease-purchased by a district as of August 1, 1987, for educational purpose or purposes (Cal.Code Regs., tit. 5, § 57001.5(a)); and

6) The reconstruction or remodeling of any facility leased or leased-purchased for educational purposes (Cal.Code Regs., tit. 5, § 57001.5 (b)). Title or any other interest considered sufficient by the district shall be transferred, but a district must repay the state for any unamortized state costs if the lease is terminated prior to amortizing the reconstruction or remodeling costs. If the district leases property from the federal government, the state, or any county, city and county, city, or district for the purposes of constructing school buildings and facilities, it is eligible for state funding (Cal.Code Regs., tit. 5, § 57001.5(b)).

I. Appeal to the Board of Governors any action of the Chancellor adversely affecting the district (Cal.Code Regs., tit. 5, § 57010).

J. Submit to the Chancellor, within 30 days after the closure of the current fiscal year, a final report on all expenditures in connection with the sources of funds expended for completed projects (Cal.Code Regs., tit. 5, § 57011). The district must further submit to any state post-audit review of funds claims for all projects (Cal.Code Regs., tit. 5, § 57011).

K. Meet with appropriate local government recreation and park authorities to review all possible methods of coordinating planning, design, and construction of new facilities and sites or major additions to existing facilities and recreation and park facilities in the community (Cal.Code Regs., tit. 5, § 57013). Any district planning, designing, or constructing new facilities must report to the Chancellor's office on plans to achieve:

1)A greater use of any joint or contiguous recreation and park facilities by the district (Cal.Code Regs., tit. 5, § 57013(a)); and

2)Possible use by the total community of such facilities and sites and recreation and park facilities (Cal.Code Regs., tit. 5, § 57013(b)).

L. Include in its capital construction program submission to the Chancellor's Office the following to aid in the review and evaluation process:

1)An architectural analysis to determine costs of the various phases of the project, with a particular attention to be directed to the type of construction, unit costs, and the efficiency of particular buildings and facilities in terms of effective utilization of area (Cal.Code Regs., tit. 5, § 57015(a));

2)A determination of the amount of federal funds available for the project, taking appropriate measures to ensure that the project will qualify for the maximum amounts of federal funds practicable under the circumstances (Cal.Code Regs., tit. 5, § 57015(b));

3)A determination of the total cost of the project, reducing the total cost by the amount of federal funds available thereof, and determining the remainder thereof to be borne by the state, or, if the district has matching funds, by the state and by the district (Cal.Code Regs., tit. 5, § 57015(c)). If the district ability is sufficient to meet the matching costs of the project or its individual phases of planning, working drawings, construction, equipment, or land acquisition, the district must bear its matching share of the cost of the project or one or more of it phases, the district shall provide the moneys available, as defined by the Board of Governors, and state funds may be requested to provide the balance of funds required (Cal.Code Regs., tit. 5, § 57015(c)); and

4)A determination of the total of funds required for the first phase of the project to be provided on a matching basis by the state and the district (Cal.Code Regs., tit. 5, § 57015(d)).

M. Include a summary of the local district energy conservation program and indicate its need for such assistance in its annual five-year construction plan when requesting a state supported energy conservation project (Cal.Code Regs., tit. 5, § 57052(a) & (b)).

N. When the need for state financial assistance has been adequately established, the energy conservation project must be submitted as a project planning guide in accordance with the Chancellor's Office's established format including evidence of an approved Energy Audit on file with the California Energy Commission (Cal.Code Regs., tit. 5, § 57053).

O. Include in its preliminary plans for energy related projects: (1) the results of a technical audit performed by an authorized Technical Auditor which describes in detail the energy conservation measures the project is to institute; (2) the status of the project as related to the various federal and state aided programs for energy conservation; and (3) an architectural or engineering analysis setting forth the detailed costs of the various elements of the project (Cal.Code Regs., tit. 5, § 57055(b)).

P. Arrange, to the extent that services are available, for the pre-audit and post-audit of buildings by investor-owned or municipal utility companies or by independent energy audit companies or organizations which are recognized by federal or state regulated financial institutions (Cal.Code Regs., tit. 5, § 57062). The pre-audit must identify the type and amount of work necessary to retrofit the buildings and shall include an estimate of projected energy savings, while the post-audit must be conducted upon completion of the retrofitting of the buildings to insure that the project satisfies the recommendations of the pre-audit (Cal.Code Regs., tit. 5, § 57062).

Q. Contract only with qualified business capable of retrofitting school buildings (Cal.Code Regs., tit. 5, § 57063).

R. Include complete and accurate take-off of assignable and gross square feet of space, complying with any and all requirements prescribed by the Chancellor in each application for capital construction plan approval (Cal.Code Regs., tit. 5, § 57154).

Claimant, in its April 2004 comments, argues that the requirements attached to state funding are compelled and not discretionary, and asserts that legal compulsion is not necessary to find a state mandate.

Claimant also responds to Finance's argument that energy savings provide offsetting costs, stating that "the test claim legislation provides absolutely no offsetting savings" and that there is no evidence that the energy savings "will result in no net costs or be in an amount sufficient to fund the cost of the state mandate." (Gov. Code, § 17556(e).) Claimant also discusses various statutes and regulations, arguing that they are post-1975 state mandates. [6]

In comments on the draft staff analysis submitted in August 2011, claimant states that to determine whether an activity is a new program or higher level of service, the comparison needs to be between the statutes pled on the effective date of filing (here, July 1, 2001), with the law in effect on December 31, 1974. Claimant also argues that it is practically and legally compelled to build new facilities and obtain funding from the state for that purpose. Finally, claimant states that there is a lapse in legal requirements for statutes converted to regulations, even though the statutes state that they would be effective until the regulations were adopted. Thus, the claimant argues that the activities required by the regulations constitute a new program or higher level of service. As to all these issues, claimant admits that the findings in the draft staff analysis are consistent with prior Commission decisions.

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[6] In its April 2004 rebuttal to the state agency comments, claimant asserts that the comments of the California Community College Chancellor's Office are incompetent and should be excluded from the record because they are not signed under penalty of perjury "with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief." (Cal. Code Regs., tit. 2, § 1183.02 (c)). While the claimant correctly states the Commission's regulation, the Commission disagrees with the request to exclude the Chancellor's comments from the official record. Most of comments from the Chancellor's Office argue an interpretation of the law, rather than constitute a representation of fact. If this case were to proceed to court on a challenge to the Commission's decision, the court would not require sworn testimony for argument on the law. The ultimate determination whether a reimbursable state-mandated program exists is a question of law. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 89.)

When facts are asserted and are relevant to one of the mandate elements, however, rules of evidence do come into play. The Commission may take official notice of any fact that may be judicially noticed by the courts (Cal. Code Regs., tit. 2, § 1187.5(c); Gov. Code. § 11515.) Official acts of the legislative and executive branches of government are properly subject to judicial notice. (Evid. Code, § 452(c).) The Commission may also consider facts provided by sworn testimony at the hearing on this test claim, or facts asserted in writing and supported with a declaration signed under penalty of perjury.

B. State Agencies' Positions

Department of Finance

In its February 2004 comments, Finance states that there are two activities that "could be interpreted as state-reimbursable mandated activities" as follows:

> 1) Inclusion in the five-year plan of the district's estimate of funds available for capital outlay matching purposes (Ed. Code, § 81821(f)); and
>
> 2) Reporting to the Chancellor's Office on plans to achieve greater use of joint facilities with parks and Recreation and possible use of new facilities by the community (Cal. Code Regs., tit. 5, § 57013).

As to the other activities, Finance does not agree they are reimbursable because either they are substantially similar to activities that have been continuously required since the Community College Construction Act of 1967, they are requirements imposed on the Chancellor's Office and not local districts, they are discretionary, or they provide cost savings that meet or exceed the amount of expenses incurred.

Community College Chancellor's Office

In its March 2004 comments, the Chancellor's Office states that "there are several bases for rejecting the Claim in its entirety." Much of the test claim, for example, may be traced to requirements in effect since the Junior College Construction Act of 1967 (Stats. 1967, ch. 1550), or the Community College Construction Act of 1970 (Stats. 1970, ch. 102), and is therefore not reimbursable because it was mandated before 1975. The Chancellor's Office also cites over $3.5 billion in eight bond acts (from 1986 to 2004) for community college construction, in addition to "hundreds of millions of dollars of lease revenue bonds for community college capital construction" provided by the state.

In arguing that the test claim statutes are part of the minimum standards for community college construction that predate 1975, the Chancellor's Office cites an opinion by the Attorney General (83 Ops.Cal.Atty.Gen. 111 (2000)) that reimbursement is often unavailable for minimum standards regulations. The Chancellor's Office further asserts that the claimant has received state aid and therefore, has been compensated for compliance with the test claim statutes and regulations, and that receipt of state aid is discretionary and not required.

According to the Chancellor's Office, "some of the challenged regulations have not been substantively amended since being converted into regulation by the Board of Governors in 1991 from statutes that predate 1975." Regarding these statutes converted into regulations by Statutes 1990, chapter 1372, the Chancellor cites *Barnhard III v. Cabrillo Community College* (1999) 76 Cal.App.4th 181, arguing that based on this case, a statute converted into a regulation and the repealed statute are deemed to have equal dignity.

III. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

> 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 programs or increased level of service.

The purpose of article XIII B, section 6 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."[7] Thus, the subvention requirement of section 6 is "directed to state mandated increases in the services provided by [local government] …"[8]

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[9]
2. The mandated activity either:
    a. Carries out the governmental function of providing a service to the public; or
    b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[10]
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.[11,12]
4. The mandated activity results in the local agency or school district incurring increased costs. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity. [13]

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.[14] The determination

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[7] *County of San Diego, supra,* 15 Cal.4th 68, 81.

[8] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[9] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

[10] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[11] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

[12] Claimant asserts that when determining whether an activity is a new program or higher level of service, the comparison needs to be between the statutes pled on the effective date of filing (here, July 1, 2001), with the law in effect on December 31, 1974. The claimant is wrong. The California Supreme Court has repeatedly stated that to determine whether a required activity is new, thus imposing a new program or higher level of service, the test claim statute or regulation is compared to the legal requirements in effect immediately before its enactment. (See fn. 11.)

[13] *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.

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

whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[15] 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."[16]

Issue 1: Are the test claim statutes and regulations a state-mandated new program or higher level of service subject to article XIII B, section 6, of the California Constitution?

A. Five-Year Plan for Capital Construction (§§ 70902(b)(1), 81820 – 81823)

1. Establish Policies and Plans for Facilities (§ 70902(b)(1), Stats. 1988, ch. 973)

Education Code section 70902 (b)(1) requires community college district governing boards to establish policies for and approve current and long-range facilities plans and submit the plans to the Board of Governors for review and approval.

This requirement, however, is not new. Former section 72231.5 (Stats. 1976, ch. 1010) required the district governing board to "Establish policies for, and approve, academic master plans and long-range plans for facilities. The district governing board shall submit such master plans to the board of governors for review and approval." This requirement predates 1975. (Former § 200.6, Stats. 1970, ch. 102.) Thus, the Commission finds that Education Code section 70901(b) does not mandate a new program or higher level of service.

2. Five-year Plan for Capital Construction (§§ 81820-81821, Stats. 1980, ch. 910, Stats. 1981, ch. 470, Stats. 1981, ch. 891, Stats. 1990, ch. 1372, Stats. 1995, ch. 758)

Education Code section 81820 requires community college districts to:

- Prepare and submit to the Board of Governors a plan for capital construction that reflects the capital construction of the district for the five-year period commencing with the next proposed year of funding.
- Continually review the five-year plan and each year the plan shall be extended one year.
- On or before February first of each succeeding year, submit a report outlining the required modifications or changes, if any, in the five-year plan.

The contents of the five-year plan are listed in section 81821 as follows:

(a) The plans of the district concerning its future academic and student services programs, and the effect on estimated construction needs which may arise because of particular courses of instruction or subject matter areas or student services to be emphasized.

(b) The enrollment projections for each district formulated by the Department of Finance, expressed in terms of weekly student contact hours. The enrollment projections for each individual college and educational center within a

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[15] *County of San Diego, supra,* 15 Cal.4th 68, 109.

[16] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

district shall be made cooperatively by the Department of Finance and the community college district.

(c) The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.

(d) District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.

(e) An annual inventory of all facilities and land of the district using standard definitions, forms, and instructions adopted by the board of governors.

(f) An estimate of district funds which shall be made available for capital outlay matching purposes pursuant to regulations adopted by the board of governors. (Stats. 1980, ch. 910, Stats. 1981, ch. 470, Stats. 1981, ch. 891, Stats. 1995, ch. 758.)

Claimant requests reimbursement for these activities.

The Department of Finance states the activity is the same as a requirement in the Community College Construction Act of 1967.

For the reasons below, the Commission finds that the requirements to prepare and submit a capital construction plan, to continually review that plan, and to report any changes to the Board of Governors are not new. However, the required contents of the capital construction plan have changed and now require districts to include additional information in their plans.

Before the test claim statutes (and before January 1, 1975), community college districts were required to prepare and submit a capital construction plan that reflects the five-year period commencing with the next proposed year of funding, and the plan was required to be annually extended for one year. Prior law also required an annual report outlining the modifications, if any, in the plan.[17]

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[17] Although section 81821 dates to the Junior College Construction Act of 1967 (Stats. 1967, ch. 1550), the 1974 version stated as follows:

> On or before November 1, 1967, the governing board of each community college district shall prepare and submit to the chancellor a plan for capital construction for community college purposes of the district for the 10-year period commencing with that date. After January 1, 1975, the plan shall reflect capital construction for community college purposes of the district for the five-year period commencing with the next proposed year of funding. The plan shall be subject to continuing review by the governing board and each year shall be extended one year, and there shall be submitted to the chancellor on or before the first day of November in each succeeding year, a report outlining the required modification or changes, if any, in the plan. (Former § 20065, Stats. 1974, ch. 280.)

The Commission cannot, however, determine whether sections 81820 and 81821 mandate a new program or higher level of service without analyzing whether the contents of the five-year plan, as listed in section 81821, are new. This is especially true in light of the requirement in section 81820 for the five-year plan to be subject to "continuing review by the governing board." Although continuing review was required immediately before the enactment of the 1980 test claim statute (and before 1975), the content of the capital construction plans and yearly reports have expanded as explained below.

Section 81821(a) was amended by Statutes 1980, chapter 910 to add the requirement to prepare and submit plans concerning future student services and the effect of the estimated construction needs because of the student services. The 1980 statute added the following underlined text to subdivision (a):

> (a) The plans of the district concerning its future academic <u>and student services</u> programs, and the effect on estimated construction needs which may arise because of particular courses of instruction or subject matter areas <u>or student services</u> to be emphasized.

In addition, prior law required that the plan include enrollment projections for each college within a district. The test claim statute (Stats. 1980, ch. 910) added the requirement to include enrollment projections for each educational center within a district. The 1980 amendment added the following underlined language to subdivision (b):

> The enrollment projections for each district formulated by the Department of Finance, expressed in terms of weekly student contact hours. The enrollment projections for each individual college and <u>educational center</u> within a district shall be made cooperatively by the Department of Finance and the community college district.

This section was renumbered to section 81820 without change (Stats. 1976, ch. 1010), but was amended by Statutes 1977, chapter 36 (changing the report due date from November 1 to February 1) and Statutes 1979, chapter 797, which changed the 10-year plan to a five-year plan.

Claimant pled the 1980 and 1990 versions of section 81820. Statutes 1980, chapter 910, repealed and reenacted section 81820, as follows:

> On or before February 1, 1981, the governing board of each community college district shall prepare and submit to the chancellor a plan for capital construction for community college purposes of the district. The plan shall reflect capital construction for community college purposes of the district for the five-year period commencing with the next proposed year of funding. The five-year plan shall be subject to continuing review by the governing board and annually shall be extended one year, and there shall be submitted to the chancellor on or before the first day of February in each succeeding year, a report outlining the required modification or changes, if any, in the five-year plan.

The 1990 version (Stats. 1990, ch. 1372) deleted "on or before February 1, 1981" in the first sentence, and changed submittal to the "board of governors" from "the chancellor" in the first and last sentences.

An educational center is administered by a college or district at a location away from the campus of the parent institution, and offers programs leading to certificates and degrees conferred by the parent institution.[18]

Statutes 1980, chapter 910, also amended subdivision (e) to add the underlined text:

> (e) An annual inventory of all facilities <u>and land</u> of the district using standard definitions, forms, and instructions adopted by the board of governors.

Prior law did not require including an annual inventory of the district's land in the capital construction plan.

Finally, subdivision (f) was added by the test claim statutes, Statutes 1980, chapter 910 and amended by Statutes 1995, chapter 758, to require that the plan include "an estimate of district funds which shall be made available for capital outlay matching purposes pursuant to regulations adopted by the board of governors."[19]

Thus, the Commission finds that sections 81820 and 81821 (Stats. 1980, ch. 910; Stats. 1981, ch. 170; Stats. 1995, ch. 758) impose new state-mandated activities on community college districts to include the following information in the five-year plan for capital construction, to continually review the following information and to report by February first of each year any required modifications or changes in the following information to the Board of Governors:

- The plans of the district concerning its future student services programs, and the effect on estimated construction needs that may arise because of particular student services to be emphasized. (§ 81821(a).)
- The enrollment projections for each educational center within a community college district, made cooperatively by the Department of Finance and the district. (§ 81821(b).)
- An annual inventory of all land of the district using standard definitions, forms, and instructions adopted by the Board of Governors. (§ 81821(e).)
- An estimate of district funds which shall be made available for capital outlay matching purposes pursuant to regulations adopted by the board of governors. (§ 81821(f).)

The Commission further finds that these new mandated activities provide a service to the public and are uniquely imposed on community college districts and, thus, constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution. The purpose of the chapter that includes sections 81820 and 81821 is to ensure that adequate community college facilities will accommodate community college students resulting from growth in population and from legislative policies expressed through the implementation of the Master Plan for Higher Education.[20] The new mandated activities are consistent with that purpose. Thus, the Commission finds that Education Code sections 81820 and 81821 (Stats.

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[18] California Code of Regulations, title 5, section 55180.

[19] Prior to Statutes 1995, chapter 758, the statute read "pursuant to Section 81838." Former section 81838 listed requirements of the Chancellor's Office in determining the district's matching share, but was repealed by Statutes 1990, chapter 1372.

[20] Education Code section 81800.

1980, ch. 910; Stats. 1981, ch. 170; Stats. 1995, ch. 758) mandate a new program or higher level of service as specified above.

3. Submit Plan on the Basis of Each College or Educational Center (§ 81823, Stats. 1980, ch. 910)

The Legislature provided an additional way to submit the five-year plan by allowing the district to submit the plan on the basis of each college or educational center maintained by the district under specified circumstances. Education Code section 81823 (Stats. 1980, ch. 910) states the following:

> (a) If a community college district maintains colleges, or one college and one or more educational centers, it may additionally submit the plan required by Section 81820 on the basis of each college or educational center maintained by the district, if either of the following circumstances is present such that students will be better served by evaluating the capital outlay program for the district on that basis: (1) the isolation of students within a district in terms of the distance of students from the location of an educational program, or inadequacy of transportation, and student financial inability to meet costs of transportation to an educational program; or (2) the inability of existing colleges and educational centers in the district to meet the unique educational and cultural needs of a significant number of ethnic students.
>
> (b) If a district elects to submit such a plan, it shall include therewith justification and documentation for so doing.
>
> (c) When a district so elects, the evaluation of the plan pursuant to Section 81822 shall include an evaluation of both of the following:
>
> (1) The justification and documentation for so doing, including enrollment projections for individual campuses and centers.
>
> (2) The plan as thus submitted.

Based on section 81823, claimant alleges the following activities:

> To include justification and documentation in its capital construction plan when it is deemed necessary by the district to submit its plan for capital construction on the basis of each college or educational center maintained by it to better serve its students because:
>
> (a) The students are isolated within the district in terms of distance or inadequacy of transportation, and the students are financially unable to meet the costs of transportation to an educational program (Ed. Code, § 81823, subds.(a)(1) & (b)), or
>
> (b) The inability of the existing colleges and educational centers to meet the unique educational and cultural needs of a significant number of ethnic students (Ed. Code, § 81823, subds.(a)(2) & (b)).

Finance states that this activity is discretionary.

Claimant asserts that complying with the statute is not discretionary "unless you can state publicly that these students are not required to be served."

The Commission finds that the plain language of section 81823 is discretionary, not mandatory. The language states that the district "*may* additionally submit the plan required by Section 81820 on the basis of each college or educational center maintained by the district" and in subdivision (b), "if a district *elects* to submit such a plan" and in subdivision (c), "when a district so *elects* . . ." (emphasis added). Use of the word "may" in the statute renders it discretionary (§ 75), as well as twice stating that the district "elects" to submit such a plan.

Claimant's argument alleges a mandatory duty on the district to provide for isolated students or the unique needs of ethnic students. Claimant's reading of the statute, however, would insert "shall" instead of "may" in the first sentence of section 81823. Even if a community college district faces the situation where students are isolated in terms of distance from an educational program or the colleges in the district are unable to meet the unique or cultural needs of ethnic students, the statute still leaves the choice to the district to file additional plans based on each college or educational center. Nothing in the plain language of the statute reveals that a community college district would fail to comply if it submitted all of the information into one capital construction plan. Thus, the requirements in section 81823 to submit the justification and documentation are required only if the district makes the discretionary decision to submit the plan for each college or educational center.

As the Supreme Court stated in the *Kern School Dist.* case:

> [A]ctivities undertaken at the option or discretion of a local government entity … do not trigger a state mandate and hence do not require reimbursement of funds—even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice.[21]

Based on the rule in the *Kern School Dist.* case, since the initial decision to provide for the students is discretionary, the resulting downstream requirements are not legally compelled state mandates. Nor is there any indication in the record or the statute that complying with the statute is practically compelled by the state. Therefore, the Commission finds that section 81823 (Stats. 1980, ch. 910) does not impose any state-mandated activities on community college districts, and therefore is not subject to article XIII B, section 6.

Moreover, the provisions in section 81823 are not new. Claimant pled this section as added by Statutes 1980, chapter 910. However, section 81823 as it existed in 1979 (and last amended by Stats. 1977, ch. 910) provided for an identical reporting activity based on the same criteria, so the Commission finds that section 81823 is not a new program or higher level of service.

4. Review and Evaluate the District's Capital Construction Plan (§ 81822, Stats. 1980, ch. 910, Stats. 1981, ch. 891, Stats. 1990, ch. 1372)

Education Code section 81822 requires the Board of Governors to "review and evaluate the plan for capital construction submitted by the governing board of each community college district in terms of the elements of the capital construction program specified in Section 81821" and "make the revision and changes therein as are appropriate, and notify the district." The statute also requires a "similar review and evaluation of continuing five-year plans for capital construction" and notifying the district "of the content of the district's revised plan for capital construction."

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[21] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)*(2003) 30 Cal.4th 727, 742.

Because section 81822 (Stats. 1980, ch. 910, Stats. 1981, ch. 891, Stats. 1990,ch. 1372) imposes requirements on the Board of Governors, but does not impose a requirement on a community college district, the Commission finds that it is not a state mandate subject to article XIII B, section 6.

B. State-Funded Capital Outlay Projects (§§ 81800-81808, 81836-81837, 81839, Cal. Code Regs, tit. 5, §§ 57001.5, 57010-57016, 57033.1, 57152)

Under the Community College Construction Act of 1980, any community college district may propose a capital outlay project for approval and seek state assistance to fund it.

"State-Funded Project" is defined in section 57152(c) as "a capital outlay project qualifying as a project pursuant to section 81805 of the Education Code [by meeting the cost and construction standards adopted by the Board of Governors], and for which a district requests or receives State funding assistance." Projects and the associated costs that qualify for state funding include the following:

- Planning, acquisition, and improvement of community college sites.
- Planning, construction, reconstruction, or remodeling of any permanent structure necessary for use as a classroom, a laboratory, a library, a performing arts facility, a gymnasium, the basic outdoor physical education facilities, the basic food service facilities, or child development centers, pursuant to section 79120 of the Education Code; related facilities necessary for the instruction of students or for administration of the educational program; maintenance or utility facilities essential to the operation of the foregoing facilities and the initial acquisition of equipment.
- Initial furnishing of, and initial acquisition of equipment for any facility leased or lease-purchased by a community college district as of August 1, 1987, for educational purposes. (Cal. Code Regs., tit. 5, § 57001.5.)[22]

Section 57152 of the title 5 regulations defines "capital outlay project" to include the "purchase of land and costs related thereto, including court costs, condemnation costs, legal fees, title fees, etc.; construction projects, including working drawings; and equipment related to a construction project regardless of cost or timing."

The costs to plan or construct dormitories, student centers other than cafeterias, stadia, the improvement of sites for student or staff parking, or single-purpose auditoriums are not included in the definition of "projects" eligible for state funding. (Cal. Code Regs, tit. 5, § 57001.5(d).)

Under the Community College Construction Act of 1980, any district "may" submit a proposed project to the Chancellor for review and approval or disapproval. The proposed project shall be in such form and contain such detail as will permit its evaluation and approval with reference to the elements of the capital construction program specified in section 81821 of the Education Code. (Cal. Code Regs., tit. 5, § 57014.) Thus, the proposed project submitted for approval is required to contain the plans of the district concerning its future academic and student services programs, enrollment projections, the current enrollment capacity, district supporting facility

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[22] Register 1991, No. 23 (April 5, 1991) page 371; Register 1991, No. 43 (Oct. 25, 1991) page 371; Register 1995, No. 23 (June 9, 1995) pages 371-372. This provision was in former Education Code section 20052 (Stats. 1967, ch. 1550, Stats. 1970, ch. 102).

capacities, an annual inventory of all facilities and land of the district, and an estimate of district funds that shall be made available for matching purposes.

If a community college district submits a proposal for one of the qualifying projects to the Chancellor's Office and seeks funding assistance from the state, then the following additional requirements are imposed on the community college district:

- When the district proposes to acquire a new college site, the district is required to pay the fee charged by the Board of Governors for each ten acres or fraction thereof of school sites reviewed and approved. (Ed. Code, § 81836.)
- When planning, designing, or constructing new facilities, the district is required to meet with appropriate local government recreation and park authorities in order to achieve a greater use of any joint or contiguous recreation and park facilities and to determine the possible uses by the total community of the facilities and sites. The information shall be reported to the Chancellor's Office. (Cal. Code Regs., tit. 5, § 57013.)
- If an existing district is included in a newly formed district, any unused funds appropriated or authorized to be appropriated for a finally approved project shall be transferred to the newly formed or including district. (Ed. Code, § 81808.)
- On completion of a project, and within 30 days after the closure of the current fiscal year, the district governing board is required to submit to the Chancellor a final report on all expenditures in connection with the source of funds expended. The district is subject to the state post-audit review of fund claims for all projects. (Cal. Code Regs., tit. 5, § 57011.)

The district also has the authority to include a proposed site in its plans for a project and enter into an agreement with the owner of the property for an option to purchase or lease, and to appeal any decision of the Chancellor's Office in administering the Community College Construction Act to the Board of Governors. (Ed. Code, § 81839; Cal. Code Regs., tit. 5, § 57010.)[23]

In addition, any district-proposed project for the erection of any new college facility or addition to, or alteration of an existing college facility that exceeds $150,000, is required to go through additional review and approval under which the district is required to submit the plans and specifications for the project to the Board of Governors. In such cases, the community college district is required to submit the plans and specifications for the project to the Board of Governors and pay the fee charged by the Board of Governors for its review. (Ed. Code, § 81837.)

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[23] Section 81839 is not new. Former section 20085 (Stats. 71, ch. 373) authorized the same activities (except that "lease with an option to purchase" was added by Stats. 1976, ch. 1010). This section was renumbered to section 81845 by Statutes 1976, chapter 1010, and repealed and added (as renumbered § 81839) by Statutes 1980, chapter 910.

The right to appeal actions of the Chancellor to the Board of Governors is also not new. Former section 20055 of the Education Code (Stats. 67, ch. 1550, amended by Stats. 1971, ch. 1525) also provided this right. This provision was moved to Education Code section 81806 in 1976 (Stats. 1976, ch. 1010) and repealed by Statutes 1980, chapter 910.

The claimant seeks reimbursement for all of the activities identified above.

The Commission finds, however, that these activities do not mandate a new program or higher level of service.

Generally, a community college district has the discretionary authority to: 1) acquire property necessary to carry out the powers or functions of the district; 2) manage and control district property; and 3) determine and control the district's capital outlay budget.[24] Although community college districts are required to repair school property,[25] they are not required to seek state funding assistance to pay for the repairs. The plain language of the program provides that any community college "may" submit a proposed project for review and approval, and "request" state funding assistance.[26] Thus, it is the decision of a community college district to seek state funding assistance for proposed capital outlay projects that triggers the activities identified in statute. Under these circumstances, the activities are not mandated by the state.[27]

However, notwithstanding the language in the test claim statutes, a community college district is required by state law, pursuant to Education Code section 81179, to apply for state funding assistance under the Community College Construction Act whenever the district does not have the funds available to repair, reconstruct, or replace school buildings that have been determined by a licensed structural engineer or licensed architect to be unsafe for use. Some may argue that this statute mandates community college districts to comply with the test claim statutes and seek state assistance in the funding of the repair or replacement of district facilities.

However, since community college districts have been given the authority to manage and control their property and to determine and control their capital outlay budget, the finding of a mandate under these circumstances would need to be based on evidence in the record showing why the facility has gotten to the point of being unsafe for use and why the district does not have funds available for the repair or replacement. Although it is conceivable that Education Code section 81179 may lead to a situation where a community college district is practically compelled to comply with the test claim statutes and regulations (i.e., where a facility is damaged or destroyed by unforeseen circumstances or emergency), there is no evidence in the record that a community college district has no option or choice but to comply with the statutes and regulations. Practical compulsion requires a showing that the district is facing certain and severe penalties "such as double taxation or other draconian consequences."[28]

Moreover, the requirements that are triggered by the district's decision to seek state funding assistance are not new.

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[24] Education Code sections 70902 (b)(5)(6)(13), 81600, 81606.

[25] Education Code section 81601.

[26] Education Code section 81839; California Code of Regulations, title 5, sections 57014, 57152.

[27] *Kern High School Dist., supra*, 30 Cal.4th 727, 743; *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 880.

[28] *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1366; *Kern High School Dist., supra*, 30 Cal.4th 727, 731.

Former Education Code section 20075 (Stats. 1971, ch. 1525) provided community college districts with the same authority as section 57014 of the regulations to submit a proposed project for review and approval by the Chancellor's Office. Former section 20075 stated:

> Any community college district may submit to the Chancellor for review and approval a proposed project. The proposed project shall be an element of the district's plan for capital construction. It shall be in such form and contain such detail, pursuant to rules and regulations of the board of governors, as will permit its evaluation and approval with reference to the elements of the capital construction program specified in Section 20066 [which requires that the project proposal contain the same information as Education Code section 81821].[29]

Former section 20075 was renumbered to section 81830 by Statutes 1976, chapter 1010, and was amended by Statutes 1980, chapter 910. It was repealed by Statutes 1990, chapter 1372, effective January 1, 1991. Section 57014 was operative on April 4, 1991. Although there appears to be a three month gap between the repeal of former section 81830 and the effective and operative date of section 57014 of the title 5 regulations, the Legislature, in Statutes 1990, chapter 1372, continued the operation of section 81830 and continued the effect of that provision until the operative date of the regulations. Statutes 1990, chapter 1372 states in relevant part of the following:

> (a) Prior to January 1, 1991, the Board of Governors of the California Community Colleges shall initially adopt and put into effect regulations which incorporate the text of the following Education Code provisions that have been repealed or amended by this act. The text of these sections, as they relate to community colleges, may be changed when initially adopted as regulations in accordance

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[29] Former section 20066 (Stats. 1971, ch. 1525) stated:

> The plan for capital construction shall set out the estimated capital construction needs of the district with reference to elements including at least all of the following:
>
> (a) The plans of the district concerning its future academic programs, and the effect on estimated construction needs which may arise because of particular courses of instruction or subject matter areas to be emphasized.
>
> (b) The enrollment projections for each district formulated by the Department of Finance, expressed in terms of weekly student contract hours. The enrollment projections for each individual college within a district shall be made cooperatively by the Department of Finance and the community college district.
>
> (c) The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors.
>
> (d) District office, library and supporting facility capacities as derived from the physical plant standards for office, library and supporting facilities adopted by the board of governors.
>
> (e) An annual inventory of all facilities of the district using standard definitions, forms, and instructions adopted by the board of governors.

> with the character of the California Community Colleges as a postsecondary education system, as specified in Section 70900 of the Education Code, and the responsibilities assigned to the Board of Governors of the California Community colleges . . . . *The changes shall not alter the requirements, rights, responsibilities, conditions or prescriptions contained in these statutes.* Permitted initial changes include grammatical or technical changes, renumbering or reordering sections, removal of outdated terms or references to inapplicable or repealed statutory authority, and the correction of gender references of the following sections of the Education Code:
>
> Sections . . . 81802, 81803, 81806, 81809, 81810, 81821.5, *81830*, 81831, 81833, 81838 . . . After initial adoption of the Board of Governors regulations specified by this section, all subsequent changes to those regulations shall be made in accordance with Section 70901.5 of the Education Code.
>
> (b) It is the intent of the Legislature that there be no lapse in the requirements, rights, responsibilities, conditions, or prescriptions contained in the statutes. *Should the board of governors fail to adopt and put into effect regulations in accordance with subdivision (a), the listed statutes shall remain operative until the effective date of the corresponding board of governors regulations*. (Stats. 1990, ch. 1372, § 708, subs. (a) & (b), emphasis added.)

In another case involving a repealed statute converted into a regulation by Statutes 1990, chapter 1372, the Sixth District Court of Appeal noted:

> As part of the permissive code,[30] the Legislature also (1) directed that the Board of Governors of the California Community Colleges adopt regulations incorporating the text of specified repealed or amended Education Code sections, and (2) provided that the specified sections would remain operative until the effective date of the corresponding regulation. (Stats. 1990, ch. 1372, § 708, p. 6320.) It specifically stated: "It is the intent of the Legislature that there be no lapse in the requirements, rights, responsibilities, conditions, or prescriptions contained in the statutes." (*Id.* at p. 6321.)[31]

Thus, the court stated the following about the regulation adopted in the aftermath of Statutes 1990, chapter 1372:

> [The title 5 regulation] is no mere administrative regulation. It is a regulation adopted by the Board of Governors of the California Community Colleges pursuant to the board's constitutional authority and the Legislature's mandate to

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[30] The "permissive code" is based on article IX, section 14 of the California Constitution. This 1972 amendment added the following to that section: 'The Legislature may authorize the governing boards of all school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established." *Barnhart v. Cabrillo Community College* (1999) 76 Cal.App.4th 818, 824.

[31] *Id.* at p. 825.

the board to keep in effect the "requirements, rights, responsibilities, conditions, or prescriptions" of an identical repealed statute.

This also applies to the section 57014 regulation. Thus, since 1971, community college districts have had the continuing authority to submit to the Chancellor for review and approval a proposed capital outlay project and to seek state funding assistance for the proposed project.

In addition, the requirements in Education Code section 81836 to pay the fees charged by the Board of Governors for each ten acres or fraction thereof of school sites reviewed and approved when the community college district proposes to acquire a new college site, and to pay for the review of the plans and specifications of projects, have existed since at least 1974. Former Education Code section 20080.1 (Stats. 1974, ch. 30) required the Chancellor to:

(a) Advise the governing board of each community college district on the acquisition of new college sites, and, after a review available plots, give the governing board of the district in writing a list of the approved locations in the order of their merit, considering especially the matters of educational merit, reduction of traffic hazards, and conformity to the organized regional plans as presented in the master plan of the planning commission having jurisdiction, *and charge the governing board of the community college district a fee of twenty-five dollars ($25) for each 10 acres or fraction thereof of each school site reviewed.*

(b) Establish standards for community college facilities.

(c) Review all plans and specifications for all construction in every community college district required to submit plans and specifications therefor to it for approval. *The Chancellor's office shall charge community college districts for the review of plans and specifications, a fee of one-seventh of 1 percent of the estimated cost determined by the chancellor's office except for those projects intended to be funded totally with district funds in which case a fee of one-twentieth of 1 percent will be charged. The minimum fee in any case shall be ten dollars ($10).*

(d) Approve plans and specifications submitted by the governing boards of community college districts, and return without approval and with recommendation for charges, any plans not conforming to established standards. (Emphasis added.)

This section was renumbered to section 81836 by Statutes 1976, chapter 1010, and the fee provision was amended in subdivision (a) by Statutes 1980, chapter 910 to "a reasonable fee as determined by the chancellor's office for each 10 acres or fraction thereof of school site reviewed." Subdivision (d) was amended by Statutes 1980, chapter 910, to "a reasonable fee as established by the board of governors." It was amended to its current form by Statutes 1990, chapter 1372. Thus, the Chancellor has been authorized to charge a fee continuously since before 1975.

Claimant argues that to the extent that the "reasonable fees" exceed the amounts under prior law, they are additional costs for which reimbursement is allowable.

The Commission disagrees. Claimant confuses an increased cost to provide a service, which, by itself, is not reimbursable, with an actual higher level of service, which may be reimbursable. As the Supreme Court explained in *San Diego Unified School Dist*,(2004) 33 Cal.4th 859, 877:

> Viewed together, these cases (*County of Los Angeles, supra,* 43 Cal.3d 46, 233 Cal.Rptr. 38, 729 P.2d 202, *City of Sacramento, supra,* 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, and *City of Richmond, supra,* 64 Cal.App.4th 1190, 75 Cal.Rptr.2d 754) illustrate the circumstance that simply because a state law or order may *increase the costs borne* by local government in *providing services,* this does not necessarily establish that the law or order constitutes an *increased or higher level* of the resulting "service to the public" under article XIII B, section 6, and Government Code section 17514.
>
> By contrast, Courts of Appeal have found a reimbursable "higher level of service" concerning an existing "program" when a state law or executive order mandates not merely some change that increases the cost of providing services, but an increase in the actual level or quality of governmental services provided. [Emphasis in original.]

Any increase in fees charged by the Chancellor to review plans is merely an increase in the cost of obtaining or providing the service, not an increase in the level or quality of governmental services provided. Therefore, the Commission finds any increase in fees in section 81836 (Stats. 1980, ch. 910, Stats. 1990, ch. 1372) over former versions of the statute is not a new program or higher level of service subject to article XIII B, section 6.

Furthermore, the requirements in section 57013 of the regulations to meet with appropriate local government recreation and park authorities when planning, designing, or constructing new facilities in order to achieve a greater use of any joint or contiguous recreation and park facilities and to determine the possible uses by the total community of the facilities and sites, and to report the information to the Chancellor's Office, are not new. Section 57013 was adopted on April 5, 1991. However, in 1979, the Legislature enacted former Education Code section 81831.5 (Stats. 1979, ch. 797), and renumbered it as section 81821.5 in 1980 (Stats. 1980, ch. 910) to require the same activities as follows:

> The governing board of any community college district shall meet with appropriate local government recreation and park authorities to review all possible methods of coordinating, planning, design, and construction of new facilities and sites or major additions to existing facilities and recreation and park facilities in the community. Any community college district planning, designing, or constructing new facilities and sites or major additions to existing facilities shall report to the chancellor's office on plans to achieve (a) a greater use of any joint or contiguous recreation and park facilities by the district and (b) possible use by the total community of such facilities and sites and recreation and park facilities.

Education Code section 81821.5 was repealed by Statutes 1990, chapter 1372, effective January 1, 1991, and section 57013 of the regulations became effective on April 5, 1979. However, as discussed above, the Legislature continued the operation of section 81821.5 until the operative date of the regulation and, thus, there is no time gap in the operation of the requirement to meet with appropriate local government recreation and park authorities when planning, designing, or constructing new facilities. Thus, the requirement in section 57013 does not impose a new program or higher level of service.

Moreover, the requirement in Education Code section 81837 to submit the plans and specifications of a project costing more than $150,000 to the Board of Governors for review and

approval has been the law since at least 1974. Former Education Code section 20080.2 (Stats. 1974, ch. 30) provided:

> The governing board of each community college district, except districts governed by a city board of education, before letting any contract or contracts totaling ten thousand dollars ($10,000) or more, for the erection of any new community college facility, or for any addition to, or alteration of, an existing community college facility, shall submit plans therefor to the chancellor's office, and obtain the written approval of the plans by the office. No contract for construction made by any governing board of a community college district contrary to the provisions of this section is valid, nor shall any public money be paid for erecting, adding to, or altering any facility in contravention of this section.

Former section 20080.2 was renumbered to section 81837 by Statutes 1976, chapter 1010, and repealed and reenacted by Statutes 1980, chapter 910. In 1981, it was amended to increase the threshold amount to $150,000. Claimant pled the 1980 and 1981 versions of section 81837.

Because submitting plans for construction projects, as specified, has been continuously required since at least 1974, the Commission finds that section 81837 (Stats. 1980, ch. 910, Stats. 1981, ch. 891) is not a new program or higher level of service. The 1981 amendment raising the threshold amount to $150,000 is not a new program or higher level of service, since it would result in fewer district submissions to the Chancellor for smaller projects.

The requirement in Education Code section 81808 to transfer any unused funds appropriated or authorized to be appropriated for a finally approved project to a newly formed district is also not new, but has been the law since 1967. Former Education Code section 20057 (Stats. 1967, ch. 1550) stated:

> In the event an existing junior college district is included in a newly formed junior college district, any unused funds appropriated or authorized to be appropriated for a finally approved project of the included district pursuant to this chapter shall be transferred to the newly formed or including junior college district on the date that such district is effective for all purposes, or prior to such effective date where the governing boards of the districts agree to such earlier transfer.

Former section 20057 was amended to read "community" instead of "junior" college district in 1970 (Stats. 1970, ch. 102). The statute was renumbered in the 1976 Education Code without change as section 81808 (Stats. 1976, ch. 1010).

Finally, the requirement in section 57011 of the regulations to submit to the Chancellor a final report on all expenditures in connection with the source of funds expended, and to be subject to the post-audit review of fund claims by the state for all projects is not new. Former Education Code section 20058 (Stats. 1967, ch. 1550) stated the following: "Upon completion of a project the governing board of a junior college district shall submit to the Department of Education a final report on all expenditures in connection with the project and the sources of the funds expended."

In 1971, the statute was amended to require submitting the report to the Chancellor instead of the Department of Education. (Stats. 1971, ch. 1525.) This statute was renumbered to section 81809 by Statutes 1976, chapter 1010. In 1980 (Stats 1980, ch. 910) it was amended to add a deadline

of "within 30 days after the closure of the current fiscal year" for submission. In 1981 (Stats. 1981, ch. 891) it was amended to add: "The district shall be subject to a state post-audit review of fund claims for all such projects." Section 81809 was repealed by Statutes 1990, chapter 1372, effective January 1, 1991. Section 57011 of the title 5 regulations was adopted effective April 5, 1991. However, as with the other statutes repealed by Statutes 1990, chapter 1372 discussed above, the Legislature continued the operation of section 81809 until the operative date of section 57011 of the title 5 regulations. Thus, the requirements imposed by section 57011 does not constitute a new program or higher level of service.

Accordingly, the Commission finds that requirements imposed when a district seeks state funding for capital outlay projects in accordance with the Community College Construction Act of 1980 (§§ 81800-81808, 81836-81837, 81839, Cal.Code Regs, tit. 5, §§ 57001.5, 57010-57016, 57033.1, 57152) does not mandate an new program or higher level of service.

C. District-Funded Construction Projects (Ed. Code, § 81836 & 81837; Cal. Code Regs., tit. 5, §§ 57150 - 57158)

A district-funded project is defined as "a capital outlay project subject to the requirements of section 81837 of the Education Code [i.e., contracts of $150,000 or more subject to the approval of the Board of Governors] for which any funds, other than state funds, are paid or to be paid for erecting, adding to, or altering any community college facility." (Cal.Code Regs, tit. 5, § 57150.) The following requirements are imposed with respect to district-funded capital outlay projects:

- When the community college district proposes to acquire a new college site, the community college district is required to pay the fee charged by the Board of Governors for each ten acres or fraction thereof of school sites reviewed and approved. (Ed. Code, § 81836(a).)[32]
- When the community college district proposes a project, the district is required to pay a reasonable fee for review of the project's plans and specifications. (Ed. Code, § 81836(d).)
- Submit an application for approval of the project plans to the Chancellor. The application shall be accompanied by the plans and full, complete and accurate take-off of assignable and gross square feet of space, which shall comply with any and all requirements prescribed by the Chancellor. (Cal. Code Regs, tit. 5, § 57154.)

The Chancellor is required to review and evaluate each district funded project with reference to the elements of the capital construction program specified in Education Code section 81821; i.e., the plans of the district concerning its future academic and student services programs, enrollment projections, the current enrollment capacity, district supporting facility capacities, and an annual inventory of all facilities and land of the district. The Chancellor's review shall be "directed particularly to ascertain whether the locally funded project is of appropriate size, is appropriately timed and is justified in terms of the elements of the capital construction plan and where applicable, the standards adopted by the Board of Governors." (Cal. Code Regs., tit. 5, § 57156.)

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[32] All proposals to acquire a new college site, whether funded by the district or funded with the assistance from the state, are required to comply with Education Code sections 81836 & 81837.

The Chancellor is required to approve the district-funded plans when the analysis shows that approval of the plans for a proposed facility would not result in facilities that would be substantially at variance with space and utilization standards adopted by the Board of Governors. (Cal. Code Regs., tit. 5, § 57158(a).)

When the Chancellor's analysis shows that the approval of the plans would result in facilities that would be substantially at variance with space and utilization standards adopted by the Board of Governors, the Chancellor is required to either impose conditions for the approval of the plans or find that despite the variance, the plans are acceptable and respond to the district with cautions and/or appraisal of the potential consequences of the variance. (Cal. Code Regs., tit. 5, § 57158(b).)

The claimant requests reimbursement for the required activities when proposing a district-funded project.

As indicated in the analysis above, the requirement in Education Code section 81836 to pay the fees charged by the Board of Governors for the review and approval of new sites proposed to be acquired by a community college district and to review the plans and specifications for proposed projects has existed since at least 1974 and, thus, does not mandate a new program or higher level of service. (Former Ed, Code, § 20080.1 (Stats. 1974, ch. 30.)

The Commission further finds that while the activity to submit an application, including the plans and specifications, to the Chancellor's Office for approval of a district-funded project is mandated in certain situations, the requirement does not impose a new program or higher level of service.

Community college districts are required by Education Code section 81601 to repair school property. Thus, any capital construction contract that exceeds $150,000 and is proposed for the purpose of repairing school property is required to be approved by the Board of Governors. Under these circumstances, the Commission finds that community college districts are mandated by the state to submit an application for approval of the plans to the Chancellor. The application shall be accompanied by the plans and full, complete and accurate take-off of assignable and gross square feet of space, which shall comply with any and all requirements prescribed by the Chancellor. (Cal. Code Regs, tit. 5, § 57154.)

Other than repairing school buildings, state law does not require community college districts to engage in capital outlay projects. Rather, community college districts can decide when and if to propose capital outlay projects for new construction, alteration, or extension and betterment of existing structures that are not in need of repair, and have the general discretionary authority to manage and control property.[33] Under these circumstances, the requirement to submit an application for approval of the plans to the Chancellor in accordance with section 57154 is not mandated by the state.[34] Nor has claimant shown any practical compulsion to perform capital

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[33] Education Code sections 70902 (b)(5)(6)(13), 81600, 81606.

[34] *Kern High School Dist., supra*, 30 Cal.4th 727, 743; *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 880.

outlay projects, as the record does not indicate any certain and severe penalties "such as double taxation or other draconian consequences"[35] for failure to do so.

The Commission finds, however, that the requirement in section 57154 of the regulations to submit an application for approval of the plans for capital outlay projects that exceed $150,000 and proposed for the purpose of repairing school property to the Board of Governors does not constitute a new program or higher level of service. In 1979, the Attorney General of California opined that facility plans financed entirely by local funds are subject to review and approval by the Chancellor in accordance with the standards established in Education Code section 81836. (62 Ops.Cal.Atty.Gen. 568, 577 (1979).)

As indicated above, the requirement in section 81837 to submit the plans and specifications of a project costing more than $150,000 to the Board of Governors for review and approval has been the law since at least 1974. Former Education Code section 20080.2 (Stats. 1974, ch. 30) required districts that let contracts over $10,000 to "submit plans therefor to the chancellor's office … and obtain the written approval of the plans by the office." Former section 20080.2 was renumbered to section 81837 by Statutes 1976, chapter 1010, and repealed and reenacted by Statutes 1980, chapter 910. In 1981, it was amended to increase the threshold amount to $150,000.

Thus, before the test claim regulation (§ 57154) was adopted in 1991, districts with locally-funded projects were required to submit their plans that conformed to established standards to the Chancellor for review and approval. This is the same requirement as in current law. Although the regulation requires that the plans be accompanied by "full, complete and accurate take-off of assignable and gross square feet of space" This requirement is not new. These calculations of square footage were necessary under the capacity and utilization standards required by section 81836(c) of the Education Code, and listed in sections 57020-57026 of the title 5 regulations, which predate 1975.[36]

Thus, the Commission finds that section 57154[37] of the title 5 regulations is not a state-mandated new program or higher level of service.

D. Energy Efficient Facilities (§ 81663, Cal. Code Regs, tit. 5, §§ 57050-57063)

Education Code section 81660 provides that a community college district "may enter into an energy management agreement for energy management systems with any person, firm, corporation, or public agency . . . ." "Energy management systems" is defined as "solar, energy, or solar and energy management systems."

Education Code section 81663 and section 57061 of the title 5 regulations authorize community college districts to borrow funds from "federal or state regulated financial institutions" to retrofit buildings for greater energy efficiency, but provides that the "amount borrowed shall not exceed

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[35] *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1366; *Kern High School Dist., supra*, 30 Cal.4th 727, 731.

[36] Register 74, No. 26 (June 29, 1975) page 673.

[37] Register 80, No. 44 (Nov. 1, 1980) page 676.5; Register 91, No. 23 (June 7, 1991) page 377; Register 95, No. 23 (June 9, 1995) page 378.

the amount that can be repaid from energy cost avoidance savings accumulated from the improvement of facilities." (§ 81663, Stats. 1991, ch. 1038, Cal. Code Regs, tit. 5, § 57061.)

The "Energy and Resources Conservation" regulations (Cal. Code Regs, tit. 5, §§ 57050-57063) require, for districts requesting a state-supported energy conservation project, "a summary of the district's Energy Conservation program as part of its five-year construction plan." (Cal. Code Regs, tit. 5, § 57052(a).) A district submitting an energy conservation project for state aid is to indicate the need for assistance in the annual district five-year construction plan. (Cal. Code Regs, tit. 5, § 57052(b).) When the need for an energy conservation project[38] has been adequately established, it must be submitted "as a project planning guide in accordance with established format to the Chancellor's Office." (Cal. Code Regs, tit. 5, § 57053.) Energy conservation projects are ranked on the basis of criteria developed by the Chancellor's Office (Cal. Code Regs, tit. 5, § 57055). The criteria include level of energy use, pay-back period, and "the extent to which the district has implemented an energy conservation program which meets the objectives specified in Board of Governor's Policy Statement on Energy and Resource Conservation." (Cal. Code Regs, tit. 5, § 57054.) Districts are required to contract with "qualified businesses capable of retrofitting school buildings." (Cal. Code Regs, tit. 5, § 57063.)

Claimant pled the following activities based on these regulations:

- To include a summary of the local district energy conservation program and indicate its need for such assistance in its annual five-year construction plan when requesting a state supported energy conservation project (Cal. Code Regs., tit. 5, § 57052, subds.(a) & (b)).
- When the need for state financial assistance has been adequately established, the energy conservation project must be submitted as a project planning guide in accordance with the Chancellor's office's established format including evidence of an approved Energy Audit on file with the California Energy Commission (Cal. Code Regs., tit. 5, § 57053).
- To include in its preliminary plans for energy related projects: (1) the results of a technical audit performed by an authorized Technical Auditor which describes in detail the energy conservation measures the project is to institute; (2) the status of the project as related to the various federal and state aided programs for energy conservation; and (3) an architectural or engineering analysis setting forth the detailed costs of the various elements of the project (Cal. Code Regs., tit. 5, § 57055(b)).
- To arrange, to the extent that services are available, for the pre-audit and post-audit of buildings by investor-owned or municipal utility companies or by independent energy audit companies or organizations which are recognized by federal or state regulated financial institutions (Cal. Code Regs., tit. 5, § 57062). The pre-audit must identify the type and amount of work necessary to retrofit the buildings and shall include an estimate of projected energy savings, while the post-audit must be conducted upon completion of

[38] "Energy Conservation Project" means: the acquisition, development, or modification of facilities and equipment which result in the conservation of energy; energy audits; energy conservation and operating procedures; energy conservation measures; water conservation measures; and redraft consisting of modifications made to existing equipment or structures. (Cal. Code Regs, tit. 5, § 57051(a).)

the retrofitting of the buildings to insure that the project satisfies the recommendations of the pre-audit (Cal.Code Regs., tit. 5, § 57062).

- To contract only with qualified business capable of retrofitting school buildings (Cal.Code Regs., tit. 5, § 57063).

The Department of Finance comments that all regulations pertaining to energy conservation projects are not reimbursable because they are contingent on electing to pursue funding for an energy conservation project. Finance also cites offsetting savings resulting from energy conservation. The Chancellor's Office also states that sections 57052, 57053, 57055, 57062, and 57063 "concern voluntary applications for state funding for energy conservation projects."

Claimant cites the legislative finding in section 57060 of the title 5 regulations that it is in the interest of the state and the people for the state to aid community college districts in conserving energy.

The Commission finds that neither section 81663 of the Education Code (Stats. 1991, ch. 1038), nor the "Energy and Resources Conservation" regulations (Cal. Code Regs, tit. 5, §§ 57050-57063) pled by the claimant impose a state-mandated program subject to article XIII B, section 6 of the California Constitution.

Section 81660 is the first code section in Article 3.5 of the Education Code governing energy management systems and clearly states that community college districts "may" enter into energy management agreements. Furthermore, the test claim statute and regulation (section 81663 and section 57061 of the title 5 regulations) authorize but do not require community college districts to enter into energy management agreements and borrow funds for "retrofitting buildings to become more energy efficient."

Sections 81663 and 57061 state that the community college district "*may* borrow funds …" [Emphasis added.] Using the word "may" makes the activity discretionary (Ed. Code, § 75). There is no legal compulsion on the face of sections 81663 or 57061 to borrow funds. And, the statute, regulations, and record are silent as to any practical compulsion to enter into energy management agreements and borrow funds for energy management systems. Therefore, the Commission finds that section 81663 of the Education Code (Stats. 1991, ch. 1038) and section 57061 of the title 5 regulations[39] are not state mandates, and not subject to article XIII B, section 6.

As to the remaining energy efficiency regulations (Cal. Code Regs, tit. 5, §§ 57050-57063), the legislative intent is expressly to "*encourage* community college districts to retrofit buildings so as to conserve energy and reduce the cost of supplying energy." (Emphasis added.) (Cal. Code Regs., tit. 5, § 57060.) The plain language to "encourage" an energy retrofit should not be interpreted as "requiring" or "mandating" one.

Moreover, the event triggering all the district requirements is the district "requesting a state supported energy conservation project…" (Ed. Code, § 81660; Cal. Code Regs., tit. 5, § 57052(a).) There is no legal requirement on the face of the regulations to request a state-supported energy conservation project. And neither the regulations nor the record indicates any practical compulsion to request a state-supported energy conservation project.

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[39] Register 91, No. 23 (June 7, 1991) page 376; Register 95, No. 23 (June 9, 1995) page 377.

If a district does request a state-supported energy conservation project, it must comply with the requirements in the regulations, such as including a summary of the local district energy conservation program in its annual five-year plan (Cal. Code Regs., tit. 5, § 57052(a)) and indicating the need for assistance in the five-year plan (Cal. Code Regs., tit. 5, § 57052(b)). The district must also submit the energy conservation project as a project planning guide with evidence of an approved energy audit on file with the California Energy Commission (Cal. Code Regs., tit. 5, § 57053(a) & (b).) Districts also arrange for pre- and post-audits of buildings (Cal. Code Regs., tit. 5, § 57062) and contract with qualified businesses capable of retrofitting school buildings (Cal. Code Regs., tit. 5, § 57063).

All of these requirements, however, are downstream of the district's discretionary decision to enter into energy systems management agreements and seek funding for an energy conservation project. Based on the reasoning in the *Kern School Dist.* case,[40] the Commission finds that Education Code section 81663 all of the regulations in subchapter 1.5 (Cal. Code Regs., tit. 5 §§ 57050 et seq.) are not mandated by the state under article XIII B, section 6.

Issue 2: Do sections 81820 and 81821(a), (b), (e), and (f), impose costs mandated by the state within the meaning of Government Code sections 17514 and 17556?

The final issue is whether sections 81820 and 81821(a), (b), (e), and (f), which require community college districts to include, review and report new information in the five year capital construction plan, impose costs mandated by the state,[41] and whether any statutory exceptions listed in Government Code section 17556 apply to these provisions. Government Code section 17514 defines "cost mandated by the state" as follows:

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

Government Code section 17564 requires reimbursement claims to exceed $1,000 to be eligible for reimbursement.

In Exhibit 1 of the test claim, claimant submitted an estimate under penalty of perjury that it would incur more than $1,000 in costs "in excess of the funding provided the district by the state to implement these new duties mandated by the state for which the community college district will not be reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement."

The Commission also finds that no exceptions to reimbursement in Government Code section 17556 apply to this test claim. There is no evidence in the record that funds have been appropriated by the Legislature for these activities.

Accordingly, the Commission finds that sections 81820 and 81821(a), (b), (e), and (f), as specified above under Issue II of this analysis, impose increased costs mandated by the state within the meaning of Government Code section 17514.

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[40] *Kern High School Dist., supra*, 30 Cal.4th 727, 743.

[41] *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

IV. Conclusion

For the reasons discussed above, the Commission finds that Education Code sections 81820 and 81821(a), (b), (e), and (f) (Stats. 1980, ch. 910, Stats. 1981, ch. 470, Stats. 1981, ch. 891, Stats. 1995, ch. 758) constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution to include the following information in the five-year plan for capital construction:

- The plans of the district concerning its future student services programs, and the effect on estimated construction needs that may arise because of particular student services to be emphasized. (§ 81821(a).)
- The enrollment projections for each educational center within a community college district, made cooperatively by the Department of Finance and the district. (§ 81821(b).)
- An annual inventory of all land of the district using standard definitions, forms, and instructions adopted by the Board of Governors. (§ 81821(e).)
- An estimate of district funds which shall be made available for capital outlay matching purposes pursuant to regulations adopted by the Board of Governors. (§ 81821(f).)

Community college districts are also eligible for reimbursement to continually review the information bulleted above and to report by February 1 of each year any required modifications or changes with respect to the information to the Board of Governors.

The Commission also finds that all other statutes and regulations in the test claim do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

J:mandates/2002/tc/02tc47/psgs/CSMdraftpsgs

Proposed Parameters and Guidelines

Education Code Sections 81820, 81821(a), (b), (e), and (f)

Statutes 1980, Chapter 910, Statutes 1981, Chapter 470, Statutes 1981, Chapter 891, Statutes 1995, Chapter 758;

Community College Construction
02-TC-47

Santa Monica Community College District, Claimant

I. SUMMARY OF THE MANDATE

On October 27, 2011, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim statutes impose a partially reimbursable state-mandated program upon community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the following reimbursable activities:

For community college districts to include in their five-year capital construction plans:

- The plans of the district concerning its future student services programs, and the effect on estimated construction needs that may arise because of particular student services to be emphasized. (§ 81821(a).)[1]
- The enrollment projections for each educational center within a community college district, made cooperatively by the Department of Finance and the district. (§ 81821(b).)
- An annual inventory of all land of the district using standard definitions, forms, and instructions adopted by the Board of Governors. (§ 81821(e).)
- An estimate of district funds which shall be made available for capital outlay matching purposes pursuant to regulations adopted by the Board of Governors. (§ 81821(f).)

Community college districts are also eligible for reimbursement to continually review the information bulleted above and to report by February 1 of each year any required modifications or changes with respect to the information to the Board of Governors.

The Commission found that all other statutes and regulations in the test claim did not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

II. ELIGIBLE CLAIMANTS

Any community college district as defined in Government Code section 17519, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

[1] All references are to the Education Code unless otherwise indicated.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The Santa Monica Community College District filed the test claim on June 27, 2003, establishing eligibility for reimbursement on or after July 1, 2001. Therefore, costs incurred for the activities in these parameters and guidelines are reimbursable on or after July 1, 2001.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b).)
5. If the total costs for a given fiscal year do not exceed $1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

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 to 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, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, 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:

Include the following information in the five-year plan for capital construction:

- The plans of the district concerning its future student services programs, and the effect on estimated construction needs that may arise because of particular student services to be emphasized. (§ 81821(a).)
- The enrollment projections for each educational center within a community college district, made cooperatively by the Department of Finance and the district. (§ 81821(b).)
- An annual inventory of all land of the district using standard definitions, forms, and instructions adopted by the Board of Governors. (§ 81821(e).)
- An estimate of district funds which shall be made available for capital outlay matching purposes pursuant to regulations adopted by the Board of Governors. (§ 81821(f).)

Community college districts are also eligible for reimbursement to continually review the information bulleted above and to report by February 1 of each year any required modifications or changes with respect to the information to the Board of Governors.

All other statutes and regulations pled in the test claim do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

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, 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.

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 may 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(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[2] 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

[2] This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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

Any offsets 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, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(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(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(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.

Received
November 21, 2011
Commission on
State Mandates

Exhibit C

SixTen and Associates
Mandate Reimbursement Services

KEITH B. PETERSEN, President
P.O. Box 340430
Sacramento, CA 95834-0430
Telephone: (916) 419-7093
Fax: (916) 263-9701

E-Mail: Kbpsixten@aol.com
5252 Balboa Avenue, Suite 900
San Diego, CA 92117
Telephone: (858) 514-8605
Fax: (858) 514-8645

November 21, 2011

Nancy Patton, Acting Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Test Claim 02-TC-47
Santa Monica Community College District
Proposed Parameters and Guidelines
Community College Construction

Dear Ms. Patton:

I have received the Commission's Draft Parameters and Guidelines transmitted on November 2, 2011, to which I respond on behalf of the test claimant.

1. Clarification of Reimbursable Activities (1183.12 (b) (1))

The mandate to prepare the five-year plan dates back to Statutes of 1980, Chapter 910. Therefore, *except for districts newly established after July 1, 2001 (the commencement date for reimbursement)* the reimbursable activities would be only applicable to the annual extension of the five-year plan, review and update of modifications or changes, submitted to the state Board of Governors by February 1, as they relate to the four (of six) subsections of Education Code Section 81821 approved for reimbursement. The changes proposed below clarify that the reimbursable activities apply both to the *initial* plan (for districts established after July 1, 2001) as well as the annual update (for all districts).

"PART IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, the following activities are reimbursable:

Include the following information in the initial five-year plan for capital construction and subsequent annual update for any required mofications or

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State Mandates

changes submitted to the Board of Governors by February 1 of each succeeding year:

• The plans of the district concerning its future student services programs, and the effect on estimated construction needs that may arise because of particular student services to be emphasized. (§ 81821(a).)

• The enrollment projections for each educational center within a community college district, made cooperatively by the Department of Finance and the district. (§ 81821(b).)

• An annual inventory of all land of the district using standard definitions, forms, and instructions adopted by the Board of Governors. (§ 81821(e).)

• An estimate of district funds which shall be made available for capital outlay matching purposes pursuant to regulations adopted by the Board of Governors. (§ 81821(f).)

~~Community college districts are also eligible for reimbursement to continually review the information bulleted above and to report by February 1 of each year any required modifications or changes with respect to the information to the Board of Governors."~~

2. Reasonable Methods of Complying (1183.12 (b) (2))

None proposed.

3. Reasonable Reimbursement Method (1183.12 (b) (3))

The test claimant does not believe the costs incurred for the approved activities are sufficiently related to any workload unit that could support a reasonable statewide reimbursement method for a significant part of the mandate.

4. Revenues and Reimbursements (1183.12 (b) (4))

There are no dedicated state or federal funds appropriated for this mandate. There are no known non-local agency funds dedicated to this mandate. There are no district general purpose funds appropriated for this mandate. There is no fee authority to offset the cost of this mandate.

5. Offsetting Savings (1183.12 (b) (5))

Offsetting savings are a question of law determined by the test claim adjudication pursuant to Government Code section 17556. The Commission did not identify any offsetting savings for any of the activities approved for reimbursement.

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November 21, 2011
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State Mandates

CERTIFICATION

I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this document is true and correct to the best of my own knowledge or information or belief.

Sincerely,

Keith B. Petersen

C: Per COSM distribution/electronic drop box

Received
November 23, 2011
Commission on
State Mandates

JOHN CHIANG

California State Controller

Exhibit D

November 23, 2011

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

Re: **Proposed Parameters and Guidelines**
Community College Construction, 02-TC-47
Education Code Sections 81820, 81821(a), (b), (e), and (f)
Statues 1980, Chapter 910
Santa Monica Community College District, Claimant

Dear Ms. Patton:

The State Controller's Office has reviewed the proposed parameters and guidelines for the Community College Construction program. The SCO agrees with the proposed parameters and guidelines.

Should you have any questions regarding the above, please contact Val Chuluunjav at (916) 323-0734, or e-mail to uchuluunjav@sco.ca.gov.

Sincerely,

JAY LAL, Manager
Local Reimbursement Section

MAILING ADDRESS: P.O. Box 942850, Sacramento, CA 94250
STREET ADDRESS: 3301 C Street, Suite 740, Sacramento, CA 95816