

ITEM 7
TEST CLAIM
FINAL STAFF ANALYSIS

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

Public Contract Code Sections 12167 and 12167.1;

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

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

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

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

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

Integrated Waste Management (00-TC-07)

Filed by the Santa Monica and South Lake Tahoe Community College Districts

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Integrated Waste Management (00-TC-07)

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

EXECUTIVE SUMMARY

Claimants, Santa Monica and South Lake Tahoe Community College Districts, filed this claim in March 2001 alleging a reimbursable state mandate on community college districts by requiring new activities and costs for developing and adopting an integrated waste management plan, diverting at least 25 percent of generated solid waste by January 1, 2002 and at least 50 percent by January 1, 2004, requesting extensions of time and alternative goals, and other activities as specified in the test claim statutes.

For reasons stated in the analysis, staff finds that the test claim legislation imposes a reimbursable state-mandated program on community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 to perform the following activities:

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

§§ 42920 – 42928), including implementing the community college's integrated waste management plan, and acting as a liaison to other state agencies (as defined by section 40196.3) and coordinators.

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

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

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

expiration of the time extension when the requirements of section 42921 will be met, the existing programs that it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.

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

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

Recommendation

Staff recommends that the Commission adopt the staff analysis that partially approves the test claim for the activities listed above.

STAFF ANALYSIS

Claimants

Santa Monica and South Lake Tahoe Community College Districts

Chronology

- 3/9/01 Claimants files the test claim with the Commission
- 5/18/01 California Integrated Waste Management Board ("Board") files comments on the test claim
- 5/18/01 California Community Colleges Chancellor's Office ("Chancellor's Office") files comments on the test claim
- 6/18/01 Department of Finance (DOF) files comments on the test claim
- 8/10/01 Claimants file comments in response to state agency comments
- 10/7/03 Commission staff issues the draft staff analysis
- 10/28/03 DOF requests extension to file comments until February 2004
- 10/31/03 Claimants file comments on the draft staff analysis
- 11/7/03 Commission staff informs DOF that comments submitted before the January 29, 2004 hearing will be provided to the Commission
- 1/9/04 Commission staff issues the final staff analysis
- 1/21/04 Board requests hearing postponement and 30 days to submit comments
- 1/22/04 Commission staff grants Board time extension to submit comments
- 2/13/04 Board submits comments on Claimant's comments and on the final staff analysis.
- 2/23/04 Claimant submits comments in response to Board's 2/13/04 comments
- 3/5/04 Commission staff issues revised final staff analysis

Background

Test claim legislation: The test claim legislation¹ requires each "state agency,"² defined to include community colleges,³ to develop and adopt, in consultation with the Board, an integrated

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

² "State agency" is "every state office, department, division, board, commission, or other agency of the state, including the California Community Colleges and the California State University.

waste management plan. The Board is required to develop and adopt a model integrated waste management plan by February 15, 2000, and if the community college does not adopt one, the Board's model plan will govern the community college.

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

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

Any cost savings as a result of the integrated waste management plan are to be redirected, to the extent feasible, to the community college's integrated waste management plan to fund plan implementation and administration costs, in accordance with sections 12167 and 12167.1 of the Public Contract Code. Each state agency is required to report annually to the Board on its progress in reducing solid waste, with the report's minimum content specified in statute.

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

The legislative history of Statutes 1999, chapter 764, (adding the Public Resource Code provisions of the test claim legislation) cited a study by the Board that estimated state agencies generate between 520,000 and 850,000 tons of solid waste (1-2 percent of the state total) annually. It further estimated that state agency solid waste diversion hovers around 12 percent, well below the statewide local government average of 33 percent. The Legislative Analyst's Office (LAO) estimated that the diversion rate of state facilities was between 3.6 and 5.2 percent in 1997. Both the Board and LAO concluded that the low diversion rates of state agencies may

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

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

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

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

be having a significant, adverse effect on many local governments' waste diversion rates and thus their ability to comply with a 50-percent solid waste diversion requirement by 2000.⁵ (This local requirement is not to be confused with the state agency requirement in the test claim. Although both ultimately call for a 50-percent diversion, they are distinct goals enacted at different times.)

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

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

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

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

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

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

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

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

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

¹⁰ Public Resources Code section 40400 et seq.

¹¹ Public Resources Code section 40500 et seq.

prepare integrated waste management plans, to include source reduction and recycling elements.¹² The cities and counties have fee authority for preparing, adopting and implementing the integrated waste management plans.¹³

Claimants' Position

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

- Develop and adopt, on or before July 1, 2000, an integrated waste management plan that will reduce solid waste, reuse materials whenever possible, recycle recyclable materials, and procure products with recycled content pursuant to the general policy statement issued by the Board in its executive order entitled "Waste Reduction Policies and Procedures for State Agencies (August 1999).
- Submit, on or before July 15, 2000, an adopted integrated waste management plan to the Board. According to the Board's Model Integrated Waste Management Plan, the plan would include completion of prescribed information forms, a list of facilities, a worksheet for reporting progress of waste reduction and recycling programs, and a questionnaire regarding the college's mission statement, waste stream and waste diversion activities.
- Provide additional information and clarification to the Board to bring the plan to the level needed for approval.
- Accept and be governed by the model integrated waste management plan prepared by the Board in the event one is not submitted by July 15, 2000 and approved by January 1, 2001.
- Designate and pay at least one person as a solid waste reduction and recycling coordinator who is responsible for implementing the integrated waste management plan and serving as liaison to other state agencies and coordinators.
- Develop, implement and maintain source reduction, recycling and composting activities that divert at least 25 percent of all solid waste generated on campus from landfill disposal or transformation facilities by January 1, 2002.
- Request one or more extensions of time to comply with the 25 percent requirement by January 1, 2002, in the event the community college finds it necessary. In accordance with the request, create and maintain records to present substantial evidence: (1) that the community college is making a good faith effort to implement the programs in its integrated waste management plan, and (2) that would permit the community college to submit a plan of correction that demonstrates it will meet the requirements before the time extension expires, providing a date before the extension expires when the requirements will be met, identifying

¹² Public Resources Code sections 40900 - 40901 et seq.

¹³ Public Resources Code section 41900 et seq.

existing programs that will be modified, and identifying any new programs that will be implemented and the means by which these programs will be funded.

- Develop, implement and maintain source reduction, recycling and composting activities that divert at least 50 percent of all solid waste generated on campus from landfill disposal or transformation facilities by January 1, 2004.
- Request one or more alternatives to the time to comply with the 50 percent requirement by January 1, 2004, in the event the community college finds it necessary. In accordance with the request, create and maintain records to present substantial evidence: (1) that the community college is making a good faith effort to implement the programs in its integrated waste management plan, and has demonstrated progress toward meeting the alternative requirement as described in its annual reports to the Board; (2) as to why the community college has been unable to meet the 50-percent diversion requirement despite implementing its plan; and (3) that the alternative source reduction, recycling and composting requirement requested represents the greatest diversion amount the community college may reasonably and feasibly achieve.
- Ensure that adequate areas are provided and adequate personnel are available to oversee collection, storage, and loading of recyclable materials when entering into or renewing a lease.
- Submit an annual report to the Board summarizing progress in reducing solid waste, to include at a minimum the following: (1) calculations of annual disposal reduction; (2) information on changes in waste generated or disposed of; (3) summary of progress in implementing the integrated waste management plan; (4) extent to which local agency programs or facilities for handling, diversion, and disposal of solid waste will be used; (5) summary of progress if a time extension was granted; (6) summary of progress toward an alternative requirement if one was granted; (7) other information relevant to compliance with section 42921.¹⁴
- Comply with regulations when adopted by the Board and follow specified criteria in applying for reductions or extensions to individual plans.
- Develop, implement and maintain an accounting system to enter and track source reduction, recycling and composting activities, the costs of those activities; and proceeds from the sale of any recycled materials, and other accounting systems which will allow making annual reports and determining savings, if any, from the source reduction, recycling and composting activities.

In responding to state agency comments, claimants state that DOF's comments are incompetent and should be stricken from the record because they do not comply with section 1183.02, subdivisions (c)(1) and (d) of the Commission's regulations. The first regulation requires comments to be submitted under penalty of perjury, with a declaration that they are true and complete to the best of the representative's personal knowledge or information and belief. The second regulation requires assertions or representations of fact be supported by documentary evidence submitted with the state agency's response, and authenticated by declarations under penalty of perjury. Claimants also state that the hearsay statements do not come to the level of

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

the type of evidence people rely on in the conduct of serious affairs. Claimants reassert these comments in response to the draft staff analysis, requesting a recommendation on their objection and request to strike DOF's comments from the record.¹⁵

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

State Agency Positions

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

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

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

Regarding the activities related to obtaining extensions of time, DOF argues that these do not constitute a state-mandated local program because the law allows, but does not require a community college to request time extensions, and because the section stipulates that the

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

colleges should identify the means for funding the programs. As to the activities related to seeking alternatives to the 50-percent goal, DOF again argues that this is authorized but not required by the test claim legislation.

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

DOF did not comment on the draft staff analysis.

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

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

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

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

Discussion

The courts have found that article XIII B, section 6 of the California Constitution¹⁶ recognizes the state constitutional restrictions on the powers of local government to tax and spend.¹⁷ “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”¹⁸ A test claim statute or executive order may impose a reimbursable state mandated program if it orders or commands a local agency or school district to engage in an activity or task.¹⁹ In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service. The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.²⁰ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must impose costs mandated by the state.²¹

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

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

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

¹⁹ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174. In *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal.4th at page 742, the court agreed that “activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds - even if the local entity is obligated to incur costs as a result of its discretionary decision to participate in a particular program or practice.” The court left open the question of whether non-legal compulsion could result in a reimbursable state mandate, such as in a case where failure to participate in a program results in severe penalties or “draconian” consequences. (*Id.*, at 754.)

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

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

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

This test claim presents the following issues:

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

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

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

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

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

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

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

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

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

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

The definitions in the test claim legislation are as follows:

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

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

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

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

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

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

²⁶ According to the *State Agency Model Integrated Waste Management Plan* (Feb. 2000), page 1: "The Board has determined that each of these large State facilities shall complete a separate integrated waste management plan, signed by the facility director. This IWMP must also be signed at the facility's State agency level by the chairman, commissioner, director, or president."

²⁷ *Ibid.*

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

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

colleges. The author included these definitions from Assembly Bill No. 705 (1997-1998 Reg. Sess.) into the test claim legislation.

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

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

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

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

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

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

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

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

Subdivision (b) of this section states:

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

³¹ A community college district, however, would be the eligible claimant under the parameters and guidelines should the Commission approve this test claim.

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

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

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

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

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

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

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

³³ *Ibid.*

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

subdivision (b), ensuring that adequate areas and personnel to oversee collection, storage, and loading of recyclable materials when entering into and renewing a lease is not a mandated activity, and thus not subject to article XIII B, section 6.

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

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

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

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

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

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

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

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

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

In comments on the draft staff analysis, claimants rebut only the analysis of the manuals’ permissive language, but do not address the other reasons for finding the manuals are not executive orders. If community colleges were to comply with the test claim legislation while disregarding the manuals, nothing in the manuals or statutes precludes them from doing so.

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

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

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

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

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

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

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

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

Because of the statutory scheme in this test claim that applies to state agencies as well as community colleges, the question arises as to whether the test claim legislation must be unique to "local" government, as opposed to state government. In *County of Los Angeles v. State of California*⁴² the court did not distinguish between local governmental functions and those at other levels of government. Rather the court stated "the intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out **functions peculiar to government**, not for expenses incurred by local agencies as an incidental impact of laws that apply generally..."⁴³ [Emphasis added.] Thus, the program at issue need not be unique to *local* government, rather it need only provide a governmental function or impose unique requirements on local governments that do not apply generally to all residents or entities of the state, as in the definition of "program" cited above.

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

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

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

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

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

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

⁴³ *Ibid.*

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

INTEGRATED WASTE MANAGEMENT PLAN

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

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

However, subdivision (b)(3) states:

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

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

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

Claimants also respond to the draft staff analysis that denied reimbursement for a community college to adopt its own integrated waste management plan. Claimants maintain that the “fall-back provision of subdivision (b)(3) ... merely ... assures that all districts will comply with the mandate, either by developing and implementing its own plan or by implementing the Board’s plan.” Claimants assert that staff’s conclusion punishes districts with unique waste management

⁴⁵ Public Resources Code section 15: “‘Shall’ is mandatory and ‘may’ is permissive.”

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

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

problems, or those that may find the model plan is inappropriate or ineffective for their situation. "Because these districts are, by the facts applied to them, compelled to develop their own plans, the staff analysis would prohibit them from seeking reimbursement." Claimants further dispute the staff conclusion that since there is no penalty for not submitting a plan, or being governed by the model plan, that the statute is not compulsory.

Staff disagrees. Since a community college can be automatically governed by the model integrated waste management plan adopted by the Board,⁴⁸ a community college that chooses to develop its own plan is exercising its discretion in doing so. A local decision that is discretionary does not result in a finding of state-mandated costs.⁴⁹ Although a district may incur extra costs in developing a plan to deal with its unique waste management problems, those are not "costs mandated by the state" because the district's problems are not increased costs "as a result of any statute ... or any executive order." (Gov. Code, § 17514).

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

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

If a state agency has not submitted an adopted integrated waste management plan or the model integrated waste management plan with revisions to the board by January 1, 2001, or if the board has disapproved the plan that was submitted, then the

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

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

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

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

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

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

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

SOLID WASTE COORDINATOR

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

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

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

Therefore, as a new requirement, staff finds that section 42920, subdivision (c) constitutes a new program or higher level of service because it requires designating one solid waste reduction and recycling coordinator per community college to perform new duties imposed by chapter 18.5 (Pub. Resources Code, §§ 42920 – 42928). These duties include: (1) implementing the community college's integrated waste management plan, and (2) acting as a liaison to other state

⁵¹ Public Resources Code section 41000 et seq.

⁵² Public Resources Code section 41300 et seq.

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

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

agencies (as defined by section 40196.3) and coordinators. The requirement for these activities to be done "using existing resources" will be discussed under issue 3 below.

SOLID WASTE DIVERSION

Divert solid waste (Pub. Resources Code, §§ 42921 & 42922, subd. (i)): Public Resources Code section 42921 requires each community college to divert from landfill disposal or transformation facilities at least 25 percent of all solid waste it generates by January 1, 2002, through source reduction, recycling, and composting activities. Subdivision (b) requires the same entities to achieve at least a 50-percent diversion by January 1, 2004. (Subsequent sections authorize approval of time extensions or alternatives to the 50-percent requirement.) Public Resources Code section 42922, subdivision (i) requires a community college "that is granted an alternative requirement to this section shall continue to implement source reduction, recycling, and composting programs, and shall report the status of those programs in the report required pursuant to Section 42926."

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

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

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

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

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

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

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

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

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

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

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

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

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

Before approving the alternative goal, the Board must hold a public hearing and make the following findings based on substantial evidence in the record: (1) The community college has made a good faith effort to effectively implement the source reduction, recycling, and

⁵⁵ Public Resources Code section 15.

composting measures described in its integrated waste management plan, and has demonstrated progress toward meeting the alternative requirement as described in its annual reports to the Board. (2) The community college has been unable to meet the 50-percent diversion requirement despite implementing the measures in its plan. (3) The alternative source reduction, recycling, and composting requirement represents the greatest diversion amount that the community college may reasonably and feasibly achieve.

Subdivision (b) of section 42922 states what the Board must consider in granting to a state agency an alternative to the 50-percent diversion requirement, such as "circumstances that support the request for an alternative requirement, such as waste disposal patterns and the types of waste disposed" by the community college. As explained above, although this subdivision reads as a permissive action "upon request," it is required pursuant to section 42927 if the community college is unable to comply with the 50-percent diversion requirement.

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

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

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

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

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

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

Staff finds that providing this explanation to the Board is not a mandated new program or higher level of service because it is a result of the community college's discretion in first requesting the alternative to the 50-percent requirement, rather than first requesting the time extension pursuant

to section 42923. The local agency's decision is discretionary, and does not result in finding state mandated costs.⁵⁶

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

(d) A state agency or a large state facility that has previously been granted an alternative source reduction, recycling, and composting requirement may request another alternative source reduction, recycling, and composting requirement. A state agency or a large state facility that requests another alternative requirement shall provide information to the board that demonstrates that the circumstances that supported the previous alternative source reduction, recycling, and composting requirement continue to exist, or shall provide information to the board that describes changes in those previous circumstances that support another alternative source reduction, recycling, and composting requirement.

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

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

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

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

Claimants disagree. Claimants state that sections 42922, 42921 and 42923 make it clear that the "legislature foresaw the need to make ...adjustments to fit the needs of each new program and changing times. The intent ...was to provide flexibility to encourage districts to request extensions of time or alternatives to achieving the desired goal of reducing solid waste..."

Claimants interpret section 42927 to mean, "when a state agency is unable to comply *either* with the 25% requirement of Section 42923 *or* the 50% requirement of Section 42924 (i.e., "...unable to comply with the requirements of this chapter"), the agency shall request *either* an alternative *or* an extension. [Emphasis in original.] This "either" – "or" interpretation is more in consonance with the provisions for multiple requests in both section 42921 and in section 42923." Claimants state that the Legislature did not intend for districts to be able only to request either a time extension or an alternative requirement.

Staff agrees with the claimants' interpretation regarding legislative intent. However, a reimbursable state mandate does not arise merely because a local entity finds itself bearing an

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

“additional cost” imposed by state law.⁵⁷ There must be a compulsion to expend revenue.⁵⁸ Section 42922 only requires a request for an alternative *or* a time extension for districts unable to comply with the requirements of chapter 18.5. (Pub. Resources Code, §§ 42920-42928). There is no compulsion to request both. Therefore, staff finds that section 42922 requires seeking only one alternative requirement for community colleges unable to comply with the requirements. Seeking a subsequent alternative requirement is at the discretion of the community college, which does not result in finding state mandated costs.⁵⁹

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

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

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

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

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

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

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

Therefore, because it is new, staff finds that if a community college is unable to comply with the January 1, 2002 deadline to divert 25 percent of its solid waste, it is a new program or higher level of service to: (1) notify the Board in writing, detailing the reasons for its inability to comply; (2) request of the Board an alternative to the January 1, 2002 deadline; (3) provide evidence to the Board that it is making a good faith effort to implement the source reduction,

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

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

⁵⁹ *Ibid.*

recycling, and composting programs identified in its integrated waste management plan; (4) provide information to the Board that describes the relevant circumstances that contributed to the request for extension, such as lack of markets for recycled materials, local efforts to implement source reduction, recycling and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed of by the community college.

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

(B) The state agency or the large state facility submits a plan of correction that demonstrates that the state agency or the large state facility will meet the requirements of Section 42921 [the 25 and 50 percent diversion requirements] before the time extension expires, includes the source reduction, recycling, or composting steps the state agency or the large state facility will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, existing programs that it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.

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

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

REPORTS TO THE BOARD

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

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

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

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

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

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

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

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

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

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

- **Comply with the model integrated waste management plan (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan (February 2000)):** A community college must comply with the Board's model integrated waste management plan, which includes the activity of consulting with the Board to revise the model plan, as well as completing and submitting to the Board the following: (1) state agency or large state facility information form; (2) state agency list of facilities; (3) state agency waste reduction and recycling program worksheet, including the sections on program activities, promotional programs, and procurement activities; and (4) state agency integrated waste management plan questions.
- **Designate a solid waste reduction and recycling coordinator (Pub. Resources Code, § 42920, subd. (c)):** A community college must designate one solid waste reduction and recycling coordinator to perform new duties imposed by chapter 18.5 (Pub. Resources Code, §§ 42920 – 42928), including implementing the community college's integrated waste management plan, and acting as a liaison to other state agencies (as defined by section 40196.3) and coordinators.
- **Divert solid waste (Pub. Resources Code, §§ 42921 & 42922, subd. (i)):** A community college must divert at least 25 percent of all solid waste generated by a community college from landfill disposal or transformation facilities by January 1, 2002, through source reduction, recycling, and composting activities, and diverting at least 50 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2004, through source reduction, recycling, and composting.

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

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

⁶⁰ Claimants also seeks reimbursement for developing, implementing and maintaining an accounting system to enter and track source reduction, recycling and composting activities, and the costs and proceeds from selling recyclables, and other accounting systems that will allow making annual reports and determining savings, if any, from source reduction, recycling and composting activities. Claimants contend that the reporting requirements in the test claim legislation, and the justifications required to obtain alternative goals impose substantial reporting requirements not contemplated by the district's current accounting systems. However, these activities are not included in the test claim legislation and would therefore be more appropriately analyzed in the parameters and guidelines phase should the Commission approve this test claim.

requirement as described in its annual reports to the Board; (b) the community college's inability to meet the 50-percent diversion requirement despite implementing the measures in its plan; (c) the alternative source reduction, recycling, and composting requirement represents the greatest diversion amount that the community college may reasonably and feasibly achieve, and (d) relate to the Board circumstances that support the request for an alternative requirement, such as waste disposal patterns and the types of waste disposed by the community college.

- **Seek a time extension (Pub. Resources Code, §§ 42927 & 42923 subds. (a) & (c)):** A community college that is unable to comply with the January 1, 2002 deadline to divert 25 percent of its solid waste, must do the following pursuant to section 42923, subdivisions (a) and (c): (1) notify the Board in writing, detailing the reasons for its inability to comply; (2) request of the Board an alternative to the January 1, 2002 deadline; (3) provide evidence to the Board that it is making a good faith effort to implement the source reduction, recycling, and composting programs identified in its integrated waste management plan; and (4) provide information to the Board that describes the relevant circumstances that contributed to the request for extension, such as lack of markets for recycled materials, local efforts to implement source reduction, recycling and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed of by the community college. (5) The community college must also submit a plan of correction that demonstrates that it will meet the requirements of Section 42921 [the 25 and 50 percent diversion requirements] before the time extension expires, including the source reduction, recycling, or composting steps the community college will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, the existing programs that it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.
- **Report to the Board (Pub. Resources Code, §§ 42926, subd. (a) & 42922, subd. (i)):** A community college must annually submit, by April 1, 2002 and by April 1 each subsequent year, a report to the Board summarizing its progress in reducing solid waste. The information in the report is to encompass the previous calendar year and shall contain, at a minimum, the following as outlined in section 42926, subdivision (b): (1) calculations of annual disposal reduction; (2) information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors; (3) a summary of progress implementing the integrated waste management plan; (4) the extent to which the community college intends to use programs or facilities established by the local agency for handling, diversion, and disposal of solid waste. (If the college does not intend to use those established programs or facilities, it must identify sufficient disposal capacity for solid waste that is not source reduced, recycled or composted.) (5) For a community college that has been granted a time extension by the Board, it shall include a summary of progress made in meeting the integrated waste management plan implementation schedule pursuant to section 42921, subdivision (b), and complying with the college's plan of correction, before the expiration of the time extension. (6) For a community college that has been granted an alternative source reduction, recycling, and composting requirement by the Board pursuant to

section 42922, it shall include a summary of progress made towards meeting the alternative requirement as well as an explanation of current circumstances that support the continuation of the alternative requirement.

- **Submit recycled material reports (Pub. Contract Code, § 12167.1):** A community college must annually report to the Board on quantities of recyclable materials collected for recycling.

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

In order for the activities listed above to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution, two criteria must apply. First, the activities must impose increased costs mandated by the state.⁶¹ Second, no statutory exceptions as listed in Government Code section 17556 can apply. Government Code section 17514 defines “costs mandated by the state” as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) The statute or executive order provides for offsetting savings to local agencies or school districts **which result in no net costs** to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state

⁶³ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal. App. 4th 1264, 1282. Two cases have held legislative declarations similar to that in section 42920, subdivision (c) unenforceable. In *Carmel Valley Fire Protection District v. State of California*, *supra*, 190 Cal.App.3d 521, the court held that “Legislative disclaimers, findings and budget control language are no defense to reimbursement.” The Carmel Valley court called such language “self serving” and “transparent attempts to do indirectly that which cannot lawfully be done directly.” (*Id.* at p. 541). Similarly, in *Long Beach Unified School District v. State of California* (*supra*, 225 Cal.App.3d 155) the Legislature deleted requested funding from an appropriations bill and enacted a finding that the executive order did not impose a state mandated local program. The court held that “unsupported legislative disclaimers are insufficient to defeat reimbursement. ...[The district,] pursuant to Section 6, has a constitutional right to reimbursement of its costs in providing an increased service mandated by the state. The Legislature cannot limit a constitutional right.” (*Id.* at p. 184).

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

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

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

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

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

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

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

⁶⁶ Government Code section 17556, subdivision (e).

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

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

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

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

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

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

In the recent case *Department of Finance v. Commission on State Mandates*,⁶⁸ the court found that costs incurred in complying with the test claim legislation did not entitle claimants to obtain reimbursement because the state already provided funds that may be used to cover the necessary

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

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

expenses. However, the holding was limited to “the circumstances here presented,” and the court found that the costs of the requirements at issue appeared “rather modest.” Moreover, the court left open the possibility that:

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

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

Therefore, staff finds that the revenues cited in Public Resources section 42925 and Public Resources Code sections 12167 and 12167.1 do not preclude the existence of a reimbursable state mandated program. Staff recommends that any revenues be identified as offsets in the parameters and guidelines, should the Commission approve this test claim.

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

Claimants respond that, based on the legal opinion of the Chancellor’s Office, students may not be charged for services the district is required to provide by state law.⁷¹ Students may only be required to pay a fee if a statute either requires it or authorizes a district to require it.⁷² Claimants

⁶⁹ *Id.* at pages 747-748.

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

⁷¹ *Id.* at page 15.

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

believe the Board's reliance on Education Code section 70902, subdivision (a) is misplaced because the section is "permissive" only to the extent that the governing board "may initiate and carry on any program, activity, or may otherwise act in any manner" but limited by the phrase "that is not in conflict with or inconsistent with, or preempted by, any law and that is not in conflict with the purposes for which community college districts are established."⁷³ Claimants argue that charging students for an integrated waste management plan and all that it entails is directly in conflict with the purposes for which community college districts are established. Claimants also assert that calling the fees "optional" is unrealistic because they could become substantial and students would not likely "voluntarily" accept the additional levy.

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

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

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

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

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

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

Staff bases its finding of no fee authority on the following. First, the test claim statutes do not provide fee authority for community colleges, nor for other "state agencies." Second, there is no

⁷³ Education Code section 70902, subdivision (a).

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

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

other law that requires or authorizes community colleges to assess a waste management or recycling fee, so it cannot be mandatory or required.⁷⁶

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

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

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

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

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

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

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

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

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

⁷⁹ Public Resources Code section 41900 et seq.

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

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

Education Code section 76375 reads in pertinent part as follows:

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

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

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

Staff agrees with the Board's summary of *Connell v. Superior Court* (1997) 59 Cal. App. 4th 382, which precludes reimbursement where a local agency has fee authority sufficient for the costs of the state-mandated program. The issue is a question of law, and evidence as to the feasibility of collecting the fee "was irrelevant and injected improper factual questions into the inquiry." (*Id.* at p. 401.) However, *Connell* is distinguishable because it involved a water district arguing against the economic feasibility of charging a fee in a sufficient amount. The fee issues in this case were not contemplated by the *Connell* court: (1) whether the fee may be

charged because of the two-thirds election requirement; (2) expenditures being outside the control of the local entity; and (3) the existence of a statutory fee cap, and (4) that if enacted, the fee would be limited to the student center rather than apply to the entire waste program. Therefore, the unique attributes of this fee distinguish it from the fee in *Connell*.

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

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

CONCLUSION

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

- **Comply with the model plan (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000):** A community college must comply with the Board's model integrated waste management plan, which includes consulting with the Board to revise the model plan, as well as completing and submitting to the Board the following: (1) state agency or large state facility information form; (2) state agency list of facilities; (3) state agency waste reduction and recycling program worksheet, including the sections on program activities, promotional programs, and procurement activities; and (4) state agency integrated waste management plan questions.
- **Designate a solid waste reduction and recycling coordinator (Pub. Resources Code, § 42920, subd. (c)):** A community college must designate one solid waste reduction and recycling coordinator to perform new duties imposed by chapter 18.5 (Pub. Resources Code, §§ 42920 – 42928), including implementing the community college's integrated waste management plan, and acting as a liaison to other state agencies (as defined by section 40196.3) and coordinators.
- **Divert solid waste (Pub. Resources Code, §§ 42921 & 42922, subd. (i)):** A community college must divert at least 25 percent of all its solid waste from landfill disposal or transformation facilities by January 1, 2002, through source reduction, recycling, and composting activities, and divert at least 50 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2004, through source reduction, recycling, and composting.

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

⁸¹ Any offsetting revenues would be identified in the parameters and guidelines phase should the Commission approve this analysis.

- **Seek an alternative requirement (Pub. Resources Code, §§ 42927 & 42922, subds. (a) & (b)):** A community college that is unable to comply with the 50-percent diversion requirement must: (1) notify the Board in writing, detailing the reasons for its inability to comply; (2) request of the Board an alternative to the 50-percent requirement; (3) participate in a public hearing on its alternative requirement; (4) provide the Board with information as to (a) the community college's good faith efforts to effectively implement the source reduction, recycling, and composting measures described in its integrated waste management plan, and demonstration of its progress toward meeting the alternative requirement as described in its annual reports to the Board; (b) the community college's inability to meet the 50-percent diversion requirement despite implementing the measures in its plan; (c) the alternative source reduction, recycling, and composting requirement represents the greatest diversion amount that the community college may reasonably and feasibly achieve, and (d) relate to the Board circumstances that support the request for an alternative requirement, such as waste disposal patterns and the types of waste disposed by the community college.
- **Seek a time extension (Pub. Resources Code, §§ 42927 & 42923 subds. (a) & (c)):** A community college that is unable to comply with the January 1, 2002 deadline to divert 25 percent of its solid waste, must do the following pursuant to section 42923, subdivisions (a) and (c): (1) notify the Board in writing, detailing the reasons for its inability to comply; (2) request of the Board an alternative to the January 1, 2002 deadline; (3) provide evidence to the Board that it is making a good faith effort to implement the source reduction, recycling, and composting programs identified in its integrated waste management plan; and (4) provide information to the Board that describes the relevant circumstances that contributed to the request for extension, such as lack of markets for recycled materials, local efforts to implement source reduction, recycling and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed of by the community college. (5) The community college must also submit a plan of correction that demonstrates that it will meet the requirements of Section 42921 [the 25 and 50 percent diversion requirements] before the time extension expires, including the source reduction, recycling, or composting steps the community college will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, the existing programs that it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.
- **Report to the Board (Pub. Resources Code, §§ 42926, subd. (a) & 42922, subd. (i)):** A community college must annually submit, by April 1, 2002 and by April 1 each subsequent year, a report to the Board summarizing its progress in reducing solid waste. The information in the report is to encompass the previous calendar year and shall contain, at a minimum, the following as outlined in section 42926, subdivision (b): (1) calculations of annual disposal reduction; (2) information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors; (3) a summary of progress implementing the integrated waste management plan; (4) the extent to which the

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

- **Submit recycled material reports (Pub. Contract Code, § 12167.1):** A community college must annually report to the Board on quantities of recyclable materials collected for recycling.

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

Recommendation

Staff recommends that the Commission adopt the staff analysis that partially approves the test claim for the activities listed above.

PAGES 42-100 LEFT BLANK INTENTIONALLY

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9
10
11 **BEFORE THE**
12 **COMMISSION ON STATE MANDATES**
13 **STATE OF CALIFORNIA**

14			
15	Test Claim of:	)	No. CSM. _____
16)	
17		)	Chapter 764, Statutes of 1999
18		)	Chapter 1116, Statutes of 1992
19)	
20	Santa Monica	)	Public Resources Code Sections
21	Community College District	)	40148, 40196.3, 42920, 42921,
22		)	42922, 42923, 42924, 42925,
23	and	)	42926, 42927 and 42928
24		)	Public Contract Code Sections
25	South Lake Tahoe	)	12167 and 12167.1
26	Community College District)	
27		)	Executive Orders of the California
28		)	Integrated Waste Management Board
29		)	"State Agency Model Integrated
30		)	Waste Management Plan"
31		)	February, 2000
32		)	"Conducting a Diversion Study -
33		)	A Guide For California Jurisdictions"
34		)	September, 1999
35		)	"Solid Waste Generation, Disposal,
36		)	and Diversion Measurement Guide"
37		)	March, 2000
38		)	"Waste Reduction Policies and
39		)	Procedures for State Agencies"
40		)	August, 1999
41)	
42		)	<u>Integrated Waste Management</u>

43
44 **TEST CLAIM FILING**
45

TEST CLAIM FORM

Claim No. _____

Local Agency or School District Submitting Claim (Co-Claimants):

- 1) Santa Monica Community College District and 2) South Lake Tahoe Community College District
1900 Pico Avenue One College Drive
Santa Monica, California 90405-1628 South Lake Tahoe, California 96150

Contact Person

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Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network
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This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

INTEGRATED WASTE MANAGEMENT

Chapter 764, Statutes of 1999, Chapter 1116, Statutes of 1992
Public Resources Code Sections 40148, 40196.3, 42920, 42921, 42922, 42923, 42924, 42925, 42926, 42927, 42928
Public Contract Code Sections 12167 and 12167.1
Executive Orders of the Integrated Waste Management Board, as specified

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Telephone No.

- 1) Cheryl Miller, Associate Vice President
2) Jon Stephens, Vice President

Voice: (310) 434-9221 FAX: (310) 434-4256
Voice: (530) 541-4660, Ext 219 FAX: (530) 541-7852

Signature of Authorized Representative

Date

February 14, 2001

1
2 PART 1. AUTHORITY FOR THE CLAIM

3 The Commission on State Mandates has the authority pursuant to Government
4 Code section 17551(a) to "...hear and decide upon a claim by a local agency or school
5 district that the local agency or school district is entitled to be reimbursed by the state
6 for costs mandated by the state as required by Section 6 of Article XIII B of the
7 California Constitution." Santa Monica Community College District and South Lake
8 Tahoe Community College District are each a "school district" as defined in Government
9 Code section 17519.¹

10
11 PART II. LEGISLATIVE HISTORY OF THE CLAIM

12 This test claim alleges mandated costs subject to reimbursement by the state for
13 community colleges to develop and adopt, in consultation with the Board², and
14 thereafter implement an integrated waste management plan. There was no requirement
15 to perform these duties prior to this legislation.

16 The Public Resources Code was established by Chapter 93, Statutes of 1939.
17 The Code consolidated and revised preexisting law relating to natural resources, the
18 conservation, utilization and supervision thereof. Division of 30 of the Code³ was added

¹ Government Code Section 17519, as added by Chapter 1459/84:

"School district" means any school district, community college district, or county superintendent of schools.

² The term "Board" means the California Integrated Waste Management Board. Public Resources Code, section 40110, as added by Chapter 586, Statutes of 1990.

³ Public Resources Code sections 40000 et seq.

1 by Chapter 1095, Statutes of 1989, and is known and cited as the California Integrated
2 Waste Management of Act of 1989 (hereinafter the "Act").⁴ The "Act" was binding on
3 cities and counties. The "Act" did not include Community College Districts.

4 Chapter 764, Statutes of 1999, operative January 1, 2000, added Chapter 18.5 to
5 the Public Resources Code. Section 42920⁵, for the first time required, at subdivision

⁴ Public Resources Code Section 40050

⁵ Public Resources Code Section 42920 as added by Chapter 764, Statutes of 1999:

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

(b) (1) On or before July 1, 2000, each state agency shall develop and adopt, in consultation with the board, an integrated waste management plan, in accordance with the requirements of this chapter. The plan shall build upon existing programs and measures, including the state agency model integrated waste management plan adopted by the board pursuant to subdivision (a), that will reduce solid waste, reuse materials whenever possible, recycle recyclable materials, and procure products with recycled content in all state agency offices and facilities, including any leased locations. It is the intent of the Legislature that the local jurisdiction and the state agency or large state facility located within that jurisdiction work together to implement the state agency integrated waste management plan.

(2) Each state agency shall submit an adopted integrated waste management plan to the board for review and approval on or before July 15, 2000. The board shall adopt procedures for reviewing and approving those integrated waste management plans. The board shall complete its plan review process on or before January 1, 2001.

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

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

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

1 (a), that on or before February 15, 2000, the board adopt a state agency model
2 integrated waste management plan for source reduction, recycling and composting
3 activities. The Board has, in fact, approved a state agency model integrated waste
4 management plan at its Board Meeting of January 25-27, 2000. [Resolution 2000-34]

5 Subdivision (b)(1) of Public Resources Code Section 42920 requires that, on or
6 before July 1, 2000, each state agency⁶ (by definition to include each California
7 community college) shall develop and adopt an integrated waste management plan that
8 will reduce solid waste, reuse materials whenever possible, recycle recyclable
9 materials, and procure products with recycled content in all state agency offices and
10 facilities. Subdivision (b)(2) requires each community college to submit an adopted
11 integrated waste management plan to the Board for review and approval on or before
12 July 15, 2000. Pursuant to the "Administrative Procedures for Approval of Integrated
13 Waste Management Plans" ("Approval Procedures") adopted by the Board at its
14 meeting of May 23-24, 2000 [Resolution No. 2000-251], those community colleges
15 which have not submitted an adopted plan by July 15, 2000 will be contacted by the
16 Board and asked to submit plans on a later date. Subdivision (b)(3) of Section 42920
17 provides that if a community college has not submitted an adopted integrated waste
18 management plan by January 1, 2001, or if the Board has disapproved the plan that
19 was submitted, then the model integrated waste management plan adopted by the
20 Board shall take effect and have the same force and effect as if adopted by the

⁶ Public Resources Code section 40196.3, as added by Chapter 764, Statutes of 1999:

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

1 community college. A copy of the "State Agency Model Integrated Waste Management
2 Plan (February 2000)" is included in this test claim and attached hereto as Exhibit "4A".

3 Section 42920, subdivision (c), requires at least one solid waste reduction and
4 recycling coordinator be designated by each community college who shall be
5 responsible for implementing the integrated waste management plan and shall serve as
6 a liaison to other state agencies and coordinators.

7 Chapter 764, Statutes of 1999, also added Public Resources Code section
8 42921⁷ which requires each community college and each large state facility,⁸ through
9 source reduction, recycling and composting activities, to divert at least 25 percent of all
10 solid waste generated from landfill disposal or transformation facilities by January 1,
11 2002, and to divert at least 50 percent by January 1, 2004. These "diversions" are
12 guided by an executive order developed and promulgated by the Integrated Waste
13 Management Board entitled "Conducting a Diversion Study -- A Guide for California
14 Jurisdictions (September, 1999)", and is included in this test claim, a copy of which is
15 attached hereto as Exhibit "4B".

⁷ Public Resources Code Section 42921 as added by Chapter 764, Statutes of 1999:

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

(b) On and after January 1, 2004, each state agency and each large state facility shall divert at least 50 percent of all solid waste from landfill disposal or transformation facilities through source reduction, recycling, and composting activities."

⁸ Public Resources Code section 40148, as added by Chapter 764, Statutes of 1999:

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

1 Chapter 764, Statutes of 1999, also added Public Resources Code section
2 42922⁹. Subdivision (a) allows the Board to establish a source reduction, recycling and

⁹ Public Resources Code Section 42922 as added by Chapter 764, Statutes of 1999:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) A state agency or a large state facility that is granted an alternative requirement pursuant to this section shall continue to implement source reduction, recycling, and composting programs, and shall report the status of those programs in the report required pursuant to Section 42926.

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

1 composting requirement that would be an alternative to the 50 percent requirement
2 provided the board holds a public hearing and makes required findings based upon
3 substantial evidence. Subdivision (c) requires a community college which requests an
4 alternative source reduction, recycling and composting requirement to explain to the
5 board why it has not first requested an extension if it has not done so. Subdivision (d)
6 allows a community college that has previously been granted an alternative source
7 reduction, recycling and composting requirement to request another source reduction,
8 recycling and composting requirement. The community college that requests a further
9 alternative requirement shall provide the Board information that demonstrates that the
10 circumstances that supported the previous alternative source reduction, recycling and
11 composting requirement continue to exist, or, shall provide information to the board that
12 describes changes in those previous circumstances that support another alternative.

13 Chapter 764, Statutes of 1999, also added Public Resources Code section
14 42923¹⁰ which allows the Board to grant one or more single or multiyear time extensions

¹⁰ Public Resources Code Section 42923 as added by Chapter 764, Statutes of 1999:

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

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

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

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

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

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

(B) The state agency or the large state facility submits a plan of correction that demonstrates that the state agency or the large state facility will meet the

1 of the 25 percent by January 1, 2002 requirement, subject to specific conditions, to
2 which the college must comply.

3 Chapter 764, Statutes of 1999, also added Public Resources Code section
4 42924¹¹ which, at subdivision (a), requires the Board to develop and adopt requirements

requirements of Section 42921 before the time extension expires; includes the source reduction, recycling, or composting steps the state agency or the large state facility will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, existing programs that it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.

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

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

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

(c) (1) In determining whether to grant the request by a state agency or a large state facility for the time extension authorized by subdivision (a), the board shall consider information provided by the state agency or the large state facility that describes relevant circumstances that contributed to the request for extension, such as a lack of markets for recycled materials, local efforts to implement source reduction, recycling, and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed by agency.

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

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

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

¹¹ Public Resources Code Section 42924 as added by Chapter 764, Statutes of 1999:

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

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

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1 relating to adequate areas for collecting, storing, and loading recyclable materials in
2 state buildings. Subdivision (b) requires each community college to ensure that
3 adequate areas are provided for, and adequate personnel are available to oversee, the
4 collection, storage, and loading of recyclable materials when entering into a new lease.
5 Subdivision (c) requires the Department of General Services to allocate adequate space
6 for the collection, storage and loading of recyclable materials in the design and
7 construction of state agency offices and facilities.

8 Chapter 764, Statutes of 1999, also added Public Resources Code section
9 42925¹² which, subject to Public Contract Code sections 12167¹³ and 12167.1¹⁴, allows

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

¹² Public Resources Code Section 42925 as added by Chapter 764, Statutes of 1999:

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

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

¹³ Public Contract Code section 12167 added by Chapter 1094, Statutes of 1989, amended by Chapter 1012, Statutes of 1991 and last amended by Chapter 1116, Statutes of 1992:

"Revenues received from this plan or any other activity involving the collection and sale of recyclable materials in state and legislative offices located in state-owned and state-leased buildings, such as the sale of waste materials through recycling programs operated by the California Integrated Waste Management Board or in agreement with the board, shall be used to offset recycling program costs. Any remaining revenues not expended during a fiscal year shall be used to offset recycling program costs in the following year. deposited in the Integrated Waste Management Account in the Integrated Waste Management Fund and are hereby continuously appropriated to the board, without regard to fiscal years, until June 30, 1994, for the purposes of offsetting recycling program costs. On and after July 1, 1994, the funds in the Integrated Waste Management Account may be expended by the board, only upon appropriation by the Legislature, for the purpose of offsetting recycling program costs."

1 any cost savings realized; to the extent feasible, be redirected to the community
2 college's plan to fund plan implementation and administration costs. Subject to the
3 approval of the California Integrated Waste Management Board, revenues derived from
4 the sale of recyclable materials by community colleges that do not exceed two thousand
5 dollars (\$2,000) annually are continuously appropriated for expenditure by the
6 community college for the purpose of offsetting recycling program costs. Revenues
7 exceeding two thousand dollars (\$2,000) annually, shall be available for expenditure by
8 the community college only when appropriated by the legislature.

9 Chapter 764, Statutes of 1999, also added Public Resources Code section
10 42926¹⁵ which requires that each community college shall submit a report to the Board

¹⁴ Public Contract Code section 12167.1 added by Chapter 1012, Statutes of 1991 and last amended by Chapter 1116, Statutes of 1992:

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

¹⁵ Public Resources Code Section 42926 as added by Chapter 764, Statutes of 1999:

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

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

- (1) Calculations of annual disposal reduction.
- (2) Information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors.
- (3) A summary of progress made in implementing the integrated waste management plan.

1 summarizing its progress in reducing solid waste as required by Section 42921. This
2 report will first be required on or before April 1, 2002 and will be due on that date
3 annually thereafter. Subdivision (b) sets forth the minimum contents of the report. This
4 report is in addition to the annual report on the quantities of recyclable materials
5 collected required by Public Contracts Code section 12167.1. To guide community
6 colleges in the measurement of these quantities for this and other reports, the California
7 Waste Management Board has also published and promulgated another executive
8 order entitled: "Solid Waste Generation, Disposal and Diversion Measurement Guide
9 (March 2000)", which is included in this test claim and a copy of which is attached
10 hereto as Exhibit "4C":

11 Chapter 764, Statutes of 1999, added Public Resources Code section 42927¹⁶
12 which directs any community college which is unable to comply with the requirements of

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

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

(6) If the state agency has been granted an alternative source reduction, recycling, and composting requirement pursuant to Section 42922, the state agency shall include a summary of progress made towards meeting the alternative requirement as well as an explanation of current circumstances that support the continuation of the alternative requirement.

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

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

¹⁶ Public Resources Code Section 42927 as added by Chapter 764, Statutes of 1999:

1 this chapter to notify the Board in writing, detailing the reasons for its inability and to
2 request an alternative plan pursuant to section 42922 or an extension pursuant to
3 section 42923.

4 Finally, Chapter 764, Statutes of 1999, added Public Resources Code Section
5 42928¹⁷ which allows the Board to adopt regulations that establish specific criteria for
6 granting, reviewing and considering reductions or extensions pursuant to Sections
7 42922 and 42923. As of the date of this test claim, the claimants are not aware of any
8 such regulations having been adopted, other than Resolution 2000-34 [approval of
9 Model Plan] and Resolution 2000-251 [approval procedures].

10
11 PART III. STATEMENT OF THE CLAIM

12 SECTION 1. REQUIREMENT FOR STATE REIMBURSEMENT

13 The statutes, code sections and executive orders 4A through 4D referenced in
14 this test claim result in community college districts incurring costs mandated by the
15 state, as defined in Government Code section 17514¹⁸, by creating new state-mandated

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

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

¹⁷ Public Resources Code Section 42928 as added by Chapter 764, Statutes of 1999:

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

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

¹⁸ Government Code section 17514, as added by Chapter 1459/84:

1 duties related to the uniquely governmental function of providing public education¹⁹ to
2 students and these statutes apply to California community colleges and do not apply
3 generally to all residents and entities in the state.²⁰

4 The new duties mandated by the state upon community colleges require state
5 reimbursement of the direct and indirect costs of labor, materials and supplies, travel,
6 data processing services and software, contracted services and consultants, equipment
7 and capital assets, staff training both in-house and at State sponsored workshops, and
8 student and public awareness training to implement the following activities:

9 A) Pursuant to Public Resources Code section 42920(b)(1), on or before July
10 1, 2000, each California community college shall develop and adopt an
11 integrated waste management plan that will reduce solid waste, reuse

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

¹⁹ Education Code section 66700, as amended by Chapter 1372, Statutes of 1990.

The California Community Colleges are postsecondary schools and shall continue to be a part of the public school system of this state. The Board of Governors of the California Community Colleges shall prescribe minimum standards for the formation and operation of the California Community Colleges and exercise general supervision over the California Community Colleges.

²⁰ Public schools are an Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 275 Cal. Rptr. 449, 225 Cal.App.3d 155:

"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. v. State of California (1987) 190 Cal.App.3d at p. 537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

1 materials whenever possible, recycle recyclable materials, and procure
2 products with recycled content pursuant to the general policy statement
3 issued by the California Integrated Waste Management Board in its
4 executive order entitled "Waste Reduction Policies and Procedures for
5 State Agencies (August 1999)" – a copy of which is attached hereto as
6 Exhibit "4D";

7 B) Pursuant to Public Resources Code section 42920(b)(2), on or before July
8 15, 2000, each California community college shall submit an adopted
9 integrated waste management plan to the California Waste Management
10 Board. According to the Board's Model Integrated Waste Management
11 Plan (Exhibit "4A") the plan would include the completion of proscribed
12 information forms, a list of facilities (including names, addresses, and the
13 name, phone number and e-mail address of all contact persons), a
14 worksheet for reporting progress of waste reduction and recycling
15 programs, and a questionnaire regarding the college's mission statement,
16 waste stream and waste diversion activities;

17 C) Pursuant to the Board "Approval Procedures", a compliance review of the
18 submitted plan is conducted and each Community College contacted by
19 Review Staff must then provide additional information and clarification
20 needed to bring the plan to the level needed for approval;

21 D) Pursuant to Public Resources Code section 42920(b)(3); in the event any
22 California community college has not submitted an adopted integrated
23 waste management plan to the Board by July 15, 2000 which is approved

1 by the Board by January 1, 2001, that community college will be placed on
2 a "List of Non-Compliance Agencies" to be forwarded to the Legislature
3 and thereafter accept and be governed by the model integrated waste
4 management plan prepared by the Board (Exhibit "4A");

5 E) Pursuant to Public Resources Code section 42920(c), Each California
6 community college shall designate and pay at least one person as it's
7 solid waste reduction and recycling coordinator who shall be responsible
8 for implementing the integrated waste management plan and serve as a
9 liaison to other state agencies and coordinators;

10 F) Pursuant to Public Resources Code section 42921(a), each California
11 community college shall develop, implement and maintain source
12 reduction, recycling and composting activities that shall divert at least 25
13 percent of all solid waste generated on campus from landfill disposal or
14 transformation facilities by January 1, 2002. The Executive Order entitled
15 "Solid Waste Generation, Disposal, and Diversion Guide for State
16 Agencies and Large State Facilities" (Exhibit "4C") instructs the community
17 colleges as to waste management terms and concepts; estimating
18 disposal and diversion quantities; sampling and data acquisition
19 strategies; and the calculation of diversion rates;

20 G) Pursuant to Public Resources Code section 42923, in the event any
21 California community college finds it necessary to obtain one or more
22 extensions of time to comply with the 25 percent requirement by January
23 1, 2002, such community college shall be required to create and maintain

1 records to present substantial evidence that (a) the community college is
2 making a good faith effort to implement the source reduction, recycling
3 and composting programs identified in its integrated waste management
4 plan; and (b) that would permit the community college to submit a plan of
5 correction that demonstrates that it will meet the requirements before the
6 time extension expires, includes the source reduction, recycling and
7 composting steps the community college will implement, providing a date
8 prior to the expiration of the time extension when the requirements will be
9 met, identify existing programs that will be modified, identify any new
10 programs that will be implemented, and identify the means by which these
11 programs will be funded;

12 H) Pursuant to Public Resources Code section 42921(b), each community
13 college shall develop, implement and maintain source reduction, recycling
14 and composting activities that shall divert at least 50 percent of all solid
15 waste generated on campus from landfill disposal or transformation
16 facilities by January 1, 2004. Again, the Executive Order entitled "Solid
17 Waste Generation, Disposal, and Diversion Guide for State Agencies and
18 Large State Facilities" (Exhibit "4C") instructs the community colleges as
19 to estimating disposal and diversion quantities; sampling and data
20 acquisition strategies; and the calculation of diversion rates;

21 I) Pursuant to Section 42922, in the event any community college finds it
22 necessary to obtain one or more alternatives to the time necessary to
23 comply with the 50 percent goal by January 1, 2004, such community

1 college shall be required to create and maintain records to present
2 substantial evidence that: (1) the community college has made a good faith
3 effort to effectively implement the source reduction, recycling and
4 composting measures described in its integrated waste management plan,
5 and has demonstrated progress toward meeting the alternative
6 requirement as described in its annual reports to the board; (2) to present
7 substantial evidence as to why the community college has been unable to
8 meet the 50-percent diversion requirement despite implementing its plan;
9 and (3) presenting substantial evidence that the alternative source
10 reduction, recycling and composting requirement requested represents the
11 greatest diversion amount that the community college may reasonably and
12 feasibly achieve;

13 J) Pursuant to Public Resources Code section 42924(b), when entering into
14 a new lease, or renewing existing leases, each community college shall
15 ensure that adequate areas are provided, and adequate personnel are
16 available, to oversee the collection, storage, and loading of recyclable
17 materials;

18 K) Pursuant to Public Resources Code section 42926, each community
19 college shall submit an annual report to the board summarizing its
20 progress in reducing solid waste. The minimum contents of the reports
21 must contain:

22 (1) Calculations of annual disposal reduction.

1 (2) Information on the changes in waste generated or disposed of due to
2 increases or decreases in employees, economics, or other factors.

3 (3) A summary of progress made in implementing the integrated waste
4 management plan.

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

11 (5) If the community college has been granted a time extension by the
12 board pursuant to Section 42923, the community college shall include a
13 summary of progress made in meeting the integrated waste management
14 plan implementation schedule pursuant to subdivision (b) of Section
15 42921 and complying with the community college's plan of correction, prior
16 to the expiration of the time extension.

17 (6) If the state agency has been granted an alternative source reduction,
18 recycling, and composting requirement pursuant to Section 42922, the
19 state agency shall include a summary of progress made towards meeting
20 the alternative requirement as well as an explanation of current
21 circumstances that support the continuation of the alternative requirement.

22 (7) Other information relevant to compliance with Section 42921.
23

- 1 L) Pursuant to Public Resources Code section 42928, each community
2 college must comply with regulations when adopted by the Board and
3 follow specified criteria in applying for reductions or extensions to their
4 individual plans.
- 5 M) Each community college must also develop, implement and maintain an
6 accounting system to enter and track its source reduction, recycling and
7 composting activities, the cost of those activities, the proceeds from the
8 sale of any recycled materials, and such other accounting systems which
9 will allow it to make its annual reports and determine savings, if any, from
10 its source reduction, recycling and composting activities.

11 SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

12 None of the Government Code Section 17556²¹ statutory exceptions to a finding
13 of costs mandated by the state apply to this statute. Note that to the extent community

²¹Government Code section 17556 as last amended by Chapter 589/89:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

1 college districts may have previously performed functions similar to those mandated by
2 the referenced code sections, such efforts did not establish a preexisting duty that
3 would relieve the state of its constitutional requirement to later reimburse community
4 college districts when these activities became mandated.²²

5 SECTION 3. FUNDING FOR THE STATE MANDATE

6 Revenues received by state agencies and institutions from the collection and
7 sale of recyclable materials in state and legislative offices, are deposited in the
8 Integrated Waste Management Fund and, since July 1, 1994, those funds may be
9 expended by the Board only upon appropriation by the Legislature for the purpose of
10 offsetting recycling program costs.²³

11 Subject to the approval of the California Integrated Waste Management Board,
12 revenues derived from the sale of recyclable materials by community colleges that do
13 not exceed two thousand dollars (\$2,000) annually are continuously appropriated for
14 expenditure by the community college for the purpose of offsetting recycling program
15 costs. Revenues exceeding two thousand dollars (\$2,000) annually, shall be available
16 for expenditure by the community college only when appropriated by the legislature.²⁴

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

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

²² Government Code section 17565:

"If a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

²³ See Footnote 13, supra

²⁴ See: Footnote 14, supra

1 To the extent so approved or appropriated and applied to the colleges, these
2 amounts would be a reduction to the total costs mandated by the state to implement
3 Chapter 764, Statutes of 1999.

4
5 **PART IV. ADDITIONAL CLAIM REQUIREMENTS**

6 The following elements of this claim are provided pursuant to Section 1183, Title
7 2, California Code of Regulations:

8 Exhibit 1: **Declarations:**

9 Declaration of Phyllis Ayers, Acting Director – Risk Management, Santa
10 Monica Community College District

11 Declaration of Tom Finn, Director of Maintenance & Operations, Lake
12 Tahoe Community College District

13 Exhibit 2: **Public Resources Code and Public Contract Code sections cited.**

14 Exhibit 3: **Statutes cited:**

15 Chapter 764, Statutes of 1999.

16 Chapter 1116, Statutes of 1992.

17 Exhibit 4: **Executive Orders:**

18 A) State Agency Model Integrated Waste Management Plan

19 B) Conducting a Diversion Study, a Guide for California Jurisdictions

20 C) Solid Waste Generation, Disposal, and Diversion Measurement Guide

21 D) Waste Reduction Policies and Procedures for State Agencies

PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on February 16, 2001, at Santa Monica, California, by:

Cheryl Miller
Cheryl Miller, Associate Vice President
Business Services

Voice: (310) 434-9221
Fax (310) 434-4256

Santa Monica Community College District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.

Cheryl Miller
Cheryl Miller, Associate Vice President
Business Services

2/16/01
Date

PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on February 14, 2001, at South Lake Tahoe, California, by:



Jon Stephens, Vice-President

Voice: (530) 541-4660, Ext. 219

Fax: (530) 541-7852

PART VI. APPOINTMENT OF REPRESENTATIVE

South Lake Tahoe Community College District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.



Jon Stephens, Vice President

2/14/01

Date

EXHIBIT 1

DECLARATIONS

- **Declaration of Phyllis Ayers dated December 1, 2000**
Acting Director – Risk Management
Santa Monica Community College District
- **Declaration of Tom Finn dated November 20, 2000**
Director of Maintenance & Operations
Lake Tahoe Community College District

Exhibit 1
Declarations

**DECLARATION OF PHYLLIS AYERS
ACTING DIRECTOR, RISK MANAGEMENT
SANTA MONICA COMMUNITY COLLEGE DISTRICT**

COSM No. _____

TEST CLAIM OF SANTA MONICA COMMUNITY COLLEGE DISTRICT

**Chapter 764, Statutes of 1999
Public Resources Code Sections 42920 – 42928
Recycling and Waste Disposal**

I, Phyllis Ayers, Acting Director, Santa Monica Community College District,
make the following declaration and statement:

In my capacity as Acting Director of the District, I am responsible for
implementing the requirements of Public Resources Code Sections 42920
through 42928 as added by Chapter 764, Statutes of 1999, which requires the
District to perform the following administrative and operative tasks relative to the
California Integrated Waste Management Act of 1989 (added by Chapter 1095,
Statutes of 1989):

ACTIVITIES REQUIRED TO IMPLEMENT THE MANDATE

A. To develop and adopt before July 1, 2000, in consultation with the
California Integrated Waste Management Board (the "Board"), an integrated
waste management plan (the "Plan"), in accordance with the California Integrated

Waste Management Act of 1989, Public Resources Code Sections 40000, et. seq. as amended, (the "Act"). The Plan is to build upon existing programs and measures, (including the state agency model integrated waste management plan "Model Plan") for source reduction, recycling, and composting activities adopted by the Board pursuant to subdivision (a) of Section 42920. The Plan must be designed to reduce solid waste, reuse materials whenever possible, recycle recyclable materials, and procure products with recycled content.

B. Submit an adopted Plan to the Board on or before July 15, 2000.

C. To designate at least one solid waste reduction and recycling coordinator to perform the duties imposed by the Act using existing resources. The coordinator shall be responsible for implementing the Plan and shall also serve as a liaison to other state agencies and coordinators.

D. The Act requires the District to divert at least 25 percent of all solid waste generated from landfill disposal or transformation facilities by January 1, 2002; and to divert at least 50 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2004. These diversions are to be made through source reduction, recycling, and composting activities.

E. When necessary, after January 1, 2002, the Act provides a mechanism to establish an alternative to the 50 percent requirement, but only after a public hearing on the request. Therefore, since such a request may become necessary, the District must gather and maintain documentation which would meet a substantial evidence test showing:

- 1) showing that the District has met, on or before January 1, 2002, the 25 percent reduction requirement,
- 2) showing a good faith effort to effectively implement the source reduction, recycling, and composting measures described in its Plan,
- 3) demonstrating progress toward meeting the alternative requirement as described in its annual reports to the Board,
- 4) showing that it has been unable to meet the 50 percent diversion requirement despite implementing the measures described in its Plan; and
- 5) showing that the alternative source reduction, recycling and composting requirement represents the greatest diversion amount that the District may reasonably and feasibly achieve.
- 6) In the event such a request is made, and an extension of time has not been requested, the District must also explain why it has not done so.

F. When necessary, the Act provides a further mechanism to establish a second alternative to the 50 percent requirement, but only after a public hearing on the request. Therefore, since such a request may become necessary, the District must gather and maintain documentation which could meet a substantial evidence test showing:

- 1) that the circumstances which supported the previous alternative source reduction, recycling and composting requirement continue to exist, or, a description of the changes in those previous circumstances which show the former alternative diversion requirement is no longer appropriate and which would support another alternative source reduction, recycling and composting requirement;
- 2) that the District has made a good faith effort to effectively implement the source reduction, recycling and composting measures described in its Plan and demonstrating progress toward meeting the alternative requirement as described in its annual reports to the Board; and
- 3) that the new alternative source reduction, recycling and composting requirement represents the greatest diversion amount that the District may reasonably and feasibly achieve.

G. The Act also permits the Board to grant one or more single or multiyear extensions from the 25 percent requirement provided certain conditions are met. Therefore, since the District may need such an extension, it must gather and maintain evidence which would show:

- 1) That the District is making a good faith effort to implement the source reduction, recycling and composting programs identified in its Plan.

- 2) The District's plan of correction which demonstrates that it will meet the requirements of the Act before the expiration of the time extension.
- 3) The source reduction, recycling and composting steps the District will implement.
- 5) A date prior to the expiration of the time extension when the percentage requirements of the Act will be met.
- 6) Describing existing programs that will be modified.
- 7) Showing the new programs that will be implemented to meet the percentage requirements.
- 8) Showing the means by which these programs will be funded.
- 9) Any other information which the District determines to be necessary to demonstrate to the Board the need for the extension.
- 10) In addition to these requirements, the Board must be able to describe the relevant circumstances that have contributed to the request for extension, such as a lack of markets for recycled materials, local efforts to implement source reduction, recycling and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed.

H. The Act further requires the Department of General Services, when designing and constructing new facilities within the District, to allocate adequate

space for the collection, storage, and loading of recyclable materials. Likewise, the District, when entering into a new lease; or renewing an existing lease, shall ensure that adequate areas are provided for, and adequate personnel are available to oversee, the collection, storage and loading of recyclable materials in compliance with the Act.

I. The Act also requires the District to submit an annual report to the Board summarizing its progress in reducing solid waste by the percentages required by the Act. The annual report, at a minimum, shall include all of the following:

- 1) Calculations of annual disposal reduction.
- 2) Information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors.
- 3) A summary of progress made in implementing its Plan.
- 4) The extent to which the District intends to utilize programs or facilities established by local agencies for the handling, diversion, and disposal of solid waste. If the District does not intend to utilize those established programs or facilities, the District must identify sufficient disposal capacity for solid waste that is not source reduced, recycled, or composted.
- 5) If the District has obtained an extension of time to comply with the 25 percent requirement, the annual report must include a summary of progress made in meeting the Plan implementation schedule and the

progress being made in complying with the Board's plan of correction prior to the expiration of the time extension.

- 6) If the District has been granted an alternative source reduction, recycling and composting requirement, the District's annual report must include a summary of progress made towards meeting the alternative requirement as well as an explanation of current circumstances that support the continuation of the alternative requirement.
- 7) Any other information relevant to compliance with the Act.

ESTIMATED UNFUNDED COST TO IMPLEMENT THE MANDATE

It is estimated that the District has already incurred in fiscal year 1999-00 more than approximately \$2,600 in implementing the program to date and in fiscal year 2000-01 will incur an additional estimated \$71,600 in completing the implementation of the program and more than approximately \$40,000 annually to employ at least one solid waste reduction and recycling coordinator, continue the additional staffing required to operate and maintain the additional equipment required, and to gather the necessary documentation required for annual reports to the Board and any requests for extensions or alternative source reduction, recycling and composting requirements.

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CERTIFICATION

The foregoing facts are known to me personally and if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED, this 1st day of December, 2000, in the City of Santa Monica, California.



Phyllis Ayers

(Title)

Acting Director, Risk Management

DECLARATION OF TOM FINN

Director of Maintenance and Operations

LAKE TAHOE COMMUNITY COLLEGE DISTRICT

COSM No. _____

TEST CLAIM OF LAKE TAHOE COMMUNITY COLLEGE DISTRICT

**Chapter 764, Statutes of 1999
Public Resources Code Sections 42920 – 42928
Recycling and Waste Disposal**

I, Tom Finn, Director of Maintenance and Operations of Lake Tahoe Community College District, make the following declaration and statement:

In my capacity as Waste Management Coordinator of the District, I am responsible for implementing the requirements of Public Resources Code Sections 42920 through 42928 as added by Chapter 764, Statutes of 1999, which requires the District to perform the following administrative and operative tasks relative to the California Integrated Waste Management Act of 1989 (added by Chapter 1095, Statutes of 1989):

ACTIVITIES REQUIRED TO IMPLEMENT THE MANDATE

A. To develop and adopt before July 1, 2000, in consultation with the California Integrated Waste Management Board (the "Board"), an integrated

waste management plan (the "Plan"), in accordance with the California Integrated Waste Management Act of 1989, Public Resources Code Sections 40000, et. seq. as amended, (the "Act"). The Plan is to build upon existing programs and measures, (including the state agency model integrated waste management plan "Model Plan") for source reduction, recycling, and composting activities adopted by the Board pursuant to subdivision (a) of Section 42920. The Plan must be designed to reduce solid waste, reuse materials whenever possible, recycle recyclable materials, and procure products with recycled content.

B. Submit an adopted Plan to the Board on or before July 15, 2000.

C. To designate at least one solid waste reduction and recycling coordinator to perform the duties imposed by the Act using existing resources. The coordinator shall be responsible for implementing the Plan and shall also serve as a liaison to other state agencies and coordinators.

D. The Act requires the District to divert at least 25 percent of all solid waste generated from landfill disposal or transformation facilities by January 1, 2002; and to divert at least 50 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2004. These diversions are to be made through source reduction, recycling, and composting activities.

E. When necessary, after January 1, 2002, the Act provides a mechanism to establish an alternative to the 50 percent requirement, but only after a public hearing on the request. Therefore, since such a request may become necessary, the District must gather and maintain documentation which would meet a substantial evidence test showing:

- 1) showing that the District has met, on or before January 1, 2002, the 25 percent reduction requirement,
- 2) showing a good faith effort to effectively implement the source reduction, recycling, and composting measures described in its Plan,
- 3) demonstrating progress toward meeting the alternative requirement as described in its annual reports to the Board,
- 4) showing that it has been unable to meet the 50 percent diversion requirement despite implementing the measures described in its Plan; and
- 5) showing that the alternative source reduction, recycling and composting requirement represents the greatest diversion amount that the District may reasonably and feasibly achieve.
- 6) In the event such a request is made, and an extension of time has not been requested, the District must also explain why it has not done so.

F. When necessary, the Act provides a further mechanism to establish a second alternative to the 50 percent requirement, but only after a public hearing on the request. Therefore, since such a request may become necessary, the District must gather and maintain documentation which could meet a substantial evidence test showing:

- 1) that the circumstances which supported the previous alternative source reduction, recycling and composting requirement continue to exist, or, a description of the changes in those previous circumstances which show the former alternative diversion requirement is no longer appropriate and which would support another alternative source reduction, recycling and composting requirement;
- 2) that the District has made a good faith effort to effectively implement the source reduction, recycling and composting measures described in its Plan and demonstrating progress toward meeting the alternative requirement as described in its annual reports to the Board; and
- 3) that the new alternative source reduction, recycling and composting requirement represents the greatest diversion amount that the District may reasonably and feasibly achieve.

G. The Act also permits the Board to grant one or more single or multiyear time extensions from the 25 percent requirement provided certain conditions are met. Therefore, since the District may need such an extension, it must gather and maintain evidence which would show:

- 1) That the District is making a good faith effort to implement the source reduction, recycling and composting programs identified in its Plan.

- 2) The District's plan of correction which demonstrates that it will meet the requirements of the Act before the expiration of the time extension.
- 3) The source reduction, recycling and composting steps the District will implement.
- 5) A date prior to the expiration of the time extension when the percentage requirements of the Act will be met.
- 6) Describing existing programs that will be modified.
- 7) Showing the new programs that will be implemented to meet the percentage requirements.
- 8) Showing the means by which these programs will be funded.
- 9) Any other information which the District determines to be necessary to demonstrate to the Board the need for the extension.
- 10) In addition to these requirements, the Board must be able to describe the relevant circumstances that have contributed to the request for extension, such as a lack of markets for recycled materials, local efforts to implement source reduction, recycling and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed.

H. The Act further requires the Department of General Services, when designing and constructing new facilities within the District, to allocate adequate

space for the collection, storage, and loading of recyclable materials. Likewise, the District, when entering into a new lease, or renewing an existing lease, shall ensure that adequate areas are provided for, and adequate personnel are available to oversee, the collection, storage and loading of recyclable materials in compliance with the Act.

1. The Act also requires the District to submit an annual report to the Board summarizing its progress in reducing solid waste by the percentages required by the Act. The annual report, at a minimum, shall include all of the following:

- 1) Calculations of annual disposal reduction.
- 2) Information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors.
- 3) A summary of progress made in implementing its Plan.
- 4) The extent to which the District intends to utilize programs or facilities established by local agencies for the handling, diversion, and disposal of solid waste. If the District does not intend to utilize those established programs or facilities, the District must identify sufficient disposal capacity for solid waste that is not source reduced, recycled, or composted.
- 5) If the District has obtained an extension of time to comply with the 25 percent requirement, the annual report must include a summary of progress made in meeting the Plan implementation schedule and the

progress being made in complying with the Board's plan of correction prior to the expiration of the time extension.

- 6) If the District has been granted an alternative source reduction, recycling and composting requirement, the District's annual report must include a summary of progress made towards meeting the alternative requirement as well as an explanation of current circumstances that support the continuation of the alternative requirement.

- 7) Any other information relevant to compliance with the Act.

ESTIMATED UNFUNDED COST TO IMPLEMENT THE MANDATE

It is estimated that the District has already incurred costs in fiscal year 1999-00 of approximately \$6,000 in implementing the program to date, in fiscal year 2000-01 will incur an additional estimated \$8,000 in costs to complete the implementation of the program, and will annually incur approximately \$5,000 annually to employ part time a solid waste reduction and recycling coordinator, continue the additional staffing required to operate and maintain the additional equipment required, gather the necessary documentation required for annual reports to the Board, and submit requests for extensions or alternative source reduction, recycling and composting requirements.

CERTIFICATION

The foregoing facts are known to me personally and if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED, this 20th day of November, 2000, in the City of South Lake Tahoe, California.



Tom Finn
Director of Maintenance and Operations

EXHIBIT 2

CODE SECTIONS CITED

Public Resources Code

Section 40148
Section 40196 .3
Section 42920
Section 42921
Section 42922
Section 42923
Section 42924
Section 42925
Section 42926
Section 42927
Section 42928

Public Contract Code

Section 12167
Section 12167.1

EXHIBIT 2
CODE SECTIONS CITED

PUBLIC RESOURCES CODE

§ 40148. Large state facility

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

(Added by Stats.1999, c. 764 (A.B.75), § 1.)

PUBLIC RESOURCES CODE

§ 40196.3. State agency

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

(Added by Stats.1999, c. 764 (A.B.75), § 2.)

PUBLIC RESOURCES CODE

Chapter 18.5

STATE AGENCY INTEGRATED WASTE MANAGEMENT PLAN

Section	Section
42920. Plan adoption.	42925. Application of cost savings; waste reduction award program.
42921. Diversion.	42926. Annual reporting.
42922. Alternative diversion requirements.	42927. Requests for alternative diversion requirements or extensions.
42923. Extensions.	42928. Regulations.
42924. Collection, storage and loading of recyclable materials.	

Chapter 18.5 was added by Stats.1999, c. 764 (A.B.75), § 4.

§ 42920. Plan adoption

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

(b)(1) On or before July 1, 2000, each state agency shall develop and adopt, in consultation with the board, an integrated waste management plan, in accordance with the requirements of this chapter. The plan shall build upon existing programs and measures, including the state agency model integrated waste management plan adopted by the board pursuant to subdivision (a), that will reduce solid waste, reuse materials whenever possible, recycle recyclable materials, and procure products with recycled content in all state agency offices and facilities, including any leased locations. It is the intent of the Legislature that the local jurisdiction and the state agency or large state facility located within that jurisdiction work together to implement the state agency integrated waste management plan.

(2) Each state agency shall submit an adopted integrated waste management plan to the board for review and approval on or before July 15, 2000. The board shall adopt procedures for reviewing and approving those integrated waste management plans. The board shall complete its plan review process on or before January 1, 2001.

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

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

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

(Added by Stats.1999, c. 764 (A.B.75), § 4.)

§ 42921. Diversion

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

(b) On and after January 1, 2004, each state agency and each large state facility shall divert at least 50 percent of all solid waste from landfill disposal or transformation facilities through source reduction, recycling, and composting activities.

(Added by Stats.1999, c. 764 (A.B.75), § 4.)

§ 42922. Alternative diversion requirements

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

Additions or changes indicated by underline; deletions by asterisks * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) No alternative requirement shall be granted for any period after January 1, 2003, and no alternative requirement shall be effective after January 1, 2003.

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

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

Additions or changes indicated by underlines; deletions by asterisks. * * *

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PUBLIC RESOURCES CODE

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

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

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

(i) A state agency or a large state facility that is granted an alternative requirement pursuant to this section shall continue to implement source reduction, recycling, and composting programs, and shall report the status of those programs in the report required pursuant to Section 42926.

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

(Added by Stats.1999, c. 764 (A.B.76), § 4.)

Repeal

This section is repealed by its own terms on Jan. 1, 2006.

§ 42923. Extensions

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

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

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

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

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

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

(B) The state agency or the large state facility submits a plan of correction that demonstrates that the state agency or the large state facility will meet the requirements of Section 42921 before the time extension expires, including the source reduction, recycling, or composting steps the state agency or the large state facility will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, existing programs that it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.

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

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

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

(c)(1) In determining whether to grant the request by a state agency or a large state facility for the time extension authorized by subdivision (a), the board shall consider information provided by the state agency or the large state facility that describes relevant circumstances that contributed to the request for extension, such as a lack of markets for recycled materials, local efforts to implement source reduction, recycling, and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed by agency.

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

(d) If the board grants a time extension pursuant to subdivision (a), the state agency may request technical assistance from the board to assist it in meeting the diversion requirements of subdivision (a) of Section 42921 during the extension period. If requested by the state agency or the large state facility,

Additions or changes indicated by underline; deletions by asterisks * * *

PUBLIC RESOURCES CODE

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the board shall assist the state agency or the large state facility with identifying model policies and plans implemented by other agencies.

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

(Added by Stats.1999, c. 764 (A.B.75), § 4. Amended by Stats.2000, c. 185 (A.B.2589), § 147.)

Repeal

This section is repealed by its own terms on Jan. 1, 2006.

Historical and Statutory Notes

2000 Legislation

Subordination of legislation by Stats.2000, c. 185 (A.B. 2589), to other 2000 legislation, see Historical and Statutory Notes under Business and Professions Code § 661.

§ 42924. Collection, storage and loading of recyclable materials

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

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

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

(Added by Stats.1999, c. 764 (A.B.75), § 4.)

§ 42925. Application of cost savings; waste reduction award program

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

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

(Added by Stats.1999, c. 764 (A.B.75), § 4.)

§ 42926. Annual reporting

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

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

(1) Calculations of annual disposal reduction.

(2) Information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors.

(3) A summary of progress made in implementing the integrated waste management plan.

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

(5) If the agency has been granted a time extension by the board pursuant to Section 42923, the state agency shall include a summary of progress made in meeting the integrated waste management plan

Additions or changes indicated by underline; deletions by asterisks * * *

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PUBLIC RESOURCES CODE

implementation schedule pursuant to subdivision (b) of Section 42921 and complying with the state agency's plan of correction, prior to the expiration of the time extension.

(6) If the state agency has been granted an alternative source reduction, recycling, and composting requirement pursuant to Section 42922, the state agency shall include a summary of progress made towards meeting the alternative requirement as well as an explanation of current circumstances that support the continuation of the alternative requirement.

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

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

(Added by Stats.1999, c. 764 (A.B.75), § 4.)

§ 42927. Requests for alternative diversion requirements or extensions

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

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

(Added by Stats.1999, c. 764 (A.B.75), § 4.)

Repeal

This section is repealed by its own terms on Jan. 1, 2006.

§ 42928. Regulations

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

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

(Added by Stats.1999, c. 764 (A.B.75), § 4.)

Repeal

This section is repealed by its own terms on Jan. 1, 2006.

PUBLIC CONTRACT CODE

§ 12167. Revenues from recycled materials in state and legislative offices; deposit of funds; expenditure of funds

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

(Added by Stats.1989, c. 1094, § 10. Amended by Stats.1991, c. 1012 (S.B.960), § 4; Stats.1992, c. 1116 (A.B.8521), § 1.)

Historical and Statutory Notes

Derivation: Former § 10397, added by Stats.1988, c. 1231, § 4.

Library References

Cal Digest of Official Reports 8d Series, Public Works and Contracts §§ 11 et seq.

§ 12167.1. Use by state agencies and institutions of revenues from recyclable materials sales

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

(Added by Stats.1991, c. 1012 (S.B.960), § 5. Amended by Stats.1992, c. 1116 (A.B.8521), § 2.)

Additions or changes indicated by underline; deletions by asterisks * * *

EXHIBIT 3

STATUTES CITED

Chapter 764, Statutes of 1999

Chapter 1116, Statutes of 1992

**Exhibit 3
Statutes Cited**

ENVIRONMENT—RECYCLING—WASTE DISPOSAL

CHAPTER 764

A.B. No. 75

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

[Filed with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

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

(1) The existing California Integrated Waste Management Act of 1989, which is administered by the California Integrated Waste Management Board, establishes an integrated waste management program to which cities, counties, and regional agencies, as defined, are subject. The act requires the board to implement various state programs designed to encourage the reduction of solid waste.

This bill would require each state agency, as defined, on or before July 1, 2000, to develop and adopt, in consultation with the board, an integrated waste management plan.

The bill would require each state agency and each large state facility, as defined, to divert at least 25% of the solid waste generated by the state agency or large state facility from landfill disposal or transformation facilities by January 1, 2002, and at least 50% by January 1, 2004. The bill would authorize the board to establish, until January 1, 2006, a source reduction, recycling, and composting requirement that would be an alternative to the 50% reduction required under the bill. The board would also be authorized to grant single or multiyear extensions from these diversion requirements, until January 1, 2006. The board would be required to develop and adopt, by February 15, 2000, collection, storage, and loading requirements for recyclable materials. The bill would require each state agency to submit an annual report to the board regarding solid waste reduction. The board would be authorized to adopt regulations, that would be operative until January 1, 2006, regarding the granting of alternative reduction requirements or extensions. The bill would also prescribe related matters.

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

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

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

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

The people of the State of California do enact as follows:

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

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

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

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

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

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

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

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

Chapter 18.5. State Agency Integrated Waste Management Plan

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

(b)(1) On or before July 1, 2000, each state agency shall develop and adopt, in consultation with the board, an integrated waste management plan, in accordance with the requirements of this chapter. The plan shall build upon existing programs and measures, including the state agency model integrated waste management plan adopted by the board pursuant to subdivision (a), that will reduce solid waste, reuse materials whenever possible, recycle recyclable materials, and procure products with recycled content in all state agency offices and facilities, including any leased locations. It is the intent of the Legislature that the local jurisdiction and the state agency or large state facility located within that jurisdiction work together to implement the state agency integrated waste management plan.

(2) Each state agency shall submit an adopted integrated waste management plan to the board for review and approval on or before July 15, 2000. The board shall adopt procedures for reviewing and approving those integrated waste management plans. The board shall complete its plan review process on or before January 1, 2001.

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

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

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

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

(b) On and after January 1, 2004, each state agency and each large state facility shall divert at least 50 percent of all solid waste from landfill disposal or transformation facilities through source reduction, recycling, and composting activities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) A state agency or a large state facility that is granted an alternative requirement pursuant to this section shall continue to implement source reduction, recycling, and composting programs, and shall report the status of those programs in the report required pursuant to Section 42926.

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

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

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

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

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

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

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

(B) The state agency or the large state facility submits a plan of correction that demonstrates that the state agency or the large state facility will meet the requirements of Section 42921 before the time extension expires, includes the source reduction, recycling, or composting steps the state agency or the large state facility will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, existing programs that it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.

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

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

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

(c)(1) In determining whether to grant the request by a state agency or a large state facility for the time extension authorized by subdivision (a), the board shall consider information provided by the state agency or the large state facility that describes relevant circumstances that contributed to the request for extension, such as a lack of markets for recycled materials, local efforts to implement source reduction, recycling, and composting

programs, facilities built or planned, waste disposal patterns, and the type of waste disposed by agency.

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

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

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

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

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

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

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

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

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

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

- (1) Calculations of annual disposal reduction.
- (2) Information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors.
- (3) A summary of progress made in implementing the integrated waste management plan.
- (4) The extent to which the state agency intends to utilize programs or facilities established by the local agency for the handling, diversion, and disposal of solid waste. If the state agency does not intend to utilize those established programs or facilities, the state agency shall identify sufficient disposal capacity for solid waste that is not source reduced, recycled, or composted.

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

1999-2000 REGULAR SESSION

(6) If the state agency has been granted an alternative source reduction, recycling, and composting requirement pursuant to Section 42922, the state agency shall include a summary of progress made towards meeting the alternative requirement as well as an explanation of current circumstances that support the continuation of the alternative requirement.

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

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

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

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

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

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

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

CHAPTER 1116

An act to amend Sections 12167 and 12167.1 of the Public Contract Code, relating to recycled paper products, and making an appropriation therefor.

[Approved by Governor September 28, 1992. Filed with Secretary of State September 29, 1992.]

The people of the State of California do enact as follows:

SECTION 1. Section 12167 of the Public Contract Code is amended to read:

12167. Revenues received from this plan or any other activity involving the collection and sale of recyclable materials in state and legislative offices located in state-owned and state-leased buildings, such as the sale of waste materials through recycling programs operated by the California Integrated Waste Management Board or in agreement with the board, shall be deposited in the Integrated Waste Management Account in the Integrated Waste Management Fund and are hereby continuously appropriated to the board, without regard to fiscal years, until June 30, 1994, for the purposes of offsetting recycling program costs. On and after July 1, 1994, the funds in the Integrated Waste Management Account may be expended by the board, only upon appropriation by the Legislature, for the purpose of offsetting recycling program costs.

SEC. 2. Section 12167.1 of the Public Contract Code is amended to read:

12167.1. Notwithstanding Section 12167, upon approval by the California Integrated Waste Management Board, revenues derived from the sale of recyclable materials by state agencies and institutions that do not exceed two thousand dollars (\$2,000) annually are hereby continuously appropriated, without regard to fiscal years, for expenditure by those state agencies and institutions for the purposes of offsetting recycling program costs. Revenues that exceed two thousand dollars (\$2,000) annually shall be available for expenditure by those state agencies and institutions when appropriated by the Legislature. Information on the quantities of recyclable materials collected for recycling shall be provided to the board on an annual basis according to a schedule determined by the board and participating agencies.

EXHIBIT 4

EXECUTIVE ORDERS

- A) State Agency Model Integrated Waste Management Plan**
- B) Conducting a Diversion Study, a Guide For California Jurisdictions**
- C) Solid Waste Generation, Disposal and Diversion Measurement Guide**
- D) Waste Reduction Policies and Procedures for State Agencies**

**EXHIBIT 4
EXECUTIVE ORDERS
(Exhibit 4A)**

State Agency Model Integrated Waste Management Plan

February 2000



STATE OF CALIFORNIA

Gray Davis
Governor

Winston Hickox
Secretary, California Environmental Protection Agency

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Executive Summary

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

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

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

This document contains the following key sections:

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

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

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

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

Instructions for Completing the State Agency Model Integrated Waste Management Plan

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

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

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

Completed plans should be submitted to the following address:

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

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

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

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

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

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

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

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

State agencies must submit this completed form.

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

Large State facilities must submit this completed form.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Column B, Rows 78-106, Page 11

List additional existing or proposed promotional programs your agency has.

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

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

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

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

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

Column B, Rows 119-126, Page 12

List additional existing or proposed procurement activities your agency has.

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

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

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

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

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

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

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

State Agency Name: _____

Address: _____

City: _____ ZIP Code: _____

State Agency Director's Name: _____

Recycling Coordinator:

Name: _____

Address: _____

City: _____ ZIP Code: _____

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

Fax Number: (____) _____

Number of Employees: _____

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

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

Signature of Chairman, Commissioner,
or Director

Date

Printed Name

Title

State Agency Model Integrated Waste Management Plan

Part I-B: Large State Facility Information Form

Facility: _____

Address: _____

City: _____ ZIP Code: _____

Facility Director: _____

Recycling Coordinator:

Name: _____

Address: _____

City: _____ ZIP Code: _____

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

Fax Number: (_____) _____

Number of Employees: _____

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

Signature of District or Facility Director

Date

Printed Name

Title

Signature of Chairman, Commissioner,
Director, or President

Date

Printed Name

Title

Part II: State Agency List of Facilities

State Agency or Large State Facility: _____

No.	Facility Name and Mailing Address (List all facilities that are part of the State agency or large State facility.)	Contact			No. of Employees
		Name	Phone	E-Mail	
1					
2					
3					
4					
5					
6					
Total Number of employees in the State Agency or Large State Facility					

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

Part III: State Agency Waste Reduction and Recycling Program Worksheet

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

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

A	B			C	D	E	F	G	H	I	J	K	L	M	N	O
	Section 1 Program Activities			2000	2001		2002		2003		2004		2005		2006	
	B1*	B2*	B3*	Projected Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage
27	Other Recycling Programs															
28	Special Collection Programs															
29	Clean-Up Events															
30																
31																
32	Composting															
33	Commercial Pick-Up of Green Waste															
34	Commercial Self-Haul of Green Waste															
35	Food Waste Composting															
36	Other Composting Programs															
37																
38																
39																
40																
41																
42																
43																
44																
45																
46																
47																
48	Special Waste															
49	Construction/Demolition Recycling															
50	Concrete/Rubble Reuse															
51	Concrete/Asphalt Recycling															
52	Rendering/Grease Recycling															

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

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

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

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

A	B	C	D	E	F	G	H	I	J	K	L	M	O	
	Section 3 Procurement Activities	2000	2001		2002		2003		2004		2005		2006	
		Existing	Proposed	Imple- mented	Proposed	Imple- mented	Proposed	Imple- mented	Proposed	Imple- mented	Proposed	Imple- mented	Proposed	Imple- mented
107	State Agency Buy Recycled Campaign (SABRC)—All procurement activities should be coordinated through SABRC.													
108	Department-Wide Recycled-Content Procurement (RCP) Policy													
109	Exceeding SABRC Goals													
110	Department-Wide Automated Procurement Tracking System													
111	Requiring Recycled-Content Product Certification for All Purchases													
112	Annual Submittal of SABRC Report													
113	Staff Recycled-Content Procurement Training													
114	Participating in Dept. of General Services Buy Recycled Task Force													
115	Proactively Working With RCP Suppliers													
116	Sharing Success Stories With SABRC													
117	Joint Purchase Pools													
118	Other Procurement Activities													
119														
120														
121														
122														
123														
124														
125														
126														

179

[Redacted]

Appendix 1: Glossary of Terms

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

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

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

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

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

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

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

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

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

Office Paper – See “Ledger Paper.”

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

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

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

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

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

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

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

Waste Audits – See “Waste Assessment.”

Waste Evaluation – See “Waste Assessment.”

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

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

$$GEN = DISP + DIVERT$$

where:

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

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

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

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

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

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

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

Sources

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

Appendix 2: Assembly Bill 75

BILL NUMBER: AB 75 CHAPTERED
BILL TEXT

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

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

DECEMBER 7, 1998

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 18.5. STATE AGENCY INTEGRATED WASTE MANAGEMENT PLAN

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

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

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

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

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

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

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

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

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

(b) On and after January 1, 2004, each state agency and each large state facility shall divert at least 50 percent of all solid waste from landfill disposal or transformation facilities through source reduction, recycling, and composting activities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) A state agency or a large state facility that is granted an alternative requirement pursuant to this section shall continue to implement source reduction, recycling, and composting programs, and shall report the status of those programs in the report required pursuant to Section 42926.

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

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

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

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

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

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

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

(B) The state agency or the large state facility submits a plan of correction that demonstrates that the state agency or the large state facility will meet the requirements of Section 42921 before the time extension expires, includes the source reduction, recycling, or composting steps the state agency or the large state facility will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, existing programs that it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.

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

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

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

(c) (1) In determining whether to grant the request by a state agency or a large state facility for the time extension authorized by subdivision (a), the board shall consider information provided by the state agency or the large state facility that describes relevant circumstances that contributed to the request for extension, such as a lack of markets for recycled materials, local efforts to implement source reduction, recycling, and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed by agency.

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

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

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

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

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

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

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

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

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

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

(1) Calculations of annual disposal reduction.

(2) Information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors.

(3) A summary of progress made in implementing the integrated waste management plan.

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

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

(6) If the state agency has been granted an alternative source reduction, recycling, and composting requirement pursuant to Section 42922, the state agency shall include a summary of progress made towards meeting the alternative requirement as well as an explanation of current circumstances that support the continuation of the alternative requirement.

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

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

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

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

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

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

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

EXHIBIT 4

EXECUTIVE ORDERS

- A) State Agency Model Integrated Waste Management Plan**
- B) Conducting a Diversion Study, a Guide For California Jurisdictions**
- C) Solid Waste Generation, Disposal and Diversion Measurement Guide**
- D) Waste Reduction Policies and Procedures for State Agencies**

**EXHIBIT 4
EXECUTIVE ORDERS
(Exhibit 4B)**

Conducting a Diversion Study— A Guide for California Jurisdictions

September 1999



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Governor

Winston Hickox
Secretary, California Environmental Protection Agency

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Introduction

The California Integrated Waste Management Act of 1989 (Act, AB 939) required local governments to prepare planning documents for achieving the 25 percent diversion goal for 1995 and the 50 percent diversion goal for 2000. These plans included a solid waste generation study that quantified the amounts and identified the types of solid waste disposed and diverted from each jurisdiction in its base year.

Originally, the Act required jurisdictions to measure the amount of waste generated (i.e., disposal plus diversion) in 1995 and 2000 to demonstrate compliance. In order for jurisdictions to establish their base-year generation amounts, it was necessary to quantify a base-year diversion amount. For the purpose of the State's AB 939 diversion calculations, the definition and method for data measurement can be found in Public Resources Code Section 41781(a)(2) and related regulations. In 1992, legislation amended the Act, eliminating the need for future generation measurements by establishing a standard methodology for a disposal reduction measurement system.

This guide has been developed to provide jurisdictions with information and tools to help you calculate a new base year in a cost-effective manner. Along with this guide we are providing a diskette containing electronic versions of Appendices A - H.

Calculating a new base year is necessary if the 1990 base-year diversion tonnage estimates are found to be inadequate. In 1990, when all jurisdictions in the state were required to establish their base-year solid waste generation amounts,

jurisdictions had to rely on the best available data at that time, which in many jurisdictions has since been found to be incomplete or erroneous. For example, many jurisdictions have found errors in their original diversion estimates, including misallocation of regional data to the jurisdiction, flawed volume-to-weight conversions, and missing or underestimated tonnage. These errors and omissions in the base-year generation data make it difficult to accurately measure progress toward achieving the diversion requirements. Many jurisdictions feel that establishing a new base year, as opposed to correcting the flaws in the original base year, is the preferred solution to resolving data problems in terms of accuracy and long term cost.

This guide provides help on how to perform a diversion study to establish a new base year.

Topics covered include:

- Benefits of conducting a diversion study.
- Determining if a base-year problem exists.
- Designing a diversion study.
- Conducting a diversion study.
- Addressing restricted wastes.
- Analyzing data and calculating diversion.
- Submitting a new base year to the California Integrated Waste Management Board (CIWMB).

What Are the Benefits of Conducting a Diversion Study?

In addition to calculating an updated base year for goal measurement requirements, the diversion study provides the jurisdiction an opportunity to identify the many diversion efforts that take place in the community during a particular year. The information can be used for the following purposes:

- To identify previously missed diversion sources (e.g., scavenging, waste prevention, internal recycling).
- To identify the potential need for new diversion programs.
- To identify potential sources of manufacturing feedstock for local recycling market development zone businesses.
- To raise government and community awareness of diversion programs.
- To act as a tool to educate local businesses about potential savings from source reduction.
- To enlighten the jurisdiction about business diversion activities which are diverting waste and saving money.
- To identify exemplary model programs for peer matching.
- To evaluate the progress of individual existing diversion programs and obtain feedback from program participants.
- To identify needs of businesses in the community to improve programs, expand programs, and implement new programs.

What Is a Diversion Study?

A diversion study is a methodology used to quantify a jurisdiction's existing diversion efforts. A jurisdiction may use the results in support of a request to the CIWMB for a new base year. Data that must be captured in a diversion study includes:

- Quantifying a community's existing and current waste diversion tonnage—This process takes into account waste prevention (reducing, reusing), recycling, and composting programs for the commercial, industrial, and residential sectors. Capturing the waste diversion tonnage requires gathering data from entities such as the waste/recycling hauler, recycling centers (buy-back and drop-off), commercial and industrial businesses, transfer stations, and landfills.
- Quantifying a community's disposal tonnage—The disposal data is available through the CIWMB's Disposal Reporting System (DRS).

Key Steps in Conducting a Diversion Study

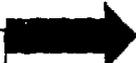
The key steps for conducting a diversion study and submitting a request to the CIWMB for a new base year are listed below and are also discussed on the following pages.



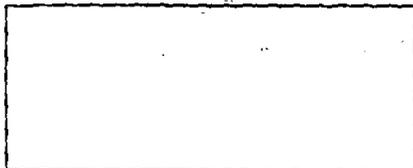
Design the diversion study.



Analyze diversion data, collect disposal data, and calculate diversion.



Prepare "Request for New Base-Year Diversion Study" report and CIWMB Base-Year Modification Request Certification form.*



Steps to Conduct a Diversion Study

- A. Gather and compile "big picture" diversion data.
- B. Identify nonresidential sectors (including commercial/industrial businesses, schools, and government) to survey.
- C. Review U.S. EPA's publication entitled *Business Waste Prevention Quantification Methodologies—Business Users' Guide*. To obtain a copy, contact the CIWMB's Office of Local Assistance at (916) 255-2555 or e-mail dplaola@ciwmb.ca.gov.
- D. Develop diversion study survey strategy and tools.
- E. Collect the diversion data by surveying the nonresidential sector.
- F. Compile residential and nonresidential diversion data.

Questions? Call (916) 255-2555 or e-mail dplaola@ciwmb.ca.gov.

*To request a sample diversion study report or certification form, contact the CIWMB's Office of Local Assistance at (916) 255-2555 or e-mail to dplaola@ciwmb.ca.gov.

What Is Diversion?

According to Public Resources Code (PRC) Section 40124, "diversion" is generally defined as the reduction or elimination of the amount of solid waste from solid waste disposal. Excluding a few mandated exceptions, the State's definition of diversion is intentionally broad to allow each jurisdiction the flexibility to develop whatever information it needs to manage its programs and meet its diversion goals. However, for the purpose of this guide, "diversion" is defined as the quantity and character of solid waste material generated within a jurisdiction, which is not disposed at Board-permitted solid waste transformation and disposal facilities.

"Source reduction" (PRC Section 40196) is defined as "any action which causes a net reduction in the generation of solid waste." Source reduction includes, but is not limited to, reducing the use of nonrecyclable materials, replacing disposable materials and products with

reusable materials and products, reducing packaging, reducing the amount of yard wastes generated, establishing the efficiency of the use of paper, cardboard, glass, metal, plastic, and other materials. Source reduction does not include steps taken after the material becomes solid waste or actions which would impact air or water resources in lieu of land, including, but not limited to, transformation.

"Recycling" (PRC Section 40180) is defined as the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste. Recycling also includes returning these materials to the economic mainstream in the form of raw material for new, reused, or reconstituted products, which meet the quality standards necessary to be used in the marketplace. Recycling does not include transformation of materials.

Determine if a New Base Year Is Needed

In 1996, the CIWMB convened a Measurement Accuracy Issues Working Group (working group) to address inaccuracies in jurisdictions' solid waste measurements in relation to AB 939 goal achievement requirements. As part of this working group, many jurisdictions identified flaws in their base-year generation tonnage as a major factor in the jurisdiction's ability to achieve the mandated diversion goals. Some of these flaws were in quantifying the amount of solid waste disposed; others were in identifying diversion activities and quantifying the amount of material diverted. For example, many jurisdictions have found that industrial and commercial waste prevention and recycling were underestimated, and some jurisdictions only counted recycled materials recovered by franchised haulers and jurisdiction-owned or -operated programs, but did not include activities by private materials brokers or nonprofit charities.

How does a jurisdiction determine whether the existing diversion data might be flawed or unacceptable for current needs? Some of the indications include:

1. The AB 939 calculated diversion rate for 1995 and subsequent years seems unrealistically low or high.
2. Current reported tonnage from diversion programs is significantly higher than the diversion estimates in the original 1990 study and cannot be explained by improved performance, program expansion, or additional programs.
3. An examination of the project records from the original study identifies possible missing data sources.

Designing a Diversion Study

Developing the Framework for a New Study

After determining the need for developing a new base year, the jurisdiction must define all intended uses for the information. For example, a diversion study can focus on gathering data necessary to calculate the new base year and it can also focus on identifying future potential waste prevention and recycling opportunities. The specific uses for the data largely determine the scope of the diversion study project. This is an important step because the more precisely the data needs and uses can be defined, the better the jurisdiction's data-related time and cost expenditures can be controlled.

The following steps also must be taken before the diversion data is collected to ensure that the results can be analyzed and will be meaningful:

1. Design the diversion study so the data can be independently verified or duplicated.
2. Ensure that the data terms and categories are consistent with AB 939 statutory and regulatory definitions.
3. Pretest all survey and audit forms for clarity, ease of use, and accurate data entry on a small representative sample of respondents.
4. Use the pre test results to fully try out the proposed data analysis method and the interpretation and reporting of final totals.
5. Put the data in a format that can be analyzed, compiled, and/or extrapolated. Building in methods to cross-check data and results may incur additional expense, but it adds to the technical defensibility of the overall study.
6. These steps may seem to create unnecessary work; however if processing errors are not caught and corrected at the design stage, the entire data collection may be inaccurate.

Amount of Time Required

Staff time is usually the largest cost component in a diversion study project. The total time required to design and implement a diversion study generally depends on the amount and type of information requested, the chosen survey method, and the number of survey participants and respondents.

However, some time costs are constant; for example, designing a survey instrument, or running a computer analysis program, takes roughly the same amount of time regardless of the number of cases in the sample. Typically, you can anticipate two to eight hours for designing and/or modifying an existing survey instrument.

The time required for collecting initial data information on residential programs, franchise hauler data, etc., can vary. On average, plan on 30 to 40 hours for compiling this data. The amount of time required will increase depending upon the jurisdiction's ability to easily access the information. In situations where there is no franchise hauler or jurisdiction-operated programs, the data may take longer to acquire.

The amount of time for each survey will vary, depending upon the size and complexity of the business, as well as how much diversion activity is taking place. For small businesses, a survey can be completed in 10 to 30 minutes. For larger, more complex businesses, one to three hours may be required. Other costs are highly design-related; a full-site audit at one large business can take an entire day. As a rule of thumb, budget an estimated total staff time of two to four hours for each completed survey form collected and analyzed.

In a diversion study in a medium-sized jurisdiction with franchise haulers, the total time required to complete the diversion study, which included 150 to 200 business audits, was 500 to 600 total hours. The total time does not include preparing the final report.

Available Resources

For most jurisdictions, the major constraint of the study will be the human and financial resources

available for the project. While this guide can assist in developing a cost-effective study, the overall budget and timeframe will largely determine the extent and quality of the data, and the approach to data gathering. Some typical costs involved in conducting diversion measurements are:

1. Staffing and supporting resources for the project (e.g., payroll, space, equipment, etc.).
2. Recruiting and training for permanent and temporary staff workers.
3. Data collecting (e.g., labor, telephone, transportation, survey design, etc.).
4. Maintaining confidentiality of records.
5. Managing and analyzing data (e.g., data entry, verification, peer review, etc.).
6. Preparing reports (e.g., develop analysis, conclusions, and recommendations).
7. Providing feedback to audited businesses.

Study Objectives

Another important design consideration is how extensive a study to perform. Data limits must be established depending upon the informational needs of the users. For example, if a new diversion study is only done to quantify base-year diversion for waste diversion requirement measurement, it may not be necessary to collect more diversion data than will show that the jurisdiction has met the diversion requirement.

Another factor to consider is the level of detail. If the jurisdiction is interested in evaluating its diversion programs, then the data will need to be more comprehensive. For example the diversion study could capture current and potential diversion activities. Many local jurisdictions use "integrated technical assistance" (the EPA term for full-service technical assistance) in the form of on-site waste reduction and recycling audits. If the jurisdiction conducts this level of diversion audit, then they will also need to develop an adequate assistance program to support the follow-up to businesses, government agencies, and the public.

Study Size

Depending on the size of the community, the number and types of generators in the community, and the amount of previously collected information, all or some of the potential data sources needs to be included in the diversion study. Also, depending on the study objectives, a jurisdiction may elect to conduct a comprehensive study to quantify all measurable diverted materials, extrapolate from a sample of material generators, or only examine specific programs or business sectors. With a well-designed strategy, it is usually possible to get adequate data with less than a "100 percent complete" survey of all targeted programs.

Smaller jurisdictions, which have a less complex waste management system, may be able to design a less intensive study to obtain good, accurate data. Small jurisdictions that have just a few large generators of materials, a single hauler system, and only a few diversion programs may be able to do a quality diversion study with just a small number of phone calls and a "windshield survey" of the community. Chances are good that a smaller jurisdiction already knows about the major commercial and industrial material generators, and operates the majority of the diversion programs themselves. Documenting the known existing recycling efforts and a limited survey of private source reduction activities may be all that is required. There is usually no need to develop a sampling strategy beyond setting a cost-effectiveness or percentage of significance, cut-off point for collecting the data.

Medium-sized jurisdictions may or may not need to spend much time on strategy either. If the community is primarily residential, and has only a few large commercial and industrial generators, a sample-based estimate and size-based business audit may be relatively quick and easy to do. As economic complexity and population size increase, the data collection problems begin to resemble those of a large city.

Large jurisdictions face a unique array of potential issues as there is generally not enough time or money to do a complete survey of all diversion data sources. If the jurisdiction has a large number of commercial and industrial facilities, it is recommended that the largest of the businesses

be targeted first. Experience has shown that for larger cities, the majority of the waste volume is generated by approximately the largest 20 percent of the businesses.

Once the data uses are defined, the next step in evaluating the existing data and planning a new diversion study is understanding the local waste stream. The benefit of knowing "the big picture" of the local waste stream is preventing double counting of materials and having the ability to determine that no important data sources have been inadvertently left out of the diversion study.

Response Rate

Participation in a diversion survey can result in a response rate range of 20 to 30 percent, to 70 or 80 percent. The response rate depends on the clarity and ease of use of the survey form, the nature of the information requested, the participant's interest in the topic, and the amount of staff follow-up on unanswered forms.

Oversampling may be necessary because not all homes and businesses will participate in a survey. A small pretest sample should indicate the response rate for a larger survey. Each attempt to follow up on non-respondents will usually yield about half the previous participation rate, so it is generally not cost-effective to make more than two additional contacts for the information.

Ensuring confidentiality of the data may sometimes increase response rates for the data provided, but the additional procedures needed to guarantee confidentiality will increase the cost and complexity of the project. Requesting only

masked (customer's name removed) or summary information for some haulers of waste can be an effective means of including confidential data in the survey process.

Quality of the Data

Regardless of the survey method chosen, great care needs to be taken in the design of the survey questions. Survey participants will sometimes misunderstand questions or overestimate their frequency and/or tonnage contributions to programs. It is also important to remember that the variable definitions used by the different suppliers of information in the study are a large potential source of data error.

All survey forms and letters must simply and clearly identify the details of the desired diversion information. Questionnaire bias can be checked by asking for the same information in different ways in different places on the survey form, or by testing survey results against reality.

The CIWMB has developed diversion study survey forms (Appendix A), which can be adapted for a jurisdiction's diversion study. The business survey form was developed as a companion tool to *Business Waste Prevention Quantification Methodologies – Business Users' Guide* (produced by the U.S. Environmental Protection Agency and University of California, Los Angeles Extension). The guide can be obtained by contacting the CIWMB's Office of Local Assistance by phone at (916) 255-2555 or by e-mail at dplaola@ciwmb.ca.gov.

Conducting a Diversion Study

Avoiding Double Counting

Double counting can be a major source for data error. For each type of generation source, the jurisdiction must determine the best place in the waste flow cycle to capture the diverted tonnage and material type data.

Recycling systems are complex market systems. Diverted materials are a commodity, and they move quickly and are easily bought and sold. Recyclables can be collected in the jurisdiction

and moved for processing to another location. For example, grocery stores may ship their compostables to a central composting facility outside the jurisdiction, and department stores may send their recyclables back to the central redistribution center. The jurisdiction must always specify time periods and locations to avoid double-counting errors. It is also important to remember that many waste disposal facilities also produce diverted materials, and that unmarketable diverted materials can flow back into the disposal system.

Getting the Big Picture

If you can't measure it, don't count it. There are many opportunities to capture diversion activities. However, it is important to err on the conservative side when compiling the diversion efforts in your jurisdiction. The goal is to capture data that can be measured, rather than relying upon "guesstimates."

Included in this guide is a "big picture" evaluation checklist for field review (Appendix B). The intent of this checklist is to provide the jurisdiction with a starting point for determining the recycling activities underway. The following provides an explanation of how the checklist could be used:

- **Haulers:** Haulers that provide recycling services (e.g., separate recycling roll-off recycling containers, old corrugated cardboard bins, mixed paper pickup, curbside recycling programs, etc.) to the residential, commercial, and industrial customers in a jurisdiction should have volume or tonnage estimates of collected recycled materials. Haulers may also provide non-attended drop-off recycling bins in a jurisdiction.
- **Recyclers:** Some jurisdictions require reporting of diverted tonnage as a condition of operating a business in the jurisdiction. This is the easiest method of obtaining private sector data. Surveys of recyclers, materials brokers, and end users have been used with mixed success. Participation in the surveys by the recyclers who operate buyback facilities is key. Professional and business associations may be willing to help collect data from their members. Great care must be taken in the design of the survey to avoid double counting of diversion tonnage. An example cover letter and a survey form are contained in Appendices C and D.
- **Current education programs:** Evaluations of education programs will provide a community with a real diversion number by measuring the source reduction activities being implemented.
- **List of top generators:** This will be covered in some detail in the next section, "Identifying Nonresidential Sectors to Survey."
- **Breakdown of waste stream:** This will provide the jurisdiction with necessary information when calculating the diversion activities within the community.
- **Large turf areas:** Many communities throughout California have not been taking grasscycling activities into account when calculating diversion activities. Implementation of grasscycling in the areas outlined can have a significant impact on the overall diversion for a jurisdiction.
- **Garage sales, thrift stores, horse manure composting, tire shops, diaper services, etc.:** Source reduction at home, repair for reuse, garage sales, and classified ad sales can be quantified through household surveys, newspaper ad counts and "windshield surveys" of sample neighborhoods. Include estimates of the casual nighttime "drive-by recycling" of household items, wood, metal, and junk put out for periodic residential special pickups.
- **Supermarket food redistribution, construction companies, etc.:** Large commercial and industrial enterprises generally have ongoing diversion programs as part of their standard operating practices. These diversion programs may represent substantial diversion tonnage that can be easily identified with waste reduction and recycling audits and/or surveys. Telephone surveys and written surveys must be carefully designed to minimize the time required for the business to complete the survey. In larger communities, businesses have been successfully approached for survey cooperation through state and regional industry associations and business organizations. A list of several commercial businesses (Appendix E) is

provided to assist in collecting diversion information. Additionally, business organizations including the Rotary Club, the Chamber of Commerce, and professional societies within your community can be of assistance.

- **Alternative daily cover:** This data should be collected from the Board's Disposal Reporting System. Contact the CIWMB Office of Local Assistance to get this data for the jurisdiction.
- **Sewage sludge** (must be diverted through landspreading, composting, etc.): Jurisdictions which have a wastewater treatment plant which diverts sludge can count the diversion.

Identifying Nonresidential Sectors to Survey

Mapping out the "big picture" provides a framework that identifies which entities, such as recyclers, government agencies, and businesses, need to be surveyed. The number of businesses and government agencies the jurisdiction will need to survey depends upon the size of the jurisdiction. For example, if the jurisdiction has a large variety of commercial and industrial facilities, it is recommended that the largest of the businesses be targeted first. Experience has shown that for larger cities, the majority of the waste volume is generated by approximately the largest 20 percent of the businesses. If the jurisdiction is small, it may be feasible to survey all of the recyclers, government agencies, and businesses in the community.

The first step is to identify all the businesses in the jurisdiction. The jurisdiction's business licenses serve as a data collection tool which can be used to identify the businesses operating and located within the jurisdiction, as well as the number of employees working at the business. Another data collection tool is the hauler's customer database. This database can identify the businesses and contacts within those businesses, dealing with recycling and waste. The contacts can be extremely useful when conducting the diversion surveys.

There are other commercial business databases which maintain business data by jurisdiction, such as Dunn and Bradstreet and ABII (www.InfoUSA.com). (Note: A business with a license to do business in the jurisdiction but which is physically located elsewhere is not a potential sample point. This minimizes selection of businesses that are home-based and/or mailbox businesses.)

Once you have compiled a list of all of the businesses, the data should be entered into a spreadsheet or database. The data should include business contact information, location, and number of employees. The businesses can then be ranked according to number of employees. If actual diversion data for each business is available, it could be used instead of ranking by employees.

This technical approach is based on the "80/20 rule"—80 percent of the divertable materials are often produced by only 20 percent of the total number of businesses. The largest firms are selected as the primary data collection targets because they potentially can document the largest amount of diverted materials for the least data collection cost. There is a similar rule of thumb for industrial sampling that the five largest plants in the area will often produce 50 percent of the total industrial diversion. These "rules" will not hold true for all jurisdictions, but they are worth testing as a possible strategy.

Further efficiencies can be gained by grouping large businesses into similar types. Each business target group is then reviewed to be sure it uses feedstock and/or processes that produce divertable or source-reducible materials. Only the best candidates are given the highest data collection priority and/or more extensive audits.

Statistical analysis shows that the larger companies are responsible for the majority of a jurisdiction's existing diversion. If the jurisdiction is small to moderate in size, all of the businesses in the 20 percent referred to may not need to be surveyed. For example, the City of Monterey had approximately 700 businesses in the top 20 percent of the total number of businesses within the community that produced divertable materials (approximately 3,500). The businesses became significantly smaller after about 150

businesses were surveyed. The city found that by surveying the largest businesses it captured significant diversion tonnage. With limited staffing resources, it proved more cost-effective to survey only the top 150 businesses instead of all 700.

Larger jurisdictions may not have the resources to survey all of their largest businesses, which number from 300 to 1000. In this situation, jurisdictions may choose to randomly sample their entire business sector.

Random Sampling Methodology

Statistical theory states that if a proper sample is drawn from a large population, all the characteristics of the population will be reasonably represented in the sample. Medium and large jurisdictions will find it cost-effective to apply this mathematical technique, by selecting a small but representative sample of sites to survey and extrapolating the diversion rate for the entire jurisdictions.

There are three basic types of random statistical sampling using a list of all possible sites (such as a property tax list of all residences or a list of all business permits). Simple random sampling uses a random numbers table (found in many mathematics textbooks) to pick from the list a random page and place on the page to start the selection, and a new random number to pick each participant. Random stratified sampling uses a random page and place from the list to start, then picks every Nth participant after that (with "N" being another random number). Random cluster sampling picks a random page or pages, and then samples every site within that cluster.

The key to accuracy in random sample selection is allowing each potential participant an equal chance of being selected from a complete list of potential sites. To ensure equality, the choice of possible random numbers should be limited, depending on the number of possible sites, so that at least three complete passes are made through the entire list of candidates.

It is more difficult, but possible, to use non-random statistical sampling techniques to select representative samples from within previously stratified groups, such as businesses grouped by type and size. The danger of accidental or

systematic bias in the sample of selected sites is greatly increased, however, in nonrandom sampling.

The potential errors in statistical sampling are so many and so difficult to identify and control, that unless the jurisdiction has had successful previous experience in designing and executing a statistical sampling plan, it would be wise to seek assistance. For jurisdictions that do not have the necessary expertise on staff, it may be possible to have a local graduate student, or research methods or statistics class, develop a sampling plan as a class exercise under the strict direction of the professor. The jurisdiction may also contact the CIWMB for assistance.

The statistical analysis study performed by the University of California, Los Angeles Extension, Waste Management and Recycling Program indicates that a sample size of approximately 200 randomly selected businesses is adequate to provide a statistically significant extrapolated diversion rate for the commercial and industrial sector (e.g., nonresidential sector).

Statistical analysis shows that the larger businesses in the non-residential sector are responsible for the majority of a jurisdiction's existing diversion. For purposes of ranking the size of a business use the business' total number of employees. If actual disposal data for each business is available, it could be used instead of ranking by employees.

The University of California, Los Angeles Extension, Waste Management and Recycling Program study has shown that the diversion rates for smaller businesses tends to be less variable, whereas the diversion rates for the larger companies tend to be more variable (e.g. more specific for each individual business). This means that more samples should be taken in the larger business stratum than the smaller business stratum, because of larger variances in the diversion rates in the larger business stratum.

When selecting random samples for extrapolation, separate the businesses in the jurisdiction into two groups: one group for the larger businesses and another group for the smaller businesses. Allocate approximately two-thirds to three-fourths of the samples to be taken in the larger business group

with the balance of the samples in the smaller group.

Table 1: Recommended Minimum Sample Size

n = actual number of businesses in jurisdiction

	Small-Sized Jurisdiction	Medium-Sized Jurisdiction	Large-Sized Jurisdiction
Total Number of Businesses	400-1000	1000-5000	5000+
Recommended Number of Samples	$80+(0.01 \times n)$	$180+(0.01 \times n)$	$200+(0.01 \times n)$
Not-to-Exceed Total Number	N/A	N/A	1000
Note: If jurisdiction has less than 400 businesses, sample a minimum of 60 of the businesses, starting with the largest ones.			

Recommended methods to allocate the samples for sampling:

1. Utilize the California Integrated Waste Management Board's Draft Disposal Characterization Studies Regulations (Article 6.0, Section 1876.52) to stratify and allocate samples according to the "80/20 rule." This approach, also described earlier, is based on the assumption that 80 percent of the waste comes from 20 percent of the businesses (the largest businesses in the group). The total number of generators to be sampled shall be allocated so that 80 percent of the samples are randomly assigned to businesses in the large generator group, and the remaining 20 percent of the samples are randomly assigned to the remaining businesses (which generate 20 percent of the waste).
2. If the jurisdiction has a few very large businesses that contribute a significant portion of the waste stream or diversion tonnage, allocate the first 10-20 samples to those companies. Although these businesses were not randomly selected, a representative sample of the jurisdiction's wastestream or diversion would not be valid without these specific businesses because of the impact of these very large businesses. The remaining samples to be allocated can then be allocated using the 80/20 rule.
3. If a jurisdiction does not have a significant "large business stratum" so that the number of samples allocated to the large stratum exceeds the actual number of large businesses, sample

all of the businesses in the large stratum and randomly allocate the balance of the samples in the smaller business stratum.

Collecting the Data

The next step is determining the data collection strategy. Gathering information is expensive in terms of personnel, time, and budget resources. The jurisdiction should always strive to obtain the needed diversion data with methods that require the least effort and minimal cost to obtain. If additional tonnage needs to be documented, sources and methods should be selected in the order of least to greatest effort and cost.

Resources for Conducting Business Surveys

Jurisdictions can explore working jointly with their haulers to conduct business surveys. The haulers know the larger accounts on their routes and which businesses have the most waste reduction and recycling. Several jurisdictions have joint programs in which the hauler's staff is trained to perform surveys. The hauler's staff conducts waste reduction and recycling surveys and identifies exemplary diversion programs for possible awards by the jurisdictions. Many jurisdictions have utilized student interns from local universities to assist in conducting waste reduction and recycling surveys. Also, volunteers from the community, businesses, local task force, and nonprofit organizations may be available to perform the surveys. Training in diversion survey procedures and various quantification methods is highly recommended. The CIWMB has training manuals for conducting waste audits.

Each jurisdiction is unique, and effort and costs may differ to obtain similar information. Much of the expense will depend upon factors such as the level of cooperation from recyclers and businesses, and the nature of franchise agreements/contractual obligations. Care must always be taken to ensure adequate quality of the diversion data, particularly to avoid double counting of materials. The model data collection form (Appendix F) will help avoid this error.

Using Mail and Telephone Surveys

Generally, mail surveys are the least expensive method of gathering diversion information but they usually receive the lowest rate of participation and require a long processing cycle before results are available. Problems with poorly designed forms or misunderstood questions are often not discovered until after the survey forms have been completed and returned. Mail surveys are most appropriate for surveying large populations using simple and easy-to-answer questions.

Telephone surveys are almost twice as expensive to do as mail surveys, but they are much more personal, allow for more complex questions, and provide information quickly. Also, if the survey method is defective and does not elicit useful data, the questions or format can be corrected early in the collection process. Questions, which require detailed research by the participant, will require one or more follow-up calls. Phone surveys are especially suited for studies involving a small sample of participants.

Telephone and mail surveys are the traditional methods of generator surveys used by most jurisdictions. Experience has shown that a mail survey will sometimes require a telephone call follow-up to remind the participant to complete the survey and for data clarification and/or verification. Otherwise, many households and most businesses will simply discard the survey forms.

Conducting On-Site Waste Reduction and Recycling Surveys

On-site waste reduction and recycling surveys are more expensive to perform than mail and telephone surveys but they have the highest response rates and allow the largest number of questions. An on-site survey will probably

uncover the greatest amount of diversion tonnage, and also provide an opportunity to give hands-on technical assistance to the waste generator. To facilitate a discussion with the generator, it can be extremely helpful to have a contact at the business or government agency responsible for the waste management activities. If the jurisdiction has a franchise hauler, the hauler often has contact information for each business and government agency.

Determining whether an appointment or cold call is most appropriate will depend on the size and type of business. For smaller businesses, typically a walk-up cold call is sufficient. However, it is also important to keep in mind that certain businesses will be busy at certain parts of the day. For example, a good time to catch restaurant manager is in the late afternoon after the lunch rush and before the diner crowd. Appointments are necessary for larger businesses that may need to schedule staff time to participate in the survey. For example, hotels have various departments that could provide information for the surveys.

Getting Business Support

To gain business support and participation, a letter from the mayor or county supervisor(s) can be presented to the business with the surveyor's business card. The letter can explain the purpose of the survey, the value of the business' participation, and the confidentiality of the survey (Appendix G).

When conducting the audits, it is helpful to bring information about your jurisdiction's diversion programs and services, the CIWMB's Waste Reduction Awards Program (WRAP) applications, and any other technical assistance materials the business might find useful. The Board has many fact sheets that are available at no cost. For more information, see the CIWMB Business Resource Efficiency Web site at www.ciwmb.ca.gov/BizWaste/.

- Following are tips for gaining business support:
- Explain to the businesses that their specific diversion information will be kept confidential and the data will be aggregated into one total diversion number for the jurisdiction.

- Explain how their efforts are helping the community reach its diversion goal.
- Provide them with information about WRAP and how they can apply for recognition.

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Sacramento, CA 95814
(916) 327-7361
Fax: (916) 323-4907

A letter template is provided for your convenience (Appendix H). Please note that all requests (even those of consultants working on behalf of local government) must be printed on official jurisdiction letterhead.

Mandating Data Disclosure

Another way to collect information is for a jurisdiction to require local businesses to disclose their diversion data. For example, the City of Commerce has an ongoing data collection program that is tied to the renewal of the commercial business license. Another variation used by Alameda County and the City of Oakland is to require construction and demolition waste diversion reporting as a condition for issuance of a building permit.

Health and Safety Guidelines

Health and safety measures should be considered when conducting physical sampling of diverted materials to determine the material types and amounts. Health and safety measures may include development of local protocols, training and supervision of sorters, designation of an on-site safety officer, or other measures.

Obtaining Information From Department of Conservation, Division of Recycling

The California Department of Conservation's, Division of Recycling administers the California Beverage Container Recycling and Litter Reduction Act. The division compiles and provides aggregate volume information on beverage containers covered under the act. To request volume information, contact:

While Board regulations do not cover diverted material sorting, information to help identify and evaluate risks can be found in "A Health and Safety Plan for Waste Characterization Studies," which is an appendix of the Board's proposed "Disposal Characterization Study Preliminary Draft Regulations" (California Code of Regulations, Title 14, Chapter 9.0, Article 6.0, Section 18726). For a copy, contact the CIWMB Waste Analysis Branch, Goal Measurement and Data Integration Section at (916) 255-2341.

The Department of Conservation
Division of Recycling
Client Services Section

Addressing Restricted Wastes

Most of the guidelines about what counts (or doesn't) toward diversion of solid waste are defined in statute, in PRC Sections 41780 through 41786 (Division 30, "Waste Management"; Part 2, "Integrated Waste Management Plans"; Chapter 6, "Planning Requirements"; Article 1, "Waste Diversion"), with further guidance in regulations. The criteria for counting something toward diversion in a 1990 or 1991 base year also apply

when establishing a new base year (e.g., 1995). The jurisdiction must take into account all restricted wastes outlined in statute. Also, the materials being counted for diversion must have been disposed of in a landfill at a minimum rate of .001 percent of the waste stream. The above statute and regulation have been compiled into a concise document (Appendix I).

Analyzing Data and Calculating Diversion

As soon as the raw data is collected, examine it for logical or numerical entry errors made by the respondents. To reduce collection costs, follow up with respondents to clarify or fix response errors, if possible, rather than remove the data

from the study. It is valid to "treat" data to remove minor response flaws, converting a response from cubic yards to tons for example, as long as the true meaning of the data is not distorted in the process.

Included in this guide are conversion factors for numerous items and materials that you may want to consider using for calculating your overall diversion (Appendices J-1 – J-3). The weights provided may not be representative of every jurisdiction within the state and should be used only if they accurately reflect the weight of items and materials submitted in the jurisdiction's diversion study.

Keep the analysis methods and goals simple and straightforward. Analysis need not be sophisticated to yield important results. Don't get "lost in the data"; more analysis is usually possible than is useful. Totals, averages, frequency counts, and selected simple cross-tabulation tables (tonnage by business type, for example) are usually all that is required. Data

extrapolation may yield misleading results, especially in limited data samples. Report both good findings and bad; bad news is often the most valuable information in the long run.

The diversion data that has been collected and analyzed for the nonresidential and residential sectors should be compiled. The disposal data should be collected from the Board's Disposal Reporting System. The diversion rate is calculated by dividing the diversion amount by the generation amount. You may obtain a specific jurisdiction's Disposal Reporting System (DRS) information by accessing our Web site at www.ciwmb.ca.gov/LGTools/DRS/, by contacting your Office of Local Assistance (OLA) representative, or by calling OLA at (916) 255-2555.

Submitting a New Base-Year Proposal

A jurisdiction may submit a request to the CIWMB to replace the original base year with a more current base year at any time, or it may include the request in the jurisdiction's annual report to the Board.

When submitting a request for a new base year derived from the diversion study conducted, the following documentation is required:

- Describe methodology used.
- Provide a summary of the waste prevention and recycling audits.
- Provide new base-year generation study calculation details.
- Explain how restricted wastes were addressed.
- Provide list of conversion factors used, and sources.
- Supplementary documentation, such as "Residential Curbside Recycling

Report," "Department of Conservation/Division of Recycling AB 2020 Report," "Summary of Commercial/Industrial Sector Diversion Survey Results," disposal reports.

- Complete the CIWMB Base-Year Modification Request Certification form.

To receive a sample jurisdiction report for a new diversion study or a copy of the certification form, contact the CIWMB's Office of Local Assistance at (916) 255-2555 or e-mail your request to dplaoia@ciwmb.ca.gov.

The CIWMB Office of Local Assistance staff is available to assist you with answering any questions you have or providing input on your new base-year diversion study. If you need any technical assistance, please contact the Office of Local Assistance at (916) 255-2555 or visit our Web site at www.ciwmb.ca.gov/LocalAssist/.

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Appendix A

Business Waste Prevention and Recycling On-Site Survey Form

Business Waste Prevention and Recycling On-Site Survey Form

Name of Business: _____ Contact: _____

1. Ask to speak to someone in the business who deals with source reduction, recycling, and garbage.
2. Introductions and exchange business cards.
3. *The purpose of our visit today is to take a look at what waste you have prevented from entering the trash through your waste prevention and recycling efforts. Please have no fear—we are not here in an enforcement mode and you've done nothing wrong. As you may have heard, State law requires that all cities and counties reduce the amount of waste going to landfills by 50 percent by the year 2000. As a business within the city, you are helping that effort.*

Currently, the city is participating in a pilot study to develop a guide showing other cities how they can quantify the waste diversion activities to know if they are meeting the 50 percent goal or not. The study requires us to look at the top waste diverters in the city and to quantify their efforts. We are surveying 200 businesses in the city to capture a good picture.

We appreciate your time today. The information you provide will be very helpful to our study.

General Description:

To help to understand your business, could you please give a general description of your business, including any source reduction and recycling programs.

Thank you for sharing an overview of your business. That was very useful so we can understand your business better. At this point we want to look at your waste stream and quantify your source reduction and recycling efforts so we can make calculations to determine the amount of materials that you are helping to keep out of the landfill.

5. How many employees does your business have? Full-time _____ Part-time _____
If part-time, are they seasonal? _____ Note: Try to determine the total full-time equivalent.
6. What materials do you recycle? _____
Are there any materials that are not collected by the franchise hauler?
If not, who collects them? _____ What is collected? _____
How much is collected? _____
(Recycling materials: pallets, OCC, stretch wrap, plastics, aluminum, glass, #10 cans, gallon jugs, 5-gallon buckets, 55-gallon drums, metal, grease traps, newspaper, white ledger, computer paper, junk mail, toner cartridges, food waste, wood waste, green waste, phone books.)

Now that we have identified the recycling business efforts, let's focus on source reduction or waste prevention.

Note: For source reduction, you will need to ask when the program started. You may be able to collect data before 1998 for existing programs and data for new programs started in 1998.

1. Paper**A. Paper Reduction**

Have you put in any programs to reduce the amount of paper you use, like double-sided copying?

Note: 1. A. should be used if they can't quantify individual paper reduction efforts in I.B-G. If I.A can be answered, skip I.B-G.

1. Number of reams of paper used before the program (per year, month, week) _____
2. Number of employees prior to implementing program _____
3. Number of reams of paper used after program _____
4. Number of employees after program _____
5. Number of months program existed in 1998 _____

Option: If questions 1-5 cannot be answered because 1998 records are unavailable, ask for an estimate on how many fewer reams of paper were used during one month or for the year. _____

B. Double-Sided Copying

Do you do double-sided copying?

1. Number of double-sided copies made (percent is acceptable) _____
2. Number of total images made (use counter on machine) _____
3. Total number of reams of copying paper used (year, month, or week) _____
4. Number of months program existed in 1998 _____

C. Routing Memos

Do you route memos instead of giving out individual staff copies?

1. Average number of memos (year, month, week) _____
2. Average number of sheets per memo _____
3. Average number of employees memo circulated to _____
4. Memo size (half sheet, quarter sheet) _____
5. Number of months program existed in 1998 _____

D. Paper Reuse for Notepads, Printers, Fax Machines

Do you reuse paper for notepads, printers, faxes?

- A. How many reams of paper were reused per week (or month or year)? _____

E. Bulletin Board

Do you use bulletin boards to reduce the amount of paper memos that go to staff?

1. Average number of documents put on bulletin board (weekly) _____
2. Number of employees using board _____

F. Mailing List

Have you removed employee's names from mailing lists resulting in less magazines, etc. coming to you?

1. Number of publications received previously _____
2. Average weight of publications _____
3. Number of months program existed in 1998 _____

G. Paper Towel Reduction

Have you changed from paper towels to cloth roller or air dryer?

1. What is the new system? _____
2. How many paper towels were purchased previously (month or year)? _____
3. Number of months program existed in 1998 _____

(Did you cover the following? Corporate and internal correspondences, route slips, bulletin board, shared subscriptions, duplex copying, alternative printing changes, end-of-year file purge.)

2. Computer

Computer Networking:

Do you have a computer network policy for e-mailing, sharing documents, or using scratch paper in printer trays?

Note: II.A. should be used if they can't quantify individual computer networking efforts in II.B-D. If II.A. can be answered, skip II. B-D.

1. Number of sheets distributed previously _____
2. Number of sheets distributed after policy instituted _____
3. Number of months program existed in 1998 _____

Option: If questions 1-3 cannot be answered because 1998 records are unavailable, ask for an estimate on how many reams were reduced during one month or for the year _____

B. File Exchange:

Have you reduced paper by using electronic methods, such as editing on line?

1. Number of months program existed in 1998 _____
2. Estimate average number of sheets per file (use historical data or employee survey) _____
3. Average number of times the file is used _____

Example: A real estate company keeps its listings in a database file, and the company's 50 associates update the file each month. Each associate's listing is one page long, making the entire set of listings 50 pages. Formerly, each associate printed the 50-page set each month after all updates were made. With electronic viewing possible, the company stopped printing the set of listings in hard copy. To calculate paper reduction: 50 sheets per month, per associate, x 12 months = 600 sheets per year per associate. 600 sheets x 50 associates = 30,000 sheets per year. That figure divided by 200,000 sheets per ton = .15 tons of paper usage eliminated.

C. E-Mail:

Do you use e-mail to share documents so they don't have to be printed out?

1. Average number of sheets in e-mails? _____
2. Number of e-mails sent in lieu of paper messages? _____
3. Number of months program existed in 1998 _____

Note: This assumes e-mail replaced paper messages. An estimate may need to be made on the amount of paper saved.

Example: The company sends and receives 20 e-mail messages each day. The paper saved, assuming an average of one page per e-mail at 260 work days per year, would be 5,200 sheets.

D. Electronic Faxing:

Are you able to send faxes electronically?

1. Average number of pages faxed and received electronically per year _____
2. Average number of pages printed _____
3. Number of months program existed in 1998 _____

Example: A survey of one company showed that approximately 15 faxes were sent and received electronically each week, totaling approximately 42 pages. With the electronic format being used, 15 pages instead of 42 were printed.

(Did you cover the following? Computerized changes, catalogs, memos and reports on line, e-mail, electronic faxing capability.)

3. Ordering/Purchasing

A. Electronic Purchase Orders:

Are your purchase orders done electronically?

1. Average weight of purchase order in pounds _____
2. Number of purchase orders per month/year _____
3. Number of months program existed in 1998 _____

A. Electronic Accounts Receivable:

Can customers pay by phone or computer?

1. Average weight of materials received (includes checks; envelopes, invoices—if weights not known, record the material types) _____
2. Number of customers submitting electronic payments _____
3. Number of billing cycles per year (obtain from accounting) _____
4. Number of months program existed in 1998 _____

B. Electronic Inventory/Catalog:

Do you have a "just in time" delivery or electronic catalogs?

1. Number of sheets in catalog per year _____
2. Number of excess plus returned catalogs _____
3. Average weight of catalog _____
4. Number of months program existed in 1998 _____

C. Toner Cartridges and Typewriter Ribbons:

Do you return your toner cartridges to the manufacturer? Are typewriter ribbons reused?

1. Weight of cartridge or type of cartridge _____
2. Number of cartridges remanufactured per year _____
3. Weight of typewriter ribbon or type of ribbon _____
4. Number of ribbons remanufactured/recycled per year _____

(Did you cover the following? Inventory control, electronic data system and payments, overage and damaged goods, electronic catalogs.)

4. Packaging

A. Packaging:

Do you use shredded paper for packaging? Do you reuse Styrofoam peanuts, bubble wrap?

1. Number of packages sent (per year, month, or week) _____
2. Weight of shredded paper _____
3. Number of months program existed in 1998 _____

B. Lightweighting:

Have you changed your packaging to use less material?

1. Number of packaging units received/sent per year _____
2. Weight (in pounds) of package before lightweighting _____
3. Weight (in pounds) after lightweighting _____
4. Number of months program existed in 1998 _____

C. Reusable Shipping Containers:

Do you reuse shipping containers? Send them back to the supplier or reuse for packaging?

Note: If they use different types of reusable containers, repeat for each container.

1. Weight of single-use container _____
2. Number of reusable containers used per year _____
3. Estimate number of trips in life of reusable container _____

D. Reusable Supply Containers:

Have you switched to purchasing supplies such as cleaning supplies in reusable containers to reduce packaging?

1. Total number of old containers _____
2. What type and size of old container _____
3. Total number of new containers _____
4. Type and size of new container _____
5. What happens to new container? Is it sent back to the supplier? Used for other things? _____

E. Pallets:

Do you reuse or recycle pallets?

1. Do you have pallets? Yes No
2. What do you do with them? Recycle Reuse Put in organics bin
3. Number of pallets recycled _____
4. Where recycled? _____
5. Average size (or weight) of pallet _____
6. Number of pallets reused _____
7. Average number of times reused per year _____

Note: Can use average for a month and extrapolate out for the year.

(Did you cover the following? Packaging, shipping, reused corrugated cardboard, multi-use crates and/or pallets, redesigned packaging)

5. Other Materials

A. Tires:

Do you take your tires to the local tire store?

1. If not, what happens to the tires? _____
2. Number of tires recycled _____
3. Weight of recycled tires _____
Note: May need weights for each type of tire.
4. Number of tires retreaded _____
5. Weight of retreaded tires _____

B. Batteries:

Do you recycle batteries?

1. How many batteries are recycled? _____
2. Weight of batteries _____
3. How many batteries are reused? _____
4. Weight of batteries _____
5. Number of months program existed in 1998 _____

6. Food Service

A. Cafeteria Service Ware:

Have you switched from disposable to reusable service ware?

1. Average percent of customers that use take-out _____
(Even though switched to reusable, some single-use items still needed) _____

2. Average number of customers or employees served each day _____
3. Number of days cafeteria is open each year _____

Note: You don't need to capture weights. Default 0.0372 pounds for each single-use setting per customer.

B. Food Donation:

Do you donate leftover food to charities or food redistribution centers?

1. Where does the food go? _____
2. Average weekly weight of donated food in pounds _____

C. Food Reuse:

Do you reuse food, such as rotating food into a salad bar?

1. How much food is reused? _____

(Did you cover the following? Bulk foodstuff, food banks, grease traps, garbage disposal, towels, gloves, tray-liners, napkin dispensers, dishware. Employee Lunchroom: employee collects cans, cafeteria has reusables. Restrooms: hand dryers, oversized rolls.)

7. Donation/Reuse

A. Office Supply Reuse:

Do you reuse office supplies?

Note: Repeat this information for each different office supply.

1. How many of each type are reused? _____
2. How many times is each item reused? _____

Note: Use default table for weights if applicable.

B. Office Supply Donated:

Do you donate or sell items such as computers, desks, office supplies?

1. Quantity of each type of item that was donated or sold _____
(Optional Question: What percentage of your purchases is replacing items that were sold or given away? _____)
2. What is the weight of each item (use default table)? _____

C. Uniforms/Linens Donated:

Do you give away old employee uniforms? Or other items such as blankets or sheets?

1. Average number of uniforms or materials donated in 1998 _____
2. Weight of uniforms _____

D. Repair Items:

Do you repair or put back into use items such as TVs, furniture?

1. How many items were repaired in 1998? _____
2. Weight of items _____

8. Landscape

A. Landscape:

Do you grasscycle (leave the clippings on the lawn), xeriscape, compost, or mulch?

1. What is the square footage of turf/lawn area that is grasscycled? _____
2. What is the square footage of turf/lawn area that is xeriscaped? _____
3. Do you collect leaves and other landscape materials and compost or recycle them? _____
Quantity _____

9. Other

Are there any other materials that you have been able to keep out of the trash?

1. Fluorescent lights
2. Cloth towels
3. Lost and found items are donated.
4. Bulk cleaning supplies
5. Rags
6. Trash liners
7. Oil
8. Brakes
9. Reusable air filters
10. Maintenance and equipment repair items
11. Construction and demolition salvaging

Note any follow-up assistance to be provided to the business:

That concludes our questions! We want to thank you for your time today. May we get a business card for our files, and in case we have any follow-up questions, may we give you a call? If you have any questions or additional ideas, please give _____ (waste management coordinator's name) a call at _____.

Give appropriate technical assistance materials!

Appendix B

“Big Picture” Evaluation Checklist for Field Review

"Big Picture" Evaluation Checklist for Field Review

- Breakdown of waste stream (percentage)**
- Residential**
- Commercial/Industrial**

- Haulers**
 - Number in community
 - Names
 - Type of hauling (e.g, curbside recycling, waste, etc.)

- Recyclers (recycling center, drop-off, scrap dealers, etc.)**
 - Names
 - Materials recycled (use developed survey form attached)

- Current education programs**
 - Grasscycling (350 lbs/1000 sq ft/year)
 - Backyard composting (700 lbs/family of 4/yr)
 - Number of participants in:
 - Grasscycling education program
 - Backyard composting
 - Number of backyard composting bins sold
 - Any follow-up survey results for education programs conducted
 - Other "hands-on" programs (e.g., business waste reduction, etc.)

- Acquire list of top generators (20 percent) (e.g, business, schools, other) that generate 80 percent of the waste.**

(Business licenses will provide business names, addresses, phone numbers, and number of employees.)

- Large turf areas and associated acreage**
 - Parks and recreation
 - Golf
 - Sports fields
 - Other

Confidential document destruction companies

Garage sales

- Calculate number of garage sales per week x 0.35 tons (call newspaper and ask for average number of ads per week).

Thrift stores

- Number of stores x 425.7 tons per store per year

Supermarket food redistribution or food banks/food rescue services within the community

Horse manure composting/Reuse

- Total manure diverted

Tire shops

- Get number of shops in community.
- Get identification of larger customers within community.
- Get number of tires diverted or total weight. Note: If using just number of tires, get credit for smallest tire.

Diaper services

- Contact to see how many clients are serviced in community and average number of diapers per week.
- Convalescent homes—adult diapers

Construction companies

- Contact companies that service community to determine diversion activities they undertake. Include roofers.

Identify rendering/tallow companies servicing community

- Get number of stores served in community.
- Get identification of larger customers within community.
- Need weight

Project Recycle database

- Division of Recycling—recycling center information

Appendix C

Cover Letter for Recycling Form

Cover Letter for Recycling Form

Jurisdiction/Contractor Letterhead

Date

Dear (*Jurisdiction Name—e.g., City of Sacramento*) Area Recycler:

As you are aware, the (*jurisdiction name*) is under State mandate to comply with the waste diversion goals of the California Integrated Waste Management Act of 1989. We appreciate your firm's efforts to help the *city/county* meet the 50 percent diversion requirement for 2000.

The (*jurisdiction name*) is in the process of compiling an annual report to the California Integrated Waste Management Board (CIWMB). This report must provide solid waste disposal and diversion tonnage for the year 199__.

The *city/county* is requesting diversion tonnage for your firm's operations in the (*jurisdiction name*) for the year of 199__. Please provide recycling tonnage for all recyclable materials accepted by your firm, originating from the (*jurisdiction name*), by material type (on the attached form). Please subtract out tonnage of recyclables that were disposed. Please include all recycled tonnage, including materials collected by your firm, brought to your facility by another firm, and brought by walk-in customers. This information will be kept **confidential**. To verify the (*jurisdiction name*)'s request for this information, you may contact (*jurisdiction representative's name*) of the *city's/county's* (*department*), at (*phone number*).

The (*jurisdiction name*) is submitting its annual report to the CIWMB within the next 30 to 40 days and must have your information by (*due date; be specific*). You may use the attached form or submit the information in your own format.

Your cooperation is much appreciated!

Sincerely,

(Signature Block)

P.S. If you need to contact me, I can be reached by phone at _____ or by fax at _____.

Appendix D

Recycling Form for Cities

Recycling Form for Cities

Solid Waste Recycling Form for City of:		Calendar Year:	
Recycling Firm:		Due Date:	
Type of Material Diverted	Annual Tonnage	Type of Material Diverted	Annual Tonnage
Paper		Groceries	
Corrugated Containers		Plastic Grocery Bags/Shopping Bags*	
Mixed Paper		Culls	
Newspaper		Food Banks*	
High Grade Ledger		Other	
Computer Paper		Food Waste	
Other Paper		Food Banks*	
Plastic		Composted	
HDPE		Used Cooking Oil	
PET		Tires	
Film Plastic*		Appliances	
Other Plastic		Other Materials	
Glass		Textiles and Leather	
CA Redemption Bottles		Rubber	
Other Glass		Other Organics	
Metals		Other Solid Waste (examples)	
Aluminum Cans		Porcelain Toilets	
Copper		Recycled Paint	
Steel		Laser Toner Cartridges	
Scrap Metal		Other Materials Generated by Major	
Other			
Yard Waste/Green Waste			
Mulch		Totals	
Compost		Total Paper	
Other		Total Plastic	
Construction and Demolition		Total Glass	
Wood		Total Metals	
Wooden Pallets		Total Yard Waste/Green Waste	
Other Wood		Total Wood	
Inerts		Total Construction and Demolition	
Concrete		Total Inerts	
Asphalt		Total Groceries	
Other		Total Food Waste	
		Total Tires	
		Total Appliances	
		Total Other Materials	
		Total Diversion (tons)	

* Please do not record duplicate information. If diversion amount is recorded in one area, do not record the same amount in another group.

Appendix E

Corporate Contact List

Corporate Contact List

Organization Name	Contact Person	Telephone Number/ E-Mail Address	Other
Safeway (Produce Composting)	Roger Vander Wende (Community Recycling & Resource Recovery, Inc.)	(800) 500-1630 Communityrec@earthlink.net	If using e-mail: <ul style="list-style-type: none"> • Allow 7-10 days for response. • Address e-mail to Roger Vander Wende. • Include return e-mail address. • Include name and street address of grocery store in question.
Safeway (Materials Besides Produce)	Jeff Brown (Safeway)	(925) 467-3845	
Albertson's Bel Air Lucky Nob Hill Raley's	Jermana Macci (American Trash Management)	(800) 488-7274	
Food 4 Less (south of Bakersfield) FoodMaxx Foods Co. Pak'n Save Save Mart Pavilions Ralphs Vons	Roger Vander Wende (Community Recycling & Resource Recovery, Inc.)	(800) 500-1630 Communityrec@earthlink.net	If using e-mail: <ul style="list-style-type: none"> • Allow 7-10 days for response. • Address e-mail to Roger Vander Wende. • Include return e-mail address. • Include name and street address of grocery store in question.
Bank of America	Jim Shirley (Recycling Manager, Bank of America)	(925) 449-2810	
Target	Jean Shrum	(612) 761-1418	

Appendix F
Model Data Collection Form
for Business Survey

Model Data Collection Form for Business Survey
 (Use of this form is suggested, not required.)

No.	Name/Address of Company	City/Region	Type of Business	SIC Code	Second SIC Code	No. Employees	Telephone No.	Contact Name	Hauler Name	Total 1998 Recycling Tons/Yr	Total 1998 Source Reduction Tons/Yr	Total
1												
2												
3												
4												
5												
6												
7												
8												
9												
10												
11												
12												
13												
14												
15												
16												
17												

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Appendix G

Letter of Introduction

Letter of Introduction

Jurisdiction Letterhead Recommended

Date

To All Businesses Operating in the (*Jurisdiction Name— e.g., City of Sacramento*)

Subject: Waste Reduction and Recycling Surveys

We respectfully request your participation with staff from the (*jurisdiction name and names of other participants if any*) in their effort to conduct free waste reduction and recycling surveys at businesses throughout the (*jurisdiction name*). The purpose of these surveys is to determine the disposal diversion efforts within the (*jurisdiction name*).

These waste reduction and recycling surveys are being conducted as part of the implementation of State- mandated waste reduction requirements. State law requires each jurisdiction to divert 50 percent of its waste stream by 2000, subject to \$10,000-per-day fines for noncompliance. Your participation is essential for the (*jurisdiction name*) to reach its goal.

All information collected from your business will remain confidential. Only aggregate numbers will be used for internal analysis purposes and for the preparation of a final report to the California Integrated Waste Management Board. The aforementioned (*jurisdiction name and/or other participants*) staff will assess your current waste management practices and follow up with recommendations for waste reduction and recycling programs for business. This survey is a cooperative effort between (*names of participants*).

If you have any questions, please contact (*name*), who is the recycling coordinator for the (*jurisdiction name*), at (*phone number*). Thank you for your participation.

Sincerely,

Signature Block

cc: (elected officials as needed)

Appendix H

Division of Recycling Data Request Letter

Division of Recycling Data Request Letter

Jurisdiction Letterhead Required

Department of Conservation
Division of Recycling
Client Services Section
801 K Street, MS 15-54
Sacramento, California 95814

**Subject: Request for Aggregate Volume Report for Materials Collected Within the
(Jurisdiction Name—e.g., City of Sacramento)**

The (*jurisdiction name*) is collecting recycling tonnage data for the purposes of complying with the disposal reduction mandates of the California Integrated Waste Management Act of 1989, and, therefore, submits this volume report request for materials collected within the (*jurisdiction name*) during calendar year (*XXXX*). Please ensure that the requested volume report includes the following:

- Received weight totals reported by program type. These program types are curbside, drop-off and collection, and community service programs and recycling centers.
- Received weights by material type (aluminum, glass, PET plastic, bimetal and other beverage containers) for each facility within each program type.

Please note that the request is for volume data reported to the Division of Recycling in received weights rather than redeemed weights.

Should you have questions or need additional information, please contact me at (*telephone number*).

Sincerely,

Signature Block

Appendix I

What Counts Toward Diversion?

What Counts Toward Diversion?

Most of the guidelines about "what counts" (or doesn't) toward diversion of solid waste are defined in statute, in PRC Sections 41780 through 41786 (Division 30, Waste Management; Part 2, Integrated Waste Management Plans; Chapter 6, Planning Requirements; Article 1, Waste Diversion), with further guidance in regulations. The criteria for counting something toward diversion in a 1990 or 1991 base year also apply when establishing a "new" base year (e.g., 1995).

The basic rule for what is considered "solid waste" is described in PRC Sec. 41781:

41781. (a) Except as provided in Sections 41781.1, and 41781.2, for the purpose of determining the base rate of solid waste from which diversion requirements shall be calculated, "solid waste" includes only the following:

(1) The amount of solid waste generated within a local agency's jurisdiction, the types and quantities of which were disposed of at a permitted disposal facility as of January 1, 1990. Nothing in this section requires local agencies to perform waste characterization in addition to the waste characterization requirements established under Sections 41030, 41031, 41330, 41331, and 41332.

(2) The amount of solid waste diverted from a disposal facility or transformation facility through source reduction, recycling, or composting.

(b) For the purposes of this section, "solid waste" does not include any solid waste which would not normally be disposed of at a disposal facility.

(c) For the purposes of this chapter, the amount of solid waste from which the required reductions are measured shall be the amount of solid waste existing on January 1, 1990, with future adjustments for increases or decreases in the quantity of waste caused only by changes in population or changes in the number or size of governmental, industrial, or commercial operations in the jurisdiction.

The term "normally disposed" is defined in the Board's regulations [Title 14, California Code of Regulations (14 CCR), Section 18720 (a) (44)]. Simply stated, all wastes types/categories [as listed in 14 CCR Article 6.1, Section 18722(j)] that were diverted from a landfill or transformation facility in the base year must have been "normally disposed" in the jurisdiction's base year (i.e., January 1, 1990, per PRC Section 41781) for that diversion to "count", unless other restrictions apply.

Several solid waste types have additional statutory restrictions or conditions for counting either their diversion, or allowances for their deduction from disposal. These are listed below, in alphabetical order, by waste or facility type:

1. ADC (alternative daily cover). The use of ADC may be considered diversion, as described in PRC Sec. 41781.3:

41781.3. (a) The use of solid waste for beneficial reuse in the construction and operation of a solid waste landfill, including use of alternative daily cover, which reduces or eliminates the amount of solid waste being disposed pursuant to Section 40124, shall constitute diversion through recycling and shall not be considered disposal for the purposes of this division.

The Board's ADC regulations are located in Title 27, CCR, Sections 20670 - 20705.

2. Biomass conversion, as defined in PRC Sec. 40106, can count toward diversion in 2000 (but only if transformation is not also counted toward a jurisdiction's 2000 diversion rate) if certain conditions are met (PRC Sec. 41783.1).

40106. (a) "Biomass conversion" means the controlled combustion, when separated from other solid waste and used for producing electricity or heat, of the following materials:

- 1) agricultural crop residues;*
- 2) bark, lawn, yard, and garden clippings;*
- 3) leaves, agricultural residue, and tree and brush pruning;*

4) wood, wood chips, and wood waste.

(b) "Biomass conversion" does not include the controlled combustion of pulp or paper materials, or materials which contain sewage sludge, industrial sludge, medical waste, hazardous waste, or either high-level or low-level radioactive waste.

41783.1. (a) For any city, county, or regional agency source reduction and recycling element submitted to the board after January 1, 1995, the 50 percent diversion requirement specified in paragraph (2) of subdivision (a) of Section 41780 may include not more than 10 percent through biomass conversion if all of the following conditions are met:

- (1) The biomass conversion project exclusively processes biomass.
- (2) The biomass conversion project is in compliance with all applicable air quality laws, rules, and regulations.
- (3) The ash or other residue from the biomass conversion project is regularly tested to determine if it is hazardous waste and, if it is determined to be hazardous waste, the ash or other residue is sent to a class 1 hazardous waste disposal facility.
- (4) The board determines, at a public hearing, based upon substantial evidence in the record, that the city, county, or regional agency is, and will continue to be, effectively implementing all feasible source reduction, recycling, and composting measures.
- (5) The city, county, or regional agency does not include transformation, as authorized pursuant to Section 41783, in its source reduction and recycling element.

Also, PRC Sec. 41781.2 (g) applies:

41781.2 (g): Notwithstanding any other provision of law, for purposes of determining the base amount of solid waste from which the diversion requirements of this article shall be calculated for a city, county, or regional agency which includes biomass conversion in its SRRE pursuant to Section 41783.1, the base amount shall include those materials disposed of in the base year at biomass conversion facilities.

1. Disaster waste. Statute allows the Board to consider disposal of waste that results from a natural disaster (PRC Sec. 41850) to be a plausible reason for a jurisdiction to not meet the diversion requirement. Board regulations used that consideration allowance as a basis for allowing a jurisdiction to deduct that waste from their reporting year disposal amount, if they provide the required documentation. Article 9.0, Sec. 18794.0(g) defines "disaster" as:

A natural catastrophe such as an earthquake, fire, flood, landslide, or volcanic eruption or, regardless of cause, any explosion, fire, or flood. In order to be considered a disaster, a local emergency or a state of emergency shall have been duly proclaimed. (Note: documentation must be provided to verify this).

Sec. 18794.2(g) of the Board's regulations specifies that documentation must be provided to demonstrate that:

- (1) the tonnage subtracted resulted from the disaster;
- (2) the jurisdiction implemented to the extent feasible, diversion programs to maximize diversion through reuse, recycling, or composting of disaster-related solid waste; and
- (3) the tonnage subtracted are consistent with the additional tonnage reported by the facilities where the solid waste was disposed.

Neither statute nor regulation specifies exactly what kind of documents are adequate for providing the required information. This allows flexibility to jurisdictions, in providing documents that are credible, reasonably accurate, and reasonable to rely upon.

NOTE: A natural disaster IS NOT the same thing as a "one time event."

1. **Hazardous waste, or household hazardous waste** does not count toward diversion at any time (e.g., original base year, revised base year, new base year, or toward the 50% mandate). AB939's provisions relate to the diversion of solid waste. PRC Section 40191(b)(1) specifies that solid waste does not include hazardous waste.

2. **Marine waste.** Marine waste is defined in the Board's regulations, Art. 3.0, Section 18720 (a) (34):

"Marine wastes" means solid wastes generated from marine vessels and ocean work platforms, solid wastes washed onto ocean beaches, and litter discarded on ocean beaches."

Marine waste is not listed as a specific waste type in the regulations. Instead, Article 6.1, Section 18722.(i) (5) states that a jurisdiction shall identify in its solid waste generation study (SWGS) all marine wastes generated in the jurisdiction, and assign them to the waste categories and waste types listed in (j) of Section 18722, or demonstrate that marine wastes generated within the jurisdiction have been accounted for within the commercial sources of solid waste generation. For example, diverting seaweed would probably be classified as an "other organic", so "seaweed" as an "other organic" would have to be identified as being disposed in the jurisdiction's base year for its diversion to be counted.

6. **Regional Diversion Facility waste.** Any residual solid waste generated as a by-product of recycling at a regional diversion facility can be deducted from the host jurisdiction's reporting year disposal tonnage, if the criteria in PRC Sec. 41782 are met. 14CCR, Section 18794.2 (Annual Report regulations) requires a jurisdiction claiming a reduction in reporting year disposal from such waste to submit documentation with its annual report demonstrating how it meets the criteria in PRC Sec. 41782 (cited under no. 7 below). There are no guidelines specifying exactly what kind of documentation is required. This allows flexibility to jurisdictions in providing documents that are credible, reasonably accurate, and reasonable to rely upon.

7. **Regional medical waste treatment facility waste.** Residual waste from a regional medical waste treatment facility can be deducted from the host jurisdiction's reporting year disposal tonnage, if the criteria in PRC Sec. 41782 are met. 14CCR, Section 18794.2 (Annual Report regulations) requires a jurisdiction claiming a reduction in reporting year disposal from such waste to submit documentation with its annual report demonstrating how it meets the criteria in PRC Sec. 41782. There are no guidelines specifying exactly what kind of documentation is required. This allows flexibility to jurisdictions in providing documents that are credible, reasonably accurate, and reasonable to rely upon.

41782. (a) The board may make adjustments to the amounts reported pursuant to subdivisions (a) and (c) of Section 41821.5, if the city, county, or regional agency demonstrates, and the board concurs, based on substantial evidence in the record, that achievement of the diversion requirements of Section 41780 is not feasible due to either of the following circumstances:

(1) A medical waste treatment facility, as defined in subdivision (a) of Section 25025 of the Health and Safety Code, accepts untreated medical waste, which was generated outside of the jurisdiction, for purposes of treatment, and the medical waste, when treated, becomes solid waste.

(2) (A) A regional diversion facility within the jurisdiction accepts material generated outside the jurisdiction, and the conversion or processing of that material results in the production of residual solid waste that cannot feasibly be diverted. Any adjustment provided pursuant to this paragraph shall apply only to that portion of the residual solid waste produced as a consequence of processing material that is not subject to the reporting requirements of subdivisions (a) and (c) of Section 41821.5 and that cannot feasibly be allocated to the originating jurisdiction.

(B) For purposes of granting the reduction specified in subparagraph (a), and for the purpose of calculating compliance with the diversion requirements of Section 41780, "regional diversion facility" means a facility which meets all of the following criteria:

(1) The facility accepts material for recycling from both within and without the jurisdiction of the city or county within which it is located.

(2) All material accepted by the facility has been source-separated for the purpose of being processed prior to its arrival at the facility.

(3) The residual solid waste generated by the facility is a byproduct of the recycling that takes place at the facility.

(4) The facility is not a solid waste facility or solid waste handling operation pursuant to Section 43020 (e.g., a composting facility with a solid waste facility permit, or in the Board's Notification tier).

(5) The facility contributes to regional efforts to divert solid waste from disposal.

(b) If the board makes an adjustment pursuant to subdivision (a), the annual report required pursuant to Section 41821 by the jurisdiction, within which a medical waste treatment facility or regional diversion facility described in subdivision (a) is located, shall include all of the following information:

(1) The total amount of residual solid waste produced at the facility.

(2) The waste types and amounts in the residual solid waste that cannot feasibly be diverted.

(3) The factors that continue to prevent the waste types from being feasibly diverted.

(4) Any changes since the petition for adjustment was granted or since the last annual report.

(5) The additional efforts undertaken by the jurisdiction to divert the waste produced at the facility.

(c) Based upon the information submitted pursuant to subdivision (b), if the board finds, as part of the biennial review pursuant to Section 41825, that the residual solid waste that previously could not be diverted can now be diverted, the board shall rescind the adjustment commensurate with the amount of diversion of the residual tonnages.

(d) It is not the intent of the Legislature to exempt any solid waste facility or handling operation from periodic tracking and the reporting of disposal tonnages in accordance with the regulations adopted by the board pursuant to subdivisions (a) and (c) of Section 41821.5, or from the permitting requirements pursuant to Section 43020.

8. Restricted Wastes (agricultural wastes, inert solids, scrap metals, white goods) may count toward diversion in the original or a new base year if criteria in PRC Secs. 41781.2 or 41781.3 are met:

41781.2. (a) (1) It is the intent of the Legislature in enacting this section not to require cities, counties, and regional agencies to revise source reduction and recycling elements prior to their submittal to the board for review and approval, except as the elements would otherwise be required to be revised by the board pursuant to this part. Pursuant to Sections 41801.5 and 41811.5, compliance with this section shall be determined by the board when source reduction and recycling elements are submitted to the board pursuant to Section 41791.5. However, any city or county may choose to revise its source reduction and recycling element or any of its components prior to board review of the source reduction and recycling element for the purpose of complying with this section.

(2) It is further the intent of the Legislature in enacting this section to ensure that compliance with the diversion requirements of Section 41780 shall be accurately determined based upon a correlation between solid waste which was disposed of at permitted disposal facilities and diversion claims which are subsequently made for that solid waste.

(c) For purposes of determining the base amount of solid waste from which the diversion requirements of this article shall be calculated, "solid waste" does not include the diversion of agricultural wastes; inert solids, including inert solids used for structural fill; discarded, white-coated, major appliances; and scrap metals; unless all of the following criteria are met:

(1) The city, county, or regional agency demonstrates that the material was diverted from a permitted disposal facility through an action by the city, county, or regional agency which specifically resulted in the diversion.

(2) The city, county, or regional agency demonstrates that, prior to January 1, 1990, the solid waste which is claimed to have been diverted was disposed of at a permitted disposal facility in the quantity being claimed as diversion. If historical disposal data is not available, that demonstration may be based upon information available to the city, county, or regional agency which substantiates a reasonable estimate of disposal quantities which is as accurate as is feasible in the absence of historical disposal data.

(3) The city, county, or regional agency is implementing, and will continue to implement, source reduction, recycling, and composting programs, as described in its source reduction and recycling element.

41781.3. (a) The use of solid waste for beneficial reuse in the construction and operation of a solid waste landfill, including use of alternative daily cover, which reduces or eliminates the amount of solid waste being disposed pursuant to Section 40124, shall constitute diversion through recycling and shall not be considered disposal for the purposes of this division.

How to count a restricted waste in the original base year:

The definitions and criteria described in PRC Section 41781.2 for counting a restricted waste as diversion in the base year basically state that diversion of the four "restricted wastes" shall not count unless the jurisdiction provides documentation to the Board demonstrating how it fulfills the criteria in that Section. A December 29, 1993 Board document provides general guidance on the "types" of documents that would demonstrate the information required. This is not an exclusive list. If a jurisdiction has additional documentation they wish to use to substantiate how their diversion program meets the criteria, staff will consider it in making a recommendation. Ultimately, the Board will determine whether or not to accept a diversion claim; staff can only provide guidance, based on what has been accepted in the past.

How to count diversion of restricted wastes when establishing a new base year:

Follow guidance provided in PRC Section 41781.2. If the diversion program was "ongoing" in a jurisdiction's original base year, they will still need to meet the criteria for restricted wastes. The jurisdiction may count the diversion only if they provide documentation substantiating how they meet the criteria; or

If the program is an old program, they can count that amount of diversion that is more than what was being diverted in their base year. For example, if the diversion program in 1990 was diverting 500 tons per year (tpy), and in 1995, it was diverting 1,000 tpy, the jurisdiction could claim 500 tons of diversion in 1995 (or whatever year is their new base year); or

If the jurisdiction claims the diversion program is a "new" program, i.e., was implemented post-1990, they can claim all the diversion, but they must provide documentation demonstrating the program is "new". A "new" program is not just a new project for the same company that was operating the program in the jurisdiction's original base year (for example, a company repairing roads re-used asphalt from Avenue A in 1990, and is working on Avenue Z in 1995).

In addition, the diversion of a restricted waste should be representative of a "normal" year for the jurisdiction, i.e., diverting a large amount of C&D debris resulting from the destruction of an army base in one year would not be "representative." 14CCR Sec. 18722 (h) (2) states:

"A Solid Waste Generation Study shall be representative of all residential, commercial, industrial and other sources of waste generation in the jurisdiction. It shall also be representative of all solid waste source reduction, recycling, composting, transformation and disposal activities and facilities in the jurisdiction or used by the jurisdiction and its residents and businesses."

Examples of types of documentation that would substantiate the criteria are listed in the attached December, 1993 guidance document. This is not an exclusive list, so if a jurisdiction has another kind of document they wish to use to substantiate their diversion claim, staff will consider it and make a recommendation. Ultimately, the Board will determine whether or not to accept a diversion claim; staff can only provide guidance, based on what has been accepted in the past.

9. **Sludge.** PRC Sec. 41781.1 and 14CCR Section 18775.2 specify the conditions for counting the diversion of sludge. The Board's publication, "Sludge and Diversion Goal Measurement (Waste Characterization and Analysis Branch Fact Sheet 13) provides further guidance for counting sludge diversion.

41781.1. (a) Prior to determining that the diversion of sludge may be counted toward the diversion requirements established under Section 41780, but within 180 days of receiving such a request, the board shall do both of the following:

(1) Make a finding at a public hearing, based upon substantial evidence, that the sludge has been adequately analyzed and will not pose a threat to public health or the environment for the reuse which is proposed.

(A) Except as provided in subparagraph (B), prior to making the finding required to be made pursuant to this paragraph, the board shall consult with each of the following agencies, and obtain their concurrence in the finding, to the extent of each agency's jurisdiction over the sludge or its intended reuse:

(i) The state water board and the regional water boards.

(ii) The State Department of Health Services.

(iii) The State Air Resources Board and air pollution control districts and air quality management districts.

(iv) The Department of Toxic Substances Control.

(B) If, prior to the board making the finding required to be made pursuant to this paragraph, an agency specified in subparagraph (A) issues a permit, waste discharge requirements, or imposes other conditions for the reuse of sludge, the agency shall have been deemed to have concurred in that finding.

(2) Establish, or ensure that one or more of the agencies specified in subparagraph (A) of paragraph (1) establishes, ongoing monitoring requirements which ensure that the proposed sludge reuse does not pose a threat to health and safety or the environment.

(b) It is not the intent of this section to require the board, or the agencies listed in subparagraph (A) of paragraph (1) of subdivision (a), to impose additional requirements or approval procedures for sludge or sludge reuse applications, apart from the requirements and approval procedures already imposed by state and federal law. It is the intent of this section to require that the board determine that each sludge diversion, for which diversion credit is sought, meets all applicable requirements of state and federal law, and thereby provides for maximum protection of the public health and safety and the environment.

14 CCR Article 7, Section 18775.2:

(a) Jurisdictions that wish to claim diversion of the waste type "sludge" shall submit a written request to the Board pursuant to PRC Section 41781.1. Within 45 days of receipt of a jurisdiction's request, the Board shall notify the jurisdiction in writing whether sufficient information has been included in the request to enable the Board to make findings pursuant to PRC Section 41781.1. Requests that are found by the Board to be incomplete, pursuant to the criteria set forth in this section, shall be revised by the jurisdiction to correct any inadequacy. The Board shall make the findings required by PRC Section 41781.1 at a public hearing no later than 180 days after receipt of a complete request for sludge diversion credit.

(1) A request for allowing sludge diversion shall include the following information:

(A) Description of the selected diversion alternative(s);

(B) Projected annual quantity of sludge waste to be diverted through the year 2000;

(C) Documentation that the waste type "sludge" has been categorized, quantified, and documented in the applicable "solid waste generation study" as defined in Section 18722 of this Chapter;

(D) Written certification from the agent(s) responsible for implementing the sludge diversion alternative that the intended sludge reuse meets all applicable requirements of state and federal law. Information upon which the above certification is based shall be made available to the Board or other state agency upon request.

(E) Description of the monitoring program(s) that are in place or which will be established to insure that the sludge diversion alternative will not pose a threat to public health or the environment.

- (F) *If the sludge diversion alternative receives a permit or is identified under an existing permit, waste discharge requirements, or has other conditions imposed by one or more of the agencies specified in PRC Section 41781.1, include the name of the agency(s) and identify the agency identification code or number for the permit, waste discharge requirements, or other imposed conditions.*

In addition, sludge disposal and diversion can only be counted by the jurisdiction "hosting" the treatment facility; sludge diversion or disposal cannot be allocated back to the "contributing" jurisdictions, since it was not a "solid waste" until treated at the treatment facility.

10. **Special waste.** Special waste is defined in Board regulations [Article 3.0, Sec. 18720 (a)(73)] to include:

"any solid waste which, because of its source of generation, physical, chemical, or biological characteristics or unique disposal practices, is specifically conditioned in a solid waste facilities permit (SWFP) for handling and/or disposal."

Some examples of special waste are listed in Board regulations, Article 6.1, Sec. 18722 (j)(8):

"ash, sewage sludge; industrial sludge; asbestos; auto shredder waste; auto bodies; and other special wastes (like dead animals)."

The definition also states that special waste is:

"...any hazardous waste listed in Section 66740 of Title 22 of the CCR, or any waste which has been classified as a special waste pursuant to Section 66744 of Title 22 of the CCR, or which has been granted a variance for the purpose of storage, transportation, treatment, or disposal by the Dept. of Health Services pursuant to Section 66310 of Title 22 CCR."

Special waste can be counted toward diversion ONLY if the waste was "normally disposed" by a jurisdiction in their base year. If a special waste was "banned" from landfill disposal in the base year, then it does not meet the requirement of "normally disposed", hence, its diversion does not count.

11. **Tires.** There are no statutes or regulations that specifically address restrictions on counting the diversion of tires. However, the policy on when tire diversion can count has been drawn from statutes on transformation and biomass conversion, and Board regulations addressing "normally disposed" and "Solid Wastes Countable Towards Diversion".

Specifically, if tires were not "normally" disposed in a jurisdiction's landfills in the base year (e.g., if there was a landfill ban against tire disposal), then diverting tires would not count toward their diversion. Also, 14CCR Sec. 18722 (m) (1) "Solid Wastes Countable Towards Diversion" states:

For purposes of determining the quantity and types of solid wastes diverted in a Solid Waste Generation Study, only those solid wastes which are normally disposed of at permitted solid waste landfills or permitted solid waste transformation facilities, and which are allowed to be counted toward the statutory diversion mandates pursuant to Sections 41781 (a) and (b) of the PRC, as amended, shall be included.*

*Only Board-permitted Waste-to-Energy (WTE) facilities are considered to be "permitted solid waste transformation facilities", so only tires burned at WTE facilities in Stanislaus County, City of Long Beach, or City of Commerce would "count" toward diversion as transformation, and then only toward the 50 percent diversion goal. However, tires that are burned at other facilities leave gypsum and steel as by-products. If these resulting materials are diverted, that can be counted toward diversion (if, of course, gypsum and steel were "normally disposed" in the jurisdiction's base year). Also, because tires do not meet the statutory definition of biomass (PRC Sec. 40106), the burning of tires is not considered biomass conversion.

However, if tires were "normally disposed" as defined in 14CCR Sec. 18720 (a) (44) in a jurisdiction's base year, then tires that are diverted from a landfill by means other than transformation, can be counted toward diversion (e.g., re-treading, re-capping, or shredding and used as rubberized asphalt).

12. Transformation, as defined in PRC Sec. 40201, will only count toward the year 2000 diversion goal of 50%, and only if biomass conversion is not also counted toward the jurisdiction's diversion rate; specifications are described in Sections 41783, 41784, and 41786.

PRC Sec. 40201. Transformation means: "incineration, pyrolysis, distillation, gasification, or biological conversion other than composting. "Transformation" does not include composting or biomass conversion."

41783. For any city, county, or regional agency source reduction and recycling element submitted to the board after January 1, 1995, the 50 percent diversion requirement specified in paragraph (2) of subdivision (a) of Section 41780 may include not more than 10 percent through transformation, as defined in Section 40201, if all of the following conditions are met:

(a) The transformation project is in compliance with Sections 21151.1 and 44150 of this code and Section 42315 of the Health and Safety Code.

(b) The transformation project uses front-end methods or programs to remove all recyclable materials from the waste stream prior to transformation to the maximum extent feasible.

(c) The ash or other residue generated from the transformation project is routinely tested at least once quarterly, or on a more frequent basis as determined by the agency responsible for regulating the testing and disposal of the ash or residue, and, notwithstanding Section 25143.5 of the Health and Safety Code, if hazardous wastes are present, the ash or residue is sent to a class 1 hazardous waste disposal facility.

(d) The board holds a public hearing in the city, county, or regional agency jurisdiction within which the transformation project is proposed, and, after the public hearing, the board makes both of the following findings, based upon substantial evidence on the record:

(1) The city, county, or regional agency is, and will continue to be, effectively implementing all feasible source reduction, recycling, and composting measures.

(2) The transformation project will not adversely affect public health and safety or the environment.

(e) The transformation facility is permitted and operational on or before January 1, 1995.

(f) The city, county, or regional agency does not include biomass conversion, as authorized pursuant to Section 41783, in its source reduction and recycling element.

Historical Background:

The question of "what counts" has evolved from the relatively simple statutes in Assembly Bill 939 (AB939) (e.g., if a waste was normally disposed, it could count toward diversion, except for agricultural wastes and inert solids), to the multi-faceted requirements of today. Subsequent bills, including AB1820 and AB2494, introduced restrictions and criteria for counting the diversion of specific waste types, including agricultural wastes and inert solids, and added other "restricted" waste types, such as scrap metals and white goods, and sludge.

PRC Section 41781 in the original Assembly Bill 939 states that:

For the purpose of determining the base rate of solid waste from which recycling levels shall be calculated, "solid waste" includes only the following:

Materials in the waste stream generated within a (jurisdiction) which are normally disposed of at a landfill or transformation facility;

The amount of solid waste diverted from a landfill or transformation facility through source reduction, recycling, or composting.

For the purposes of this section, "solid waste" does not include: agricultural wastes; inert solids; or other waste products which would not normally be disposed of at a landfill or transformation facility.

There were no criteria or conditions under which the base-year diversion of these materials would count.

AB 1820, effective in June, 1990, revised PRC Sec. 41781, by adding certain conditions for the base-year diversion of certain materials. Specifically:

"Solid waste" does not include any of the following:

- *Agricultural wastes, except agricultural wastes which were disposed of at a permitted disposal facility as of January 1, 1990, which are diverted, and which are recycled, (composted), or reused;*
- *Inert solids, including inert solids used for structural fill, except inert solids which were disposed of at a permitted disposal facility as of January 1, 1990, which are diverted, and which are recycled or reused for paving materials or other construction-related materials;*
- *Scrap metals, except scrap metals which were disposed of at a permitted disposal facility as of January 1, 1990, which are diverted, and which are recycled or reused;*
- *Discarded, white-coated major appliances, except those discarded, white-coated major appliances which were disposed of at a permitted disposal facility as of January 1, 1990, which are diverted, and which are recycled, or refurbished and reused;*
- *Sludge.* (this section was replaced later, with PRC Sec. 41781.1).*
- *Another waste product which would not normally be disposed of at a landfill or transformation facility.*

The current statutory guidelines for counting the diversion of "restricted wastes" were added in AB 2494 in Section 41781.2. That bill modified the criteria for counting the base-year diversion of these materials, and also defined some of the terms used in the criteria.

PRC Sec. 41780 describes the 25 and 50 percent diversion requirement:

41780. (a) Each city or county source reduction and recycling element shall include an implementation schedule which shows both of the following:

(1) For the initial element, the city or county shall divert 25 percent of all solid waste from landfill disposal or transformation by January 1, 1995, through source reduction, recycling, and composting activities.

(2) Except as provided in Sections 41783, 41784, and 41785, for the first revision of the element, the city or county shall divert 50 percent of all solid waste by January 1, 2000, through source reduction, recycling, and composting activities.

(b) Nothing in this part prohibits a city or county from implementing source reduction, recycling, and composting activities designed to exceed these goals.

PRC Secs. 41780.1 and 41780.2 describe the method jurisdictions (and regions) are to use to calculate their diversion rates:

41780.1. (a) Notwithstanding any other requirement of this part, for the purposes of determining the amount of solid waste that a regional agency is required to divert from disposal or transformation through source reduction, recycling, and composting to meet the diversion requirements of Section 41780, the regional agency shall use the solid waste disposal projections in the source reduction and recycling elements of the regional agency's member agencies. The method prescribed in Section 41780.2 shall be used to determine the maximum amount of disposal allowable to meet the diversion requirements of Section 41780.

(b) Notwithstanding any other requirement of this part, for the purposes of determining the amount of solid waste that a city or county is required to divert from disposal or transformation through source reduction, recycling, and composting to meet the diversion requirements of Section 41780, the city or county shall use the solid waste disposal projections in the source reduction and recycling elements of the city or county. The method prescribed in Section 41780.2 shall be used to determine the maximum amount of disposal allowable to meet the diversion requirements of Section 41780.

(c) To determine achievement of the diversion requirements of Section 41780 in 1995 and in the year 2000, projections of disposal amounts from the source reduction and recycling elements shall be adjusted to reflect

annual increases or decreases in population and other factors affecting the waste stream, as determined by the board. By January 1, 1994, the board shall study the factors which affect the generation and disposal of solid waste and shall develop a standard methodology and guidelines to be used by cities, counties, and regional agencies in adjusting disposal projections as required by this section.

(d) The amount of additional diversion required to be achieved by a regional agency to meet the diversion requirements of Section 41780 shall be equal to the sum of the diversion requirements of its member agencies. To determine the maximum amount of disposal allowable for the regional agency to meet the diversion requirements of Section 41780, the maximum amount of disposal allowable for each member agency shall be added together to yield the agency disposable maximum.

41780.2. (a) Each city, county, or member agency of a regional agency shall determine the amount of reduction in solid waste disposal and the amount of additional diversion required from the base-year amounts by using the methods set forth in this section.

(b) The city, county, or member agency of a regional agency shall multiply the total amount of base-year solid waste generation, as adjusted using the methods described in subdivision (c) of Section 41780.1, by 0.75 to determine the maximum amount of total disposal allowable in 1995 to meet the diversion requirements of Section 41780.

(c) The city, county, or member agency of a regional agency shall multiply the total amount of base-year solid waste generation, as adjusted using the methods described in subdivision (c) of Section 41780.1, by 0.50 to determine the maximum amount of total disposal allowable in the year 2000 to meet the diversion requirements of Section 41780.

(d) The city, county, or member agency of a regional agency shall multiply the total amount of base-year solid waste generation, as adjusted using the methods described in subdivision (c) of Section 41780.1, by 0.25 to determine the minimum amount of total diversion needed in the year 1995 to meet the diversion requirements of Section 41780.

(e) The city, county, or member agency of a regional agency shall multiply the total amount of base-year solid waste generation, as adjusted using the methods described in subdivision (c) of Section 41780.1, by 0.50 to determine the minimum amount of total diversion needed in the year 2000 to meet the diversion requirements of Section 41780.

(f) The city, county, or member agency of a regional agency shall subtract the total amount of base-year existing diversion from the minimum total diversion required as determined in subdivision (d) or (e) to determine the amount of additional diversion needed to meet the diversion requirements of Section 41780. This amount of additional diversion shall be equal to the minimum amount of additional reduction in disposal amounts which is needed to comply with Section 41780.

PRC Sec. 41785 discusses the process for establishing an alternate diversion rate:

41785. (a) On and after January 1, 1995, and upon the request of a city or county, the board may establish an alternative source reduction, recycling, and composting requirement to the 50-percent requirement established under Section 41780, not to exceed three years unless another alternative requirement is granted by the board, if the board holds a public hearing and makes both of the following findings based upon substantial evidence on the record:

(1) The city or county and has made a good faith effort to effectively implement the source reduction, recycling, and composting measures described in its board approved source reduction and recycling element and has demonstrated progress toward meeting the alternative requirement as described in its annual reports to the board and the city or county has been unable to meet the 50-percent diversion requirement despite implementing those measures.

(2) The alternative source reduction, recycling, and composting requirement represents the greatest diversion amount that the city or county, may reasonably and feasibly achieve.

(b) In making the decision whether to grant an alternative requirement pursuant to subdivision (a) and in determining the amount of the alternative requirement, the board shall consider

circumstances in the city or county that support the request for an alternative requirement, such as waste disposal patterns within the city or county and the types of residential and nonresidential waste disposed by the city or county. The city or county may provide the board with any additional information that the city or county determines to be necessary to demonstrate to the board the need for the alternative requirement.

(c) If a city or county that requests an alternative source reduction and recycling requirement to the 50-percent requirement has not previously requested an extension pursuant to Section 41820, the city or county shall provide information to the board that explains why it has not requested an extension.

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

(1) The city or county has made a good faith effort to effectively implement the source reduction, recycling, and composting measures described in its board approved source reduction and recycling element and has demonstrated progress toward meeting the alternative requirement as described in its annual reports to the board.

(2) The alternative source reduction, recycling, and composting requirement represents the greatest diversion amount the city or county may reasonably and feasibly achieve.

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

(1) The city or county has made a good faith effort to effectively implement the source reduction, recycling, and composting measures described in its board approved source reduction and recycling element and has demonstrated progress toward meeting the alternative requirement as described in its annual reports to the board and that the alternative diversion requirement is no longer appropriate.

(2) The new requirement represents the greatest amount of diversion that the city or county may reasonably and feasibly achieve.

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

(2) Any alternative requirement that is granted prior to January 1, 2000, shall become effective on January 1, 2000. The board shall require any city or county granted an alternative requirement prior to January 1, 2000, to comply with this section after the date that the alternative requirement is granted.

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

(4) No city or county shall be granted an alternative requirement if the city or county has failed to meet, on or before July 1, 1998, the applicable requirements of Chapter 2 (commencing with Section 41000), Chapter 3 (commencing with Section 41300), Chapter 3.5 (commencing with Section 41500), and Chapter 4.5 (commencing with Section 41730).

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

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

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

(h) If the board grants an alternative source reduction, recycling, and composting requirement, the city or county may request technical assistance from the board to assist it in meeting the

alternative source reduction, recycling, and composting requirement. If requested by the city or county, the board shall assist with identifying model policies and programs implemented by other jurisdictions of similar size, geography, and demographic mix.

(i) A city or county that is granted an alternative requirement pursuant to this section shall continue to implement source reduction, recycling, and composting programs, and shall report the status of those programs in the report required pursuant to Section 41821.

(j) This section shall remain in effect until January 1, 2006, and as of that date is repealed.

Appendices J-1, J-2, J-3

Weight Conversion Charts

These charts will be provided at a future date.

EXHIBIT 4

EXECUTIVE ORDERS

- A) State Agency Model Integrated Waste Management Plan**
- B) Conducting a Diversion Study, a Guide For California Jurisdictions**
- C) Solid Waste Generation, Disposal and Diversion Measurement Guide**
- D) Waste Reduction Policies and Procedures for State Agencies**

**EXHIBIT 4
EXECUTIVE ORDERS
(Exhibit 4C)**

Solid Waste Generation, Disposal, and Diversion Measurement Guide

for State Agencies and Large State Facilities

March 2000



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Introduction

In 1999, the California State Legislature passed Assembly Bill 75 (Strom-Martin, Chapter 764, Statutes of 1999). The bill added Sections 40148–42928 to the Public Resources Code. One of the requirements of this new law is that State agencies and large State facilities must meet waste diversion goals of 25 percent by January 1, 2002 and 50 percent by January 1, 2004. To disclose how goals will be met, the law requires each State agency and large State facility to submit an integrated waste management plan (IWMP) to the California Integrated Waste Management Board by July 15, 2000 (see publication #321-00-006, *State Agency Model Integrated Waste Management Plan*). In preparing these plans, State agencies and large State facility administrators will need to identify waste diversion programs and calculate each program's impact on reducing disposal.

This guide provides State agencies and large facility administrators with information and tools to help calculate annual waste generation, disposal, and diversion tonnage to complete their IWMPs. The guide will also help administrators make estimates of future diversion tonnage associated with implementation of selected waste reduction and recycling programs. The guide should be used in conjunction with the Board's publication *Conducting a Diversion Study—A Guide for California Jurisdictions*.

These publications are available through the Board's Web site at www.ciwmb.ca.gov/Publications/ (choose Local Assistance). Or go to the Board's Project Recycle site for links to all pertinent information and resources on this topic. From the Board's home page at www.ciwmb.ca.gov, choose "Project Recycle" under the "Find a Program" list, or "State Agency" under the "Who Are You?" list, or go directly to www.ciwmb.ca.gov/ProjRecycle/.

Topics covered in this guide include:

1. Waste management terms and concepts.
2. Estimating disposal and diversion quantities.
3. Sampling and data acquisition strategies.
4. Calculating a diversion rate.

Key Terms

Key terms are identified at the front of this guide to improve understanding of the basic language used in measuring waste generation, disposal and diversion. It is important to read and understand these terms before using other parts of this guide.

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

Diversion. The total quantity of solid waste, generated within the jurisdiction (State agency or large State facility), that is diverted from permitted solid waste transformation and disposal facilities, through existing source reduction, recycling, and composting programs.

Diversion Rate. The amount of materials recycled as a percentage of the solid waste stream. Example 1 illustrates how a diversion rate is calculated:

Example 1. Calculating a Diversion Rate

The facility disposes of 75 tons of waste per year. The recycling company picks up 25 tons of office paper per year.

Generation = Disposal + Diversion

100 tons = 75 tons disposal + 25 tons diversion

Diversion Rate = 25 tons Diversion / 100 tons Generation

Diversion Rate = 0.25 = 25%

Integrated Waste Management Hierarchy. The hierarchy recognizes that waste management must occur in an integrated system with preference towards approaches that reduce disposal or loss of natural resources. The most preferred option is waste prevention (source reduction), followed by recycling, and finally environmentally safe transformation and/or landfilling. Source reduction and recycling practices are considered diversion. Landfilling and transformation are considered disposal.

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

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

These actions include any practice that prevents waste from being generated (e.g., using a reusable cup instead of a disposable cup). Source reduction includes practices that increase the efficiency in the use of paper and other materials (e.g., double-sided copying or electronic documents to replace paper manuals). Source reduction also includes the repair and reuse of items (versus disposal) and utilizing durable, longer lasting products (e.g., buying a 100,000-mile tire vs. two 50,000-mile tires).

Waste Audit. An on-site assessment of the waste stream and recycling potential of an individual business, industry, institution, or household (State agency or large State facility).

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

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

$$\text{Generation} = \text{Disposal} + \text{Diversion}$$

Where:

Generation = the total quantity of solid waste generated within the jurisdiction [State agency or large State facility].

Disposal = the total quantity of solid waste, generated within the jurisdiction [State agency or large State facility], which is transformed or disposed in permitted solid waste facilities.

Diversion = the total quantity of solid waste, generated within the jurisdiction [State agency or large State facility], which is diverted from permitted solid waste transformation and disposal facilities, through existing source reduction, recycling, and composting programs.

Note that the expression "generation = disposal + diversion" is an algebraic equation, and thus if any two of the three parts of the equation is known, the other can be solved.

Waste Generator. For purposes of completing the integrated waste management plan and using this measurement guide, waste generator means the State agency or large State facility whose act or process causes materials to be handled through a disposal or diversion program.

Waste Stream. The total flow of solid waste generated by a business, industry, institution, household, or municipality (State agency or large State facility). Implementing source reduction, reuse, recycling, and composting techniques reduce components of the waste stream.

Measuring Disposal Quantities

There are several different methods of acquiring information to measure disposal quantities. These methods are often used in combination to obtain reliable data.

Waste Hauler Records

The simplest and most accurate method to determine waste disposal for a site or facility is to contact the waste hauler and ask them to provide an estimate of annual disposal. If the waste service is shared with another facility or entity, ask the hauler to estimate the waste coming from each entity.

Annual Disposal Rate Correlative Factors

When the waste hauler is not able to provide records for a site or facility a correlative factor can be used. Various city, State, and federal facilities that previously participated in solid waste characterization studies provide a basis for the estimation of annual disposal tonnage. Table 1 lists the various types of government facilities and their respective annual disposal based upon a predictive factor. Using Table 1, Example 2 illustrates how a correlative factor is used to determine disposal from a hospital.

Table 1: Annual Nonhazardous Disposal Correlative Factors by Facility Type

Number	Type of Facility	Annual Disposal Rate Correlative Factor
1	Animal Care (e.g., animal shelters)	1.80 tons per employee per year
2	Administrative Offices (offices only)	0.20 tons per employee per year
3	Administrative Offices (with food service)	0.52 tons per employee per year
4	Clinics/Laboratories (medical clinic, labs)	0.60 tons per employee per year
5	Cultural Facilities (e.g., museums)	15.09 tons per employee per year
6	Education: Universities/Colleges	0.12 tons per student per year
7	Fire Stations	0.39 tons per employee per year
8	Golf Courses (with grasscycling/mulching)	1.77 tons per acre per year
9	Golf Courses (without grasscycling/mulching)	10.52 tons per acre per year
10	Parks/Fairgrounds	2.40 tons per employee per year
11	Hospitals (acute care)	3.34 tons per licensed bed per year
12	Libraries	0.82 tons per employee per year
13	Police/Law Enforcement (e.g., CHP office)	0.52 tons per employee per year
14	Prisons (adults)	1.32 tons per prisoner per year
15	Juvenile Detention Hall	1.23 tons per juvenile per year
16	Vehicle Repair/Maintenance	1.29 tons per employee per year
17	Warehouse Storage/Distribution Center	1.61 tons per employee per year

**employee factors are full time equivalent*

Example2: Using an Annual Disposal Rate Correlative Factor for a Hospital

Hospital with 500 employees (full time) and 100 licensed beds.

Select the appropriate description for your facility (e.g., State Hospital) and obtain the "disposal correlative factor" for this type of facility (e.g. Hospital has a disposal correlative factor of 3.34 tons per licensed bed per year). Simply multiply this factor by the number of licensed beds to obtain an estimate of annual disposal.

The calculated annual disposal tonnage for an acute care hospital based on licensed beds:

100 beds x 3.34 tons per bed per year = 334 tons per year.

Disposal Information from the Board's Waste Characterization Database

For additional correlative factors, visit the Board's waste characterization database on the Web at www.ciwmb.ca.gov/WasteChar/.

Under the topic selection menu, select "Solid Waste Characterization," then select "Business Type Characterization" on the content options (on the left side), and finally select "Waste Disposal Rates for Business Types."

The waste characterization database includes typical waste compositions for various business groupings. Use these additional correlative factors when waste hauler records are not available and an appropriate correlative factor is not identified in Table 1. Information on the percentage that various materials appear in each of these business groupings is also available. This information is helpful in identifying materials to target in waste diversion programs.

Table 2 is reproduced from the Board's waste characterization database.

Table 2: Sample Table from Waste Characterization Database

Business SIC* Group Number	Business SIC Grouping Name	Disposal Rate (tons/employee/year)	Waste Density (lbs /cubic yard)
1	Agriculture / Fisheries	0.91	107
2	Forestry	0.20	100
3	Mining	1.78	100
4	Construction Companies	2.01	145
5	Manufacturing—Food / Kindred	1.80	130
6	Manufacturing—Apparel / Textile	0.98	103
7	Manufacturing—Lumber and Wood Products	9.95	128
8	Manufacturing—Furniture / Fixtures	2.07	145
9	Manufacturing—Paper / Allied	0.83	100
10	Manufacturing—Printing / Publishing	1.32	103
11	Manufacturing—Chemical / Allied	0.97	135
12	Manufacturing—Primary / Fabricated Metal	0.89	122
13	Manufacturing—Industrial Machinery	0.89	125
14	Manufacturing—Electronic Equipment	0.83	128
15	Manufacturing—Transportation Equipment	1.54	88

Business SIC* Group Number	Business SIC Grouping Name	Disposal Rate (tons/employee/year)	Waste Density (lbs /cubic yard)
16	Manufacturing—Instruments / Equipment	1.16	121
17	Manufacturing—Other	1.54	81
18	Trucking and Warehousing	0.68	62
19	Transportation—Air	0.96	82
20	Communications	0.94	98
21	Utilities	0.22	73
22	Transportation—Other	1.82	90
23	Wholesale Trade—Durable Goods	0.46	40
24	Wholesale Trade—Nondurable Goods	1.36	82
25	Retail Trade—Building Materials and Garden	1.05	73
26	Retail Trade—General Merchandise Stores	0.36	87
27	Retail Trade—Food Store	2.77	113
28	Retail Trade—Automotive Dealers and Service Stations	1.93	107
29	Retail Trade—Restaurants	2.50	121
30	Retail Trade—Other	2.46	121
31	Finance/Insurance/Real Estate/Legal	2.04	105
32	Services—Hotel/Lodging	1.17	92
33	Services—Business Services	0.92	106
34	Services—Motion Pictures	1.10	169
35	Services—Medical/Health	0.62	73
36	Services—Education	0.54	75
37	Services—Other	1.68	91
38	Public Administration	0.43	53

Note: Check Web site for updates of this table

*SIC = Federal standard industrial classification codes used to group similar businesses.

Measuring Diversion Quantities

In completing Part III (State Agency Waste Reduction and Recycling Program Worksheet) of the IWMP, State agencies and large State facilities must estimate the diversion tonnage from each *selected* diversion activity listed in rows 1-77. As described in the instructions for completing the IWMP, diversion information entered on the worksheet must be in tons.

Similar to the recommended method for obtaining disposal data, the simplest method for a facility with an existing recycling program that is serviced by a recycler is to contact the recycler for an estimate of the annual tonnage recycled.

When the recycler does not have these records or when measuring source reduction, an alternative is to determine the volume or weight of the materials diverted during a known time frame (e.g., weekly, monthly, etc.) and then extrapolate the value to reflect annual tonnage. Extrapolation is explained in this section on quantifying diversion.

Quantifying Recycling and Source Reduction Diversion

Annual recycling or source reduction diversion tonnage can be quantified by either volumetric conversion to weight or by calculating the sum of the unit weights. Comprehensive tables listing density conversion factors for various materials are included in Appendix J to the Board's publication, *Conducting a Diversion Study—A Guide For Local Jurisdictions*. The conversion factors can be easily referenced on the Board's Web site at: www.ciwmb.ca.gov/LGLibrary/DSG/. An example of the information contained in these tables is provided in Figure A. The tables will provide unit material weights and the factors to utilize when volumetric data is the only data available.

Figure A: Excerpt from Conversion Factor Tables on Board's Web Site

Conversion Factors (Furniture and Miscellaneous)					
Item	Type	Material	Size	Source	Weight (lbs)
Desk	Executive, double pedestal	Wood		BUG	345

Volumetric Estimation of Annual Recycling Tonnage Using Conversion Factors

Use this method to determine tonnage when only volume information is available. See example 3.

Example 3: Determine Annual Recycling Tonnage by Volume Conversion

The facility sets out flattened cardboard boxes for a scavenger to take every week. The janitor estimates that the volume of the flattened cardboard box pile is approximately 2 cubic yards that is picked up every week. Using the density conversion factor from the Board's web site, flattened cardboard is approximately 50 pounds per cubic yard.

$$\frac{2 \text{ cubic yards/week} \times 52 \text{ weeks/year} \times 50 \text{ pounds/cubic yard}}{2000 \text{ lbs/ton}} = 2.60 \text{ tons per year}$$

Sum of the Unit Weights Using Conversion Factors

Another method of estimating annual recycling or source reduction tonnage is to obtain the unit weight of material and annualize the amount recovered. Use the conversion table to find the individual item weight and sum up the weights of the items recycled.

Example 4: Determine Tonnage Using Sum of Units and Material Conversion Factors

Instead of wasting old used desks, a facility donated one dozen, double pedestal executive style wood desks in one year to the local school district for student cabinetry rebuilding projects. To estimate the source reduction (to repair/rebuild an item thus diverting it from the landfill is source reduction) diversion credit, locate on the Furniture and Miscellaneous table, a similar description.

Using information from Figure 1, diversion tonnage is calculated as follows:

$$12 \text{ desks} \times 345 \text{ pounds per desk} = 4,140 \text{ pounds/year} = 2.07 \text{ tons/year}$$

Additional Considerations in Quantifying Source Reduction Diversion

Quantifying diversion credit from identified source reduction activities is more complex because we are trying to measure materials that are not being handled through a recycling or disposal program. The basic principle of measuring source reduction is to identify a comparison of improved practices to a previous practice that produced more waste. Within this section of the guide are a number of examples of how source reduction can be measured. To illustrate the basic principles of source reduction measurement, activities are separated into three categories:

1. Resources not consumed.
2. Material reuse.
3. Avoided waste from improved durability.

Resources Not Consumed

One principle behind quantifying source reduction diversion credit is to calculate the additional resource consumption had it not been for the source reduction activity. It is not necessary that the practice be implemented solely for waste reduction. In fact, source reduction practices are often the outcome of improved operational efficiency and have the additional benefit of waste reduction.

Example 5: Determining Source Reduction from Double-Sided Copying

If the 250 pounds of paper sheets are not double sided, another 250 pounds of paper would have been used (for a total of 500 pounds of single sided sheets). The net reduction is 250 pounds of paper not used as a result of the double-sided practice. The source reduction credit is recognized for the more efficient use of resources.

Note that this diversion practice does not necessarily reduce the disposal at the location that the diversion practice is being implemented. If the double-sided copied reports are sent to another entity (e.g., mailed to a Federal Agency as a monthly report), the disposal at the location of the double-sided practice is not impacted.

Example 6: Determining Source Reduction from an Online Employee Manual

Prior to the year 1998, a company with 100 employees gave each employee an updated employee manual every year. The paper manual weighs 2 pounds each. The company decides to implement a paper reduction policy and provides the manual for on-line use combined with a no-print policy for the year 1998.

The year 1998–1999 source reduction credit can be calculated by estimating the amount of resources conserved (not consumed).

$100 \text{ employees} \times 2 \text{ pounds per manual} \times 1 \text{ manual per year} = 200 \text{ pounds/year.}$

In the year 2000, the company doubles in size to 200 employees, the amount of source reduction credit from this practice is now:

$200 \text{ employees} \times 2 \text{ pounds per manual} \times 1 \text{ manual per year} = 400 \text{ pounds/year.}$

As long as the online, no print practice exists, the source reduction credit grows in proportion with the number of employees.

Please note that if the manuals were all recycled every year, there would be 200 pounds per year of paper recycled. After the online, no-print policy was implemented, there are no more paper manuals to recycle, so the recycling diversion amount is zero. However, there is now 200 pounds per year of source reduction diversion credit. Diversion credit does not disappear just because there is no recycling; the diversion credit is allocated to source reduction diversion practices.

Material Reuse

Material reuse means that surplus items that might otherwise be discarded are instead collected and made available to others who can use them. Examples 7 and 8 illustrate how to quantify this type of diversion.

Example 7: Determine Source Reduction from Grasscycling

Grasscycling is a source reduction practice where the lawn is mowed with a mulching mower and the clippings are left on the lawn to decompose. The practice is widely used in the landscaping industry and is beneficial to the health of turf areas.

A State facility has substantial lawn area of approximately 5 acres. Grasscycling is implemented and the clippings are left on the lawn.

To calculate the approximate source reduction (avoided waste disposal) tonnage resulting from the implementation of the grasscycling, use the following field-tested default credit estimating factor:

Default Credit:

350 pounds per year per 1000 square feet of lawn area.

7.6 tons per acre per year of grasscycling source reduction credit.

$5 \text{ acres} \times 7.6 \text{ tons per acre per year} = 38.0 \text{ tons per year.}$

If the grasscycling practice was only implemented for 6 months, the source reduction diversion tonnage has to be annualized as follows:

$38.0 \text{ tons per year} \times 6 \text{ months} / 12 \text{ months per year} = 19.0 \text{ tons for 6 months.}$

Example 8: Estimating Construction and Demolition Waste Recycling/Reduction

A construction job required a concrete roadway to be removed. The concrete was stacked in a pile of approximately 20 cubic yards. The material is crushed on site and reused as sub-base material for a new road. (Note: Materials taken offsite for crushing counts as recycling). To estimate the amount of diversion from reuse, the total volume, in cubic yards, needs to be estimated and converted to weight using information from Table 3.

$$20 \text{ cubic yards} \times 1.18 \text{ tons/CY} = 23.6 \text{ tons}$$

Table 3: Conversion Factors for Selected Loose Construction/Demolition Materials

Material Type	Pound per Cubic Yard	Tons per Cubic Yard	Cubic Yards per Ton
Concrete	2370	1.18	0.84
Asphalt	1940	0.97	1.03
Brick	2430	1.21	0.82
Dirt	2660	1.33	0.75
Wood	400	0.20	5.00
Gypsum Wallboard	500	0.25	4.00
Cardboard	100	0.05	20.0
Mixed			

A suggested "Construction and Demolition Waste Recycling and Disposal Survey" form is currently being utilized by several cities and is included as an attachment. The form can help identify how an agency or large facility is handling construction and demolition materials. Please revise as needed.

Avoided Waste from Improved Durability

The concept behind this source reduction practice is that all products and items eventually become waste. One way to avoid the generation of waste is to buy products with "improved durability" to make them last longer before becoming waste. To calculate the annual diversion credit from buying a product with improved durability, estimate the amount of solid waste that was avoided in a year. Examples 9-11 illustrate how to quantify this type of diversion.

Example 9: Determine Source Reduction from Use of a More Durable Tire

Instead of buying the cheap 20,000-mile warranty tires, the vehicle maintenance department decides to buy high durability tires that are 80,000-mile warranty tires. Each service vehicle averages 60,000 miles a year. The tires weigh 20 pounds each. There are 200 cars in the fleet. Tires are disposed when worn out.

(1) First, estimate how much waste (worn tires) is generated in a year per car using the 20,000-mile tire.

60,000 miles per year, per car / 20,000 miles = 3.0 sets (4 tires per car) of tires are worn in a year.

3.0 sets of tires x 4 tires per car = 12.0 tires are worn per year, per car.

(2) Next, calculate how much of the "higher durability" or 80,000-mile tires are worn in a year.

60,000 miles per year, per car / 80,000 miles = 0.75 sets tires are worn in a year.

0.75 sets of tires x 4 tires per car = 3.0 tire equivalents are worn per year.

(3) Next, calculate the difference (amount of tires not used due to higher durability).

12.0 tires used - 3.0 tire equivalents used = 9.0 tires not used per car per year
(if high durability tires are used)

(4) Next, convert to weight for the whole fleet:

9.0 tires/car/year x 20 pounds per tire x 200 cars = 36,000 pounds/year.

The 36,000 pounds per year represents the weight of tire equivalents per year that would have been discarded and now are not discarded because of higher durability.

Please also note that if this facility did recycle the tires when worn, 12 low durability tires would be recycled in a year per car.

If high durability tires are used, only three tire equivalents are available to recycle each year. The facility still gets the "diversion credit" as source reduction for 9 tires not used per car, per year. In this example, the overall diversion per year for 200 cars is 36,000 pounds of source reduction credit and 12,000 pounds of recycling credit for a total of 48,000 pounds if the high durability tires are recycled at the end of their useful life.

Example 10: Determine Source Reduction from Use of Retread Tires

A large vehicle maintenance facility uses retreads. The facility sends out 25 tires per week for retreading. Retreading is considered a source reduction practice because it extends the life of the tire. Each large truck tire can normally be retreaded 5 times (maximum). For this example, the truck tires are 100 pounds each.

A new truck tire that sees everyday use will last approximately 9 months; each retread lasts 6 months. (Note: 66.67% replacement factor of new tire, 6 months divided by 9 months equals 66.67%).

To calculate the source reduction diversion extending the life of a new tire by retreading, estimate the new tires that would be consumed and reduce the weight of the whole new tire replacement by its reduced retread life:

$$(25 \text{ tires/week}) (100 \text{ lbs/tire}) (52 \text{ weeks/year}) (66.67\% \text{ replacement factor}) \\ = 86,671 \text{ pounds per year of new tires not consumed}$$

Example 11: Determine Source Reduction from Reusable Plastic Pallets

A State central warehouse facility buys and utilizes cheap wooden pallets to ship materials to distribution facilities. The wooden pallets are returned to the central warehouse facility to be reused. The warehouse discards the pallets after 5 trips.

The trucks return to the central warehouse empty.

A new program has been implemented to utilize high durability plastic pallets by the central warehouse. The plastic pallets are returned with the empty trucks (backhaul) and reused until worn out. The warehouse purchases 150 plastic pallets per year on average now.

There are several ways to determine the amount of source reduction credit received from utilizing the more durable pallets, however, the principle remains the same. It is a weight estimate of the amount of wood pallets "avoided." The simplest way is to get the actual data on the number of wood pallets (and their weight) used in a year before switching to plastic pallets, and compare that to how many plastic ones are used now. The difference between the weights is the source reduction credit for the amount of resources now conserved and not disposed.

In practice, most facilities do not have this type of data, so a default estimation procedure can be utilized to provide a reasonable estimate of the amount of diversion.

A plastic pallet has a life expectancy of over 250 trips if properly care for. A typical wood pallet weighs 40 pounds and has a life of approximately 1-7 trips. For this default calculation example, the life expectancy is 5 trips. A plastic pallet is the equivalent of 50 wood pallets (250 trips for a plastic divided by 5 trips for a wood pallet). This means that a plastic pallet replaces (or is the equivalent of) 50 wood pallets, or 2000 pounds of wood (50 wood pallets x 40 pounds each = 2000 pounds). The 2000 pounds of wood not used represents the source reduction credit from avoided resource consumption and disposal from utilizing a highly more durable product.

To estimate the source reduction credit per year, the only value needed for a reasonable estimate is the number of plastic pallets that the central warehouse buys in a year:

150 plastic pallets per year x 2000 pounds credit per plastic credit
= 300,000 pounds per year of source reduction credit

Calculating Proposed Tonnage

A "State Agency Waste Reduction and Recycling Program Worksheet" is included with the IWMP forms. State agencies must calculate "Year 2000 Projected Tonnage" (existing diversion) for selected diversion practices. To calculate existing diversion use the calculation methods described earlier in this section on measuring diversion quantities.

In order to obtain Year 2001 and future year's "Proposed Tonnage" for inclusion on the worksheet (additional potential diversion achievable), use the same methods as you would to estimate the existing diversion, except substitute a *reasonable estimate* of the expected improvement in participation or efficiency. Example 12 illustrates one method that can be used to calculate the "Proposed Tonnage" for the Year 2001 double-sided copying program.

Example 12: Determining Proposed Source Reduction from Double-Sided Copying**Year 2000 "Projected Tonnage" (from previous example)**

A facility implemented a double-sided copying policy one year ago. An examination reveals that 25% of all the sheets of paper photocopied are now double-sided (25 sheets out of 100 are double-sided). The facility estimates that they buy 200 reams of paper a year for copying (5 pounds per ream). What is the annual source reduction diversion tonnage that the facility can take credit for?

To calculate source reduction credit, determine the amount (the weight) of additional paper that would be utilized if all copies were single-sided copies.

$200 \text{ reams/yr} \times 25\% \text{ double-sided} \times 5 \text{ pounds/ream} = \text{weight of paper double-sided}$

= 250 pounds of paper are double sided sheets

Year 2001 "Proposed Tonnage"

An estimate is made that a 50% double-sided rate is achievable. In year 2001, the use of paper purchasing and use is estimated to increase to 300 reams.

$300 \text{ reams/yr} \times 50\% \text{ double-sided} \times 5 \text{ pounds/ream} = \text{weight of paper double-sided}$

= 750 pounds of paper are double-sided sheets

The net reduction is 750 pounds of paper not used as a result of the double-sided practice. The source reduction credit is recognized for the more efficient use of resources.

Note that the increase in the double-sided rate and the increase in the use of paper to 300 reams resulted in an increased "Proposed Tonnage" for Year 2001.

If an active paper conservation policy is proposed for Year 2001, the amount of paper actually utilized for copying is projected to decrease to 50 reams. and in the same year, the double-sided copying rate is increased to 50%, as above, the overall source reduction from double-sided copying will actually decrease.

$50 \text{ reams/yr} \times 50\% \text{ double-sided} \times 5 \text{ pounds/ream} = \text{weight of paper double-sided}$

= 125 pounds of paper are double-sided sheets

The net reduction is 125 pounds of paper not used as a result of the double-sided practice. The source reduction credit is recognized for the more efficient use of resources. **THIS DECREASE DOES NOT INDICATE A FAILURE TO IMPLEMENT DOUBLE-SIDED COPYING OR A DECREASE IN THE EFFECTIVENESS OF THE PROGRAM.** Instead, recognize that 300 reams of paper would have been used if the paper conservation policy did not take place. The "amount of paper that would have been consumed" (300 reams - 50 reams = 250 reams) is additional source reduction credit.

$250 \text{ reams/yr} \times 5 \text{ pounds/ream} = \text{weight of paper not consumed}$

= 1,250 pounds of paper of paper not consumed

Total "Proposed Tonnage" for 2001

125 pounds from double siding + 1,250 from "conservation"

= 1,375 pounds of paper are source reduced (Proposed Tonnage)

(Remember to convert weights to "tons" before entering on worksheet)

Representative Sampling of Multiple Sites

Ideally, State agencies or large State facilities with numerous sites located throughout the state would conduct an on-site disposal and waste reduction audit to assess the waste management practices at every facility. This type of complete study will yield detailed information, but it will require a massive amount of time and resources. Recognizing that limited time and resources are available for this type of analysis, agencies may want to identify a statistically representative sample to determine agency-wide disposal and diversion estimates.

Determining the Number of Samples (site audits)

Although there are many statistical methods to determine the minimum number of samples or audits to conduct, here are some general guidelines:

1. If there is a large variation in the type of facilities within the agency, a larger number of samples are needed.
2. If the primary functions of the facilities are different, a larger number of samples are needed.
3. Differences in how each facility generates and diverts wastes should be considered.

Using these guidelines, Table 4 is constructed to assist in determining the minimum individual audits/samples that should be done. The table is based on the experience and research of Dr. Eugene Tseng and students of the University of California, Los Angeles, Waste Management and Recycling Extension Program. Note that the number of samples in Table 4 differ from those identified in sample size table included in the Board's publication: *Conducting a Diversion Study—A Guide For California Jurisdictions*. Table 4 is intended for State agencies and large State facilities which have more uniform activity and function than the broad activity and function represented in the total business composition of a jurisdiction.

Table 4: Guide to Determine the Number of Audit Samples

Number of Facilities	Number of Samples
10-19	6-10
20-49	10-15
50-99	15-19
100-199	19-22
200-399	22-25
400+	26-30

Selecting Sites for Representative Sampling

There are many ways to select a "statistically representative sample" of individual facilities to obtain the data necessary to estimate agency-wide diversion. Two methods that are commonly used in the solid waste industry, random sampling and "80/20" sampling, are described here.

Random Sampling

Each facility is given an equal chance of being selected for analysis. This is equivalent to having all members of a population in a hat and drawing a sample from them. This sample selection method will work best for an agency having numerous sites with approximately the same number or employees and service level provision at each site.

80/20 Sampling

The 80/20 rule is a waste industry "rule of thumb" that states that the majority (80 percent) of the waste is generated by the largest (20 percent) businesses. This is particularly important if you have an agency with many facilities with a huge size range (in terms of employees). Using the 80/20 sampling methodology will guarantee that the larger facilities are included in the sampling. This is important because the largest facilities will most likely have existing diversion programs, and they will also be the most effective sites for implementation of potential programs.

To select facilities using the 80/20 sampling method, a list of all the facilities and corresponding number of employees must be created. The largest facility with the most employees is listed first; next the facility with the second most employees is listed, until all facilities have been ranked in order of employment numbers. The cumulative employment by percent of total is calculated. Once the cumulative total has been developed, the list of facilities is divided into a "large facility stratum", and a "small facility stratum." The facilities that are in the "large facility stratum" account for 80 percent of the overall total employment in the agency.

The next step is to allocate your total planned number of samples to the "large facility stratum" and the "small facility stratum". For example, an agency has 25 facilities. Using Table 4, we determine that 10 audits (samples) are needed. 80 percent of 10 samples = 8 samples that are allocated to the "large facility stratum" for random sampling. The remaining two samples are randomly selected from the "small facility stratum". Review example 13 for details of how to make a sample selection from a list of agency facilities.

Example 13: Hypothetical Example in Applying Sampling Methods

A State agency has 25 separate facilities. Using the sampling guide from Table 4, the agency determines 10 audits are needed. Table 5 shows how the samples are allocated with the different sampling methodologies (stratified and non-stratified) and the probability of the selection of each individual sample.

For the 80/20 sampling, 8 samples (80% of 10 = 8) would be randomly selected from the nine facilities fitting into the large facility stratum (shaded), and the remaining two samples would be randomly selected from the 16 other facilities in the small facility stratum. The large facility stratum is determined by looking at the cumulative percent of total employment, with the cutoff at Facility 1 (see Table 5).

Table 5: Hypothetical Facility Listing and Probability of Sample Selection

Facility Name	Employee Number	% Total Employees	Cumulative Percent	Random Sampling (nonstratified)	80/20 Sampling (stratified)
Facility A	500	25.00%	25.00%	1/25	1/9
Facility B	250	12.50%	37.50%	1/25	1/9
Facility C	200	10.00%	47.50%	1/25	1/9
Facility D	200	10.00%	57.50%	1/25	1/9
Facility E	120	6.00%	63.50%	1/25	1/9
Facility F	100	5.00%	68.50%	1/25	1/9
Facility G	100	5.00%	73.50%	1/25	1/9
Facility H	100	5.00%	78.50%	1/25	1/9
Facility I	70	3.50%	82.00%	1/25	1/9
Facility J	50	2.50%	84.50%	1/25	1/16
Facility K	50	2.50%	87.00%	1/25	1/16
Facility L	45	2.25%	89.50%	1/25	1/16
Facility M	35	1.75%	91.00%	1/25	1/16
Facility N	30	1.50%	92.50%	1/25	1/16
Facility O	25	1.25%	93.75%	1/25	1/16
Facility P	20	1.00%	94.75%	1/25	1/16
Facility Q	20	1.00%	95.75%	1/25	1/16
Facility R	15	0.75%	96.50%	1/25	1/16
Facility S	10	0.50%	97.00%	1/25	1/16
Facility T	10	0.50%	97.50%	1/25	1/16
Facility U	10	0.50%	98.00%	1/25	1/16
Facility V	10	0.50%	98.50%	1/25	1/16
Facility W	10	0.50%	99.00%	1/25	1/16
Facility X	10	0.50%	99.50%	1/25	1/16
Facility Y	10	0.50%	100.00%	1/25	1/16
Total	2,000				

Table 6: Employment Information for Sampled Sites Relative to Total Employment

Facility Name (from 80/20 Sampling)	Employment at Sampled Site	Total Stratum Employment
Large Stratum		
Facility A	500	
Facility B	250	
Facility C	200	
Facility D	200	
Facility E	120	
Facility F	100	
Facility H	100	
Facility I	70	
Total Large	1,640	1,640
Small Stratum		
Facility L	45	
Facility V	10	
Total Small	55	360
GRAND TOTAL	1,695	2,000

Calculating Agency-Wide Diversion

Once the disposal and diversion tonnage results of statistically representative samples are compiled, agency-wide diversion and generation tonnage can be calculated.

Table 7 provides an example of hypothetical results of waste reduction and recycling audits of 10 individual facilities. This table of information will serve as the base data in our example of calculating agency-wide generation, disposal and diversion.

Table 7: Hypothetical Results of Waste Reduction and Recycling Audits

Facility Name (from 80/20 sampling)	Existing Recycling (tons/year)	Existing Source Reduction (tons/year)	Total Annual Disposal (tons/year)
Large Stratum			
Facility A	70.0	120.0	200.0
Facility B	40.0	30.0	90.0
Facility C	30.0	50.0	80.0
Facility D	10.0	30.0	70.0
Facility E	10.0	10.0	60.0
Facility F	10.0	20.0	38.0
Facility H	10.0	10.0	30.0
Facility I	10.0	20.0	20.0
Total Large	190.0	290.0	588.0
Small Stratum			
Facility L	5.0	5.0	7.0
Facility V	5.0	5.0	5.0
Total Small	10.0	10.0	12.0
GRAND TOTAL	200.0	300.0	600.0

Step 1: Calculate Total Agency Annual Disposal Tons

Agency annual disposal is calculated by extrapolating the disposal for sampled sites in the large and small stratum. Extrapolation is done by multiplying the stratum sample tons by the ratio of stratum total employment to stratum sample employment. The extrapolated totals for each stratum are then added to get an agency total. The formula is:

$$\begin{aligned} \text{Agency Disposal} &= (\text{Sample Large Disposal}) * \frac{(\text{Total Large Employment})}{(\text{Sample Large Employment})} + \\ &\quad (\text{Sample Small Disposal}) * \frac{(\text{Total Small Employment})}{(\text{Sample Small Employment})} \\ &= \left[(588) * \frac{1640}{1540} \right] + \left[(12) * \frac{360}{55} \right] = 704.73 \end{aligned}$$

In this example, Total Agency Disposal of "704.73" should be entered on line 75, column C of the "Waste Reduction and Recycling Program Worksheet."

Step 2: Calculate Agency Annual Diversion Tons by Program Activity

A similar formula to that used in Step 1 is also used to calculate the "Annual Diversion Tons by Program Activity."

To illustrate how to calculate agency-wide diversion tonnage for a specific source reduction program (Use of Electronic Media), refer to Table 8 for hypothetical results of an agency waste reduction and recycling audit. Table 8 shows the total diversion tonnage identified for all programs (Column labeled "Total Existing Source Reduction") and a column labeled "Existing Source Reduction from Use of Electronic Media". The total source reduction tonnage associated with "Use of Electronic Media" for the eight sampled facilities in the large stratum is 23 tons. The total diversion tonnage associated with "Use of Electronic Media" for the two sampled facilities in the small stratum is 5 tons.

Table 8: Hypothetical Results of Use of Electronic Media

Example of Waste Reduction and Recycling Audit Results in Annual Tons for Use of Electronic Media		
Facility Name (from 80/20 Sampling)	Total Existing Source Reduction (tons/year)	Existing Source Reduction "Electronic Media" (tons/year)
Large Stratum		
Facility A	120.0	6.0
Facility B	30.0	5.0
Facility C	50.0	4.0
Facility D	30.0	2.0
Facility E	10.0	1.0
Facility F	20.0	0.0
Facility H	10.0	1.0
Facility I	20.0	4.0
Total Large	290.0	23.0
Small Stratum		
Facility L	5.0	0.0
Facility V	5.0	5.0
Total Small	10.0	5.0
GRAND TOTAL	300.0	28.0

Agency diversion from "Use of Electronic Media" is calculated by extrapolating the total diversion from "Use of Electronic Media" for sampled sites in the large and small stratum. Extrapolation is done by multiplying the stratum tons recycled from "Use of Electronic Media" by the ratio of stratum total employment to stratum sample employment. The extrapolated totals

for each stratum are then added to get the agency's total diversion from "Use of Electronic Media". The formula is:

$$\begin{aligned} &\text{Agency-wide diversion tons from "Use of Electronic Media" =} \\ &\text{Program's Large Diversion} * \frac{\text{Total Large Employment}}{\text{Sample Large Employment}} + \\ &\text{Program's Small Diversion} * \frac{\text{Total Small Employment}}{\text{Sample Small Employment}} \end{aligned}$$

Substituting the values from Table 8 for the program "Electronic Media,"

$$(23 \text{ tons}) * (1640/1540) + (5 \text{ tons}) * (360/55) = 57.22 \text{ tons}$$

The 57.22 tons represents the total agencywide diversion tons from "Use of Electronic Media." The agencywide diversion from "Use of Electronic Media" should be entered on the "State Agency Waste Reduction and Recycling Program Worksheet," in column C, Row 4. Column B2 should be checked with an "X" to indicate that it is an existing program. Column B3 should also be checked with an "X" to indicate that this is a continuing program.

To calculate the "Proposed Tonnage" for the "Use of Electronic Media", the agency can estimate the increase in the program implementation for each year. For illustration purposes, the "Use of Electronic Media" program will be expanded by at least 10 percent per year. Add 10 percent increase over the Year 2000 "Projected Tonnage" to calculate the Year 2001 "Proposed Tonnage." (Please see Row 4 of the sample worksheet in Attachment A).

Please note that not all diversion practices will increase over time. For illustration purposes, assume that grasscycling was only implemented for six months as presented in Example 7 of this guide. The diversion would be 19 tons for the Year 2000 "Projected Tonnage." If grasscycling were implemented all year in 2001 and beyond, the tonnage would double to 38 tons. After 2001, the diversion from grasscycling will not increase if the agency does not plan to plant any new lawns. (This is illustrated in Row 10 of the sample worksheet).

If anything, any additional landscaping should be xeriscaping to reduce the generation of waste and use of water, so the grasscycling diversion may actually be reduced. The overall diversion will not be decreased because the grasscycling diversion is shifted to the xeriscaping diversion.

Step 3: Calculate Total Agency Annual Diversion Tons

After determining the agency-wide diversion tonnage from each program activity, the next step is to calculate the "Total Tonnage Diverted" for row 74 of the Waste Reduction and Recycling Program Worksheet. Simply add up the numerical values in rows 1-73 of column C. For illustration purposes let's assume the total agency-wide diversion after extrapolation for all the sampled diversion is equal to 700.00 tons. With this value known, total generation and the State agency or large State facility diversion rate can be calculated in step 4 and 5.

Step 4: Calculate Agency Annual Generated Tons

From the equation defining generation:

$$\begin{aligned} \text{Agency Generation} &= \text{Agency Disposal} + \text{Agency Diversion} \\ &= 704.73 + 700.00 = 1,404.73 \end{aligned}$$

Step 5: Calculate Agency Annual Diversion Rate

From the equation defining diversion rate:

$$\begin{aligned}\text{Agency Diversion Rate} &= \frac{\text{Agency Diversion}}{\text{Agency Generation}} * 100 \\ &= \frac{700.00}{1,404.73} = 49.8\%\end{aligned}$$

Please note that it is not necessary to have a numerical value for every program activity. Indicate diversion tonnage only for the programs that are being implemented or plan to be implemented. Section 2 and 3 will only be "check boxes" for indicating the existence or non-existence of a program. There will not be any numerical value entered in these sections of the worksheet. A sample of a completed State Agency Waste Reduction and Recycling Program Worksheet is included with this guide as Attachment A.

Attachment A: Sample State Agency Waste Reduction and Recycling Program Worksheet

A	B			C	D	E	F	G	H	I	J	K	L	M	N	O
	Section 1: Program Activities			2000	2001		2002		2003		2004		2005		2006	
	B1*	B2*	B3*	Projected Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage
1	Source Reduction															
2	Use of Reusable Cups				X	0.00	0.10		0.10		0.10		0.15		0.15	
3	Use of Electronic Forms			X	X	200.00	210.00		220.00		230.00		240.00		250.00	
4	Use of Electronic Media			X	X	57.22	62.94		69.24		76.16		83.78		92.15	
5	Double-Sided Copies			X	X	2.50	5.00		6.00		5.00		5.00		4.50	
6	Utilize Property Reutilization			X	X	2.07	0.00		2.07		0.00		2.07		0.00	
7	Utilize CalMAX				X	0.00	5.00		6.00		7.00		8.00		9.00	
8	Utilize a Food Exchange				X	0.00	10.00		10.00		10.00		10.00		10.00	
9	Salvage Yards			X	X	120.00	126.00		132.00		132.00		132.00		132.00	
10	Xeriscaping/Grass-cycling			X	X	19.00	38.00		38.00		38.00		38.00		38.00	
284	Other Source Reduction Programs															
12	High Durability Tires			X	X	18.00	18.00		18.00		18.00		18.00		18.00	
13																
14																
15	Recycling															
16	Beverage Containers			X	X	1.00	1.00		1.00		1.00		1.00		1.00	
17	Cardboard			X	X	50.00	70.00		75.00		80.00		85.00		90.00	
18	Glass				X	0.00	4.00		4.00		4.00		4.00		4.00	
19	Newspaper			X	X	25.00	30.00		30.00		30.00		30.00		30.00	
20	Office Paper			X	X	30.00	40.00		40.00		40.00		35.00		35.00	
21	Plastics				X	0.00	1.00		1.00		1.00		1.00		1.00	
22	Scrap Metal				X	0.00	10.00		10.00		10.00		10.00		10.00	
23	Other Materials															
24																
25																
26																

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

A	B			C	D	E	F	G	H	I	J	K	L	M	N	O
	Section 1: Program Activities			2000	2001		2002		2003		2004		2005		2006	
	B1*	B2*	B3*	Projected Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage
27	Other Recycling Programs															
28	Special Collection Programs		X	0.00	5.00		0.00		5.00		0.00		5.00		0.00	
29	Clean-Up Events															
30																
31																
32	Composting															
33	Commercial Pick-Up of Green Waste															
34	Commercial Self-Haul of Green Waste															
35	Food Waste Composting	X	X	60.00	60.00		60.00		60.00		60.00		60.00		60.00	
36	Other Composting Programs															
37																
38																
39																
40																
41																
42																
43																
44																
45																
46																
47																
48	Special Waste															
49	Construction/Demolition Recycling	X	X	21.20	22.33		23.45		24.62		25.85		27.15		28.5	
50	Concrete/Rubble Reuse															
51	Concrete/Asphalt Recycling		X	0.00	50.00		50.00		50.00		50.00		50.00		50.00	
52	Rendering/Grease Recycling		X	0.00	20.00		20.00		20.00		20.00		20.00		20.00	

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

A	B			C	D	E	F	G	H	I	J	K	L	M	N	O
	Section 1: Program Activities			2000	2001		2002		2003		2004		2005		2006	
	B1*	B2*	B3*	Projected Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage	Proposed Tonnage	Actual Tonnage
53	Tires															
54	Use of Retreads	X	X	43.36	43.36		43.36		43.36		43.36		43.36		43.36	
55	Tire Reuse															
56	Tire Recycling															
57	Use of Rubberized Asphalt															
58	Use of Tire-Derived Products															
59	Collection Program															
60	Drop-Off at Landfills															
61	Used Oil/Antifreeze															
62	White and Brown Goods (Reuse/Recycling)		X	0.00	5.00		5.00		5.50		5.50		6.00		6.00	
63 0286	Wood Waste															
	Wood Waste Chipping for Mulch or Compost (Drop-Off)															
65	Brush/Wood Waste Chipping	X	X	50.58	50.58		50.58		50.58		50.58		50.58		50.58	
66	Other Special Waste															
67																
68																
69																
70																
71																
72																
73																
74	Total Tonnage Diverted			700.00	887.31		914.80		941.32		958.29		986.89		1,010.53	
75	Total Tonnage Disposed			704.73	704.73		704.73		704.73		704.73		704.73		704.73	
76	Total Tonnage Generated			1,404.73	1,592.04		1,619.53		1,646.05		1,663.02		1,691.62		1,715.26	
77	Overall Diversion Percentage			49.83%	55.73%		56.49%		57.19%		57.82%		58.34%		58.91%	

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

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

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

Attachment B: Construction and Demolition Waste Recycling and Disposal Survey (Test Version 1.02)

Owner Name: _____ Date: _____

Property Address: _____

Owner Telephone: _____

Contractor Name: _____

Contractor Contact: _____ Contractor Telephone: _____

Description of Project: _____

Approximate Dollar Value of Construction: _____

Approximate Square Footage of Project: _____

Demolition Schedule: _____

Construction Schedule: _____

Name of Hauler(s): _____ Telephone: _____

Please check waste prevention activities that are practiced at this project site:

- Use of Prefabricated Components
- Reuse of Materials from Other Projects
- Accurate Material Estimates
- Reduced Packaging
- Other (describe) _____

Concrete	2370 lbs/cu yd	1.18 tons/cu yd	0.84 cu yds/ton
Asphalt	1940 lbs/cu yd	0.97 tons/cu yd	1.03 cu yds/ton
Brick	2430 lbs/cu yd	1.21 tons/cu yd	0.82 cu yds/ton
Dirt	2660 lbs/cu yd	1.33 tons/cu yd	0.75 cu yds/ton
Wood	400 lbs/cu yd	0.20 tons/cu yd	5.00 cu yds/ton
Gypsum wallboard	500 lbs/cu yd	0.25 tons/cu yd	4.00 cu yds/ton
Cardboard	100 lbs/cu yd	0.05 tons/cu yd	20.0 cu yds/ton

[Faint, illegible text]

Attachment C: Construction and Demolition Waste Material Disposition Summary

Fill out the tables below. The unit of measurement is tons. Use the conversion factors provided on the previous page. If a different conversion number is used, please provide. If tonnage information is not available, estimates can be provided in cubic yards.

Part I. Demolition Materials (tons)					
Material Type	Disposed In Class III Landfill	Taken to Inert Fills	Other (describe)	Recycled or Salvaged for Reuse	How Recycled? (e.g., used as aggregate, etc.)
Concrete					
Asphalt					
Dirt					
Wood					
Metals					
Mixed Waste					
Other (describe)					

Part II. Construction Materials (tons)					
Material Type	Disposed in Class III Landfills	Taken to Inert Fills	Other (describe)	Recycled or Salvaged for Reuse	How Recycled? (e.g., used as aggregate, etc.)
Concrete					
Asphalt					
Dirt					
Wood					
Metals					
Mixed Waste					
Other (describe)					

Summary Sheet

Please name the facilities (e.g., landfill or inert facility name) materials are taken to.

Facility Name	Total Tons

To the best of my knowledge, the above estimates are an accurate representation of the disposition of the construction and demolition materials generated on-site at the construction job. I understand that the city may audit disposal and recycling documentation related to this survey.

Print Name

Signature

Additional Notes / Comments (attach additional sheets if necessary):

EXHIBIT 4

EXECUTIVE ORDERS

- A) State Agency Model Integrated Waste Management Plan**
- B) Conducting a Diversion Study, a Guide For California Jurisdictions**
- C) Solid Waste Generation, Disposal and Diversion Measurement Guide**
- D) Waste Reduction Policies and Procedures for State Agencies**

**EXHIBIT 4
EXECUTIVE ORDERS
(Exhibit 4D)**

Waste Reduction Policies and Procedures for State Agencies

*How to Reduce, Reuse, Recycle, and
Buy Recycled in California State Government*

August 1999



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1. Introduction

California's Solid Waste Mandates

Assembly Bill 939 (Sher, Chapter 1095, Statutes of 1989) requires every California city and county to divert 50 percent of its waste from landfills by the year 2000. Current law also requires State agencies to institute waste reduction and buy recycled activities to assist local governments in this effort. With less than a year remaining to attain the solid waste diversion goals of AB 939, California has reached a commendable statewide 33 percent waste diversion rate.

The Integrated Waste Management Hierarchy

To most efficiently achieve the waste reduction goals of AB 939, the legislature established a hierarchy of waste reduction practices: (1) waste prevention (also referred to as source reduction), (2) recycling and composting, (3) environmentally safe transformation and land disposal. Waste prevention is at the top of this hierarchy because when resources are used efficiently, less waste is created. If waste is not created, it does not need to be recycled or disposed.¹ Waste prevention and reuse activities have been highlighted in this document as the most effective way to save money and resources in State government. However, a comprehensive and integrated approach to waste reduction is suggested including waste prevention, reuse, recycling collection, composting, and recycled-content product procurement activities.

State Government's Role in Reducing Waste

Current law places state waste diversion responsibility on local government. As citizens, State employees have the responsibility to participate and contribute to the diversion activities of the communities in which they live and work. Equally, each State agency has the responsibility to divert waste to further the waste diversion goals of the jurisdiction or regions of the state in which the agency does business. Local governments are subject to fines of up to \$10,000 per day if the waste diversion goals are not met. These penalties will ultimately affect all citizens if the State does not do its part in meeting the mandates.

Beyond responsibilities at the local level, the State of California should lead the way in exemplary waste reduction efforts. Although state government is diverse, opportunities exist in each agency to reduce waste. Implementing waste prevention, reuse, recycling, and buying recycled activities within each state agency will provide leadership, responsibility and economic and environmental benefits to the state, its people, business community, and government.

This guidance document provides California State agencies, offices, departments, divisions, boards, commissions, and facilities with a framework to develop and implement waste reduction and recycled-content product procurement policies and programs to:

Demonstrate State government leadership and responsibility toward meeting the state's solid waste goals.

¹ *You Can Do It Too! Preventing Office Waste at the California Integrated Waste Management Board*, Pub. # 442-95-025, April 1995.

- Show environmental leadership in conserving natural resources.
- Maximize budget resources through the efficient use of all resources.
- Further compliance with laws requiring state agency waste reduction and buy recycled activities.

2. Benefits of Waste Reduction

Produces More Efficient Operations and Reduces Costs

The traditional use of the word "waste" means inefficient use of resources. Waste reduction is the efficient use of all resources. It begins with examining how business is conducted, including how materials are used, why individual business processes are performed, and what products are purchased. Efficient operations will minimize waste in materials, labor, and money. Specific benefits to an agency employing a waste reduction program include reduction in energy, water and utility costs; reduction in raw material usage, storage and disposal costs; and decreased printing and postage costs. Waste reduction, in whatever its form, results in direct cost savings for the State of California.

Promotes Environmental Sustainability

Waste reduction slows the depletion of natural resources, helps reduce environmental impacts associated with the extraction of raw materials and the manufacture of products, and conserves valuable landfill space.

Develops Markets for Recycled Materials

Purchasing recycled-content products creates markets for recycled materials, thereby supporting the manufacturing capacity for those products. The State can make a significant impact on the development of markets for recycled materials by each department meeting or exceeding the purchasing and reporting goals of Public Contract Code (PCC) Sections 12205 (State Agency Buy Recycled Campaign) in each of the 11 product categories (See Section 8, Procurement—Buying Recycled).

3. Elements of a Self-Sustaining Waste Reduction Program

Improves an Organization's Environmental Performance

A waste reduction program involves much more than placing recycling bins in common areas. In fact, the term "program" is misleading because it implies doing something "extra." A self-sustaining waste reduction program is simply a better, more efficient way to do the same thing—conduct business. It is an ongoing process that continually improves an organization's environmental performance. A comprehensive self-sustaining waste reduction program incorporates waste prevention, reuse, recycling, and recycled-content product procurement activities into everyday business. It originates with and is supported through management as an organizational policy. Employees are expected to be familiar with the policies and conduct business in that manner.

Focuses on Improvements to Internal Processes

Similarly, a self-sustaining waste reduction program should focus not on the waste, but processes that generate the waste. For example, the Integrated Waste Management Board examined its process used to disseminate monthly Board meeting agendas and agenda items to both staff and external clients. The process was inefficient, unreliable, and costly. As a result, a fully automated system called Board Agenda Web Document System, or BAWDS, replaced the manual schedule, print, copy and mail system. The BAWDS system automates the Board calendar, Board agenda, and agenda items for internal routing on the "BoardNet" (intranet) and externally through the Internet.

A preliminary feasibility study on the BAWDS project noted that the system provides better information dissemination and access, requires less staff time, and reduces costs. (An average monthly paper savings of ~35,000 sheets of paper, an average of \$832 per month for IWMB mailing costs, and over \$4,500 savings to IWMB clients requesting agenda items electronically). Waste reduction was not the primary objective of the project; however, it was a significant benefit.

The State has the opportunity to maximize the benefits of waste reduction by improving processes within agencies that provide services or receive support from other State agencies or employees. For example, the State Controller could commit to automating the pay warrant receipt for employees with direct deposit. Employees with direct deposit would have the option of printing a hard copy of their pay warrants. This change would reduce the amount of paper used to print pay stubs for direct deposit employees, and save postage and staff time to compile and distribute the pay stubs. Identifying improvements to interagency processes will provide maximum savings and reduced waste for the State.

Includes Management Support and Employee Input

Management through policies and directives supports a successful waste reduction program; however, it also requires employee involvement. Staff responsible for performing the business functions is best able to identify wasteful practices and recommend areas for improvement. With upper management support, the improvements can be implemented and the waste reduction savings can be realized. This approach to encouraging employee input with the full support of upper management perpetuates employee "buy-in" and helps develop a sustainable waste reduction program.

4. Establishing Departmental Policy and Goals

Secure Organizational Support

Successful waste reduction requires commitment and support from both the upper management and staff level employees. The ultimate goal in recruiting organizational support is to make waste reduction part of the culture of the workplace. Waste reduction must become inherent to the way business is conducted.

Management must be clear on waste issues and see that the benefits of waste reduction outweigh the costs. It must be understood that it is not a problem to be fixed, it is an ongoing improvement to internal processes.

There are many support materials available through the IWMB to help document the benefits of waste reduction and to encourage top management support. See IWMB Pub. #500-94-035, *Encouraging Top Management to Support Waste Reduction Efforts* (available on the Internet), and U.S. EPA WasteWi\$e fact sheet, *Steps for Implementing a Waste Prevention Program*.

Know Your Waste Types

There are two methods to identify waste: waste assessment and analysis of business functions.

Waste Assessment. The traditional method of estimating waste generation, a waste assessment or audit, identifies materials and items that are major contributors to an organization's waste stream. A waste assessment also provides a baseline for measuring the effects of waste reduction practices. Waste assessments can range from visual peeks into garbage cans to more formal retrieval, separation and weighing of disposed materials. For health and safety concerns in an office environment, visual assessments are recommended.

For more information on how to perform a waste assessment, see IWMB Pub. #500-94-004, *Reduce, Reuse, Recycle—A Guide for California Business*; IWMB Pub # 442-95-070, *Establishing a Waste Reduction Program at Work*; and U.S. EPA's WasteWi\$e fact sheet *Conducting a Waste Assessment*.

Analysis of Business Functions. Examining major business processes for opportunities to reduce materials, labor or time will produce greater overall cost savings, and reduce waste at the same time.

An example of a business function change that improved efficiency and reduced waste is a change the Fair Political Practices Commission (FPPC) instituted for completion of their Form 700, Statement of Economic Interest. Formerly, hard copies (at 31 pages each) were provided to each State employee required to comply. Each State employee would complete and return the package to FPPC. A majority of the completions required only a signature on the front page, leaving the other 30 pages unused.

The FPPC now provides the Form 700 as a downloadable PDF (portable document format) file that agencies can provide electronically to their employees. Employees access the form electronically and print only pages of the form they need to return to the FPPC, i.e., the signature page, in most cases. By implementing the PDF version of the Form 700, the FPPC realizes savings in several areas: reductions in paper, postage, storage, and labor costs required to manage the volume of paper previously used as well as the reduction in paper waste.

An analysis of business functions to improve efficiencies and reduce waste should be ongoing in any State agency. As part of a waste reduction program, it can provide immediate and measurable results.

Set Waste Reduction Policies and Goals

Waste reduction policies reflect the visions and priorities of the department. Policies should be drafted early in the process of implementing a waste reduction program and formally adopted by the agency. Formal adoption by the agency demonstrates support and

commitment. Once adopted, standard operating procedures, new employee orientations, etc. should highlight the waste reduction policies.

Waste reduction goals should be adopted based on the policies of the agency. This can be as part of the policies themselves, or as a separate document. The goals should be for a specified time period, such as one or two years. Setting realistic and measurable goals will ensure success.

5. Implementing Waste Reduction in State Government

The following outlines the steps to establishing a waste reduction program within a State agency.

Many of these steps are consistent with those used by the private sector. Realizing that "one size does not fit all" in practicing waste reduction, this is a general outline for guidance purposes, mostly pertaining to an office setting.

Each agency should take into consideration the primary business function performed when applying these steps. For instance, the California Department of Corrections, with diverse operations and facilities, would employ different steps in implementing waste reduction than a small office department, such as the Department of Boating and Waterways. Regardless of the size of the organization or the function, there are common components to any successful program:

Designate a Waste Reduction Team and Coordinator

A waste reduction coordinator should be appointed by management to ensure the policies and goals of the department are met. The coordinator should have strong organizational, leadership, and communication skills, and have enthusiasm for waste reduction.

A waste reduction team of staff should be designated to assist the coordinator in implementing and maintaining the program. The team can be voluntary or mandatory; however, voluntary recruitment with team duties included in the staff's duty statement to formalize the efforts results in the most committed team. The size of the team depends on the size of the agency. Representatives from each functional area and level of the agency must be represented.

The waste reduction coordinator and team are responsible for educating, planning, and maintaining the program. The team should meet regularly. The IWMB's Waste Reduction Committee meets biweekly to monthly, depending on the items to be discussed. Subcommittees may be formed to address specific action items related to the agency policies and goals.

Develop an Action Plan

An action plan to achieve each established goal should be drafted by the team as a working document. The action plan outlines tasks to be accomplished, staff responsible for each task, and a timeline for completion of each task.

Measure Savings

Measuring savings from waste reduction efforts provides information to help sustain current efforts and improve upon them. Highlighting savings keeps employees and management involved and enthusiastic about the changes that have been made. Measuring also provides a monitoring system to identify and correct unexpected problems quickly.

It's important to determine the method of measurement early in the program. Whether through a waste audit or through changes to business functions, measuring waste reduction requires establishing a baseline of the materials to be measured.

For more information on measuring savings through waste reduction, see IWMB Pub. #441-97-023, *Measuring the Success of Office Paper Reduction Efforts*, or IWMB Publication #442-95-070, *Establishing a Waste Reduction Program at Work*.

Educate/Publicize Results

Once the savings are measured, they can be used to educate staff and management of the goals achieved and the success of the campaign. Education is an ongoing effort. The goal is to have waste reduction become the way daily business is conducted.

6. Waste Prevention and Reuse

What Is Not Created Does Not Need to Be Managed

Waste prevention and reuse, sometimes referred to as source reduction, is preventing or reducing waste during its production rather than managing it after its generation, as in recycling and disposal. Preventing waste means using less material, such as paper, to do the same job. Reusing materials also is a form of waste prevention because materials go further, thereby producing less overall waste.

Waste prevention is accomplished by getting the maximum use of any material before it is recycled or thrown away. It includes replacing disposable materials with reusable materials, eliminating a particular item altogether, repairing or maintaining equipment so it last longer, and using electronic communications instead of paper.²

Waste prevention and reuse measures are the first steps in a comprehensive waste reduction program. Successful waste prevention requires creative and analytical thinking first about how a reduction in materials can be accomplished, and then what can be done to reuse the materials that have been used once. Too often only recycling systems are considered rather than reducing and reusing systems.

Successful waste prevention requires making changes to materials that come in as raw materials, supplies, or packaging as opposed to thinking about waste reduction as only trash going out. All materials that are recycled or disposed have been paid for in some way. It is important to consider purchasing practices to see if materials can be moved "upstream" into the waste prevention and reuse categories instead of focusing on recycling as the first and

² *You Can Do It Too! Preventing Office Waste at the California Integrated Waste Management Board*, Pub. #442-95-025, April 1995.

only treatment of materials.³ By minimizing the volume of raw materials, supplies or packaging used, direct savings are realized.

Case Study

The Integrated Waste Management Board has undertaken a comprehensive waste prevention initiative in its office headquarters. The IWMB formed an in-house committee to develop and implement a waste prevention program to reduce waste at the IWMB and serve as a model for other public and private sector office settings. Highlights from the first nine months of the program include the following:⁴

White office paper use was reduced 25 percent by:

- Discouraging avoidable or excess copying and printing.
- Encouraging communications via electronic mail.
- Encouraging two-sided copying and printing.
- Making two-sided printing an automatic computer feature.
- Reducing the size of documents.
- Streamlining document review processes.
- Turning one-sided paper into scratch pads.
- Pruning mailing lists.

These efforts are estimated to produce annual savings of:

- 364 cases (3640 reams or 1.8 million sheets) of white paper.
- \$16,724 in reduced postage costs.
- \$68,370 in photocopying costs.
- \$5,500 in reduced printing costs.
- \$10,151 in reduced purchasing costs (paper and note pads).

7. Recycling/Collection

Recycling Is Not Enough

Recycling has traditionally been the first action taken when implementing a waste reduction program. Too often it is the only action implemented. An agency that implements recycling collection programs without implementing the other elements of an integrated system may be lacking the true benefits of waste reduction and resource efficiency. To realize the full cost and resource savings a comprehensive waste reduction program can provide, an agency should first focus on waste prevention and reuse activities. However, recycling is a critical component to an integrated waste management system.

³ *Establishing a Waste Reduction Program at Work* (Participant's Manual), A Training Program of the CIWMB, Pub. #442-95-070, January 1996.

⁴ *You Can Do It Too! Preventing Office Waste at the California Integrated Waste Management Board*, Pub. #442-95-025, April 1995.

Materials to Collect for Recycling

Before determining what materials to collect for recycling, the agency must first determine what materials are generated in sufficient quantities to support a recycling program. The materials to collect for recycling and the methods used to collect those materials are specific to the organization and site. Current law requires State agencies and facilities to collect office paper, corrugated cardboard, newsprint, beverage containers (as defined in section 14505 of the Public Resources Code [PRC]), waste oil, and any other material at the discretion of the IWMB (see Applicable Statutes, next page).

A majority of State agencies will comply with these mandates as they operate in office settings generating these materials. However, State agencies or facilities with specific functions may generate other waste materials in significant quantities sufficient for recycling. For instance, the Department of Transportation generates construction and demolition (C&D) materials in sufficient quantities to support a C&D collection program. (For more information on C&D debris or other special wastes, see Appendix B, Waste Reduction Resources for State Agencies.)

Collection Methods

The methods used to collect, separate, store, and remove recyclables depends on the material types, volume, space availability, and organizational structure to remove the materials. General recycling program options include:

Source Separation. Materials such as white paper, mixed paper, aluminum, glass, plastic, and cardboard are segregated by type into bins where initially discarded. This is the traditional approach to office recycling. Characteristics of a source separated recycling program are:

- Potential high recovery value of recyclables.
- Provides an adequate recovery rate to contribute to State waste diversion goals.
- Provides significant avoided disposal costs for building management (approximately \$800 to \$1400 per month according to BFI⁵).
- Requires only 5 percent more custodial staff time to handle discarded materials.
- Success (high recovery rate) based on employee education and involvement.

Dry Commingled (unseparated). All dry waste materials are mixed where initially discarded, then compacted, and hauled away for a fee (about 8 percent less than the charge for municipal solid waste or MSW). The materials are mechanically/manually sorted at a transfer station or "clean" materials recovery facility (MRF). Unacceptable materials typically include cafeteria and restroom waste, food/beverages, liquids, pallets, construction debris, and landscape waste. Characteristics of a dry commingled system are:

⁵ "Recycling Space Needs for Capitol Area East End Complex, Department of Education," prepared by CIWMB Staff for Department of General Services, Real Estate Services Division, May 24, 1999.

- Reduced recovery value of recyclables.
- Provides a high recovery rate to contribute to state waste diversion goals.
- Avoided disposal costs for building management depends on fee to haul away dry commingled recyclables vs. MSW.
- Requires minimal additional custodial staff time to handle discarded materials.
- Requires less employee education and involvement to achieve a high recovery rate.

Education Is Key to Success

Education is important to the success of any waste reduction program. With recycling collection programs, education is critical. Staff should be trained about the collection system being implemented and how their participation determines the success of the program. This training should include materials being diverted, the proper location to put the recyclables, and clearly identified lists of unacceptable materials. Education increases participation in the program and minimizes contamination of recyclables thereby increasing the volume of recyclables and the overall success of program.

Applicable Statutes

Current law requires each State agency/office to initiate activities for the collection, separation, and recycling of recyclable materials whether in State-owned or -leased facilities in Sacramento, Los Angeles, and San Francisco counties, and in any other area the IWMB determines is feasible. With assistance from the IWMB, each State agency shall recycle office paper, corrugated cardboard, newsprint, beverage containers (as defined in section 14505 of the PRC), waste oil, and any other material at the discretion of the Board.

Additional Resources

The IWMB has a Web site for State agencies at www.ciwmb.ca.gov/StateAgency/, which links to other useful pages within the site, including the following:

For more information on statutes pertaining to the collection and recycling of materials in State offices (PCC Section 12165 (a) and PRC Sections 42560-42562), contact the IWMB's Project Recycle staff (See Appendix B).

For more information on office paper recycling, waste assessments, and cost-benefit analysis of office paper recycling, see the many publications available through the IWMB's Business Resource Efficiency and Waste Reduction Program at www.ciwmb.ca.gov/BizWaste/.

8. Procurement: Buying Recycled

Completes the Materials "Loop"

Buying recycled-content products (RCP) completes the recycling loop by creating markets for recycled materials to use as feedstock in the manufacturing of recycled-content products. It is the demand side of the recycling equation. A demand for recycled-content products in turn supports recycling collection as the most economical and desirable method of disposal.

Purchasing Power of State Government

The State's role in RCP procurement is twofold. On the one hand, State purchases can definitely be an asset to markets for recycled materials. The State purchases billions of dollars of products each year. State government is the single largest purchasing entity in California. Through this buying power, the State has the ability to create and maintain stable markets for recycled materials.

The second role the State fulfills by purchasing RCPs is that of leadership and an example to other government entities throughout the State as well as the private sector. If the private sector believes that the State is committed to buying RCPs, it too will respond by manufacturing more RCPs and by increasing its own RCP purchases. In this way the State and the private sector create a synergy that will build and sustain markets for recyclable materials.

State Agency Buy Recycled Campaign

Activities pertaining to RCP procurement by State agencies increased considerably with the passage of Assembly Bill 4, (Eastin, Stats. 1989, c. 1094). This statute, added to the Public Contract Code and revised by several subsequent bills, constituted the major components of what has become known as the State Agency Buy Recycled Campaign (SABRC). The current laws require State agencies to:

- Purchase recycled-content products in sufficient quantities to attain the annual goals for specified product categories.
- Report annual purchases of recycled and nonrecycled products in specified product categories.
- Submit plans identifying how the annual goals for recycled-content products will be attained.
- Require contractors to certify, under penalty of perjury, the recycled content of the products they offer to the State.
- Purchase ALL recycled-content products instead of nonrecycled products whenever they are available at no more than the total cost of nonrecycled products, and fitness and quality are comparable.
- Attain the mandated recycled-content product procurement goals regardless of the price differences between recycled- and nonrecycled-content products.

Staff from the Integrated Waste Management Board, with assistance from the Department of General Services (DGS) provide a SABRC manual and training to implement the statutory requirements. As of FY 97/98, 113 out of 133 agencies submitted reports (84 percent) and reported \$24,483,218 in RCP purchases.

9. Elements of A Successful State Agency Buy Recycled Campaign

There are many elements that go into a successful SABRC within any agency. Depending on the size of the institution, the way it is organized, the extent to which purchasing is centralized, and the commitment made to these mandates, each agency's results can vary considerably. The access to computers and software dedicated to purchasing and accounting and the individual staff working on these issues will effect the amount of RCP purchases and

the ability of that agency to accurately report those purchases. Based on the experience that IWMB staff has gained over the past four years of implementing the SABRC and on comments received from State agencies, the following items have been identified as key elements of a successful buy recycled campaign.

Commitment From the Top

Because of the need for multiple offices to be involved in identifying, purchasing, tracking, and reporting RCPs for an agency, it is often necessary to have a high level manager oversee these activities. Therefore, a critical factor to a successful SABRC is support throughout the levels of management. Middle and upper level support and backup are critical to overcoming hesitation or complacency when it comes to purchasing RCPs rather than non-RCPs. Because staff from several offices may need to be involved in the SABRC activities, a manager must be responsible for communicating the needs to the other managers and for coordinating the efforts of the team.

Dedicated Personnel

Those responsible for the SABRC mandates must purchase RCPs rather than non-RCPs whenever possible. Without personal dedication by the agency coordinator, increased RCP procurement will be very difficult. Much of the time, the responsibilities for the SABRC are simply added to the responsibilities of one particular person. This is often not realistic nor appreciated. At the very least, the SABRC coordinator responsibilities should be those of someone in an appropriate position of authority, overseeing procurement and related administrative functions with an interest in environmental issues.

Internal Communication/Coordination

For most State agencies, attaining the SABRC mandates will require a coordinated effort among multiple branches or offices within an agency. The individual responsible for generating the report may not work in the procurement office. At the very least, a close relationship must exist between the buyers, the users, and those generating the report. It would not be uncommon for another person or office to be responsible for collecting the procurement data during the year, and the users of the products (the copy room, painters, plumbers, vehicle pool, etc.) to also play a part in the process. Each of the people in these positions needs to be part of the team that becomes responsible for attaining the SABRC mandates and generating the report. Full responsibility cannot be placed upon one individual for an agency's compliance with the mandates.

External Information Sharing

Another element that cannot be overlooked is education. Some people have had bad experiences with RCPs in the past or have heard of such experiences from others. RCPs have improved a great deal in recent years with corporate America coming into the manufacturing arena for many product categories. With considerable research and development going into this new generation of RCPs, many of them compare very favorably to, and some are simply better than, non-RCPs with respect to price, quality, and availability. These advancements need to be discussed among buyers and sellers. Buyers need to communicate with suppliers, and a concerted effort must be made by the State as a whole to inform product manufacturers of the preferences for RCPs. Additionally, SABRC contacts representing various agencies need to communicate and share experiences with each other.

Evaluation and Improvement

The final element to a successful SABRC is the ability to analyze past purchases with respect to product performance, price, delivery, and vendor satisfaction, as should be done with all purchases regardless of material content. This type of information will be used to develop a history of RCP procurements.

Analysis of purchases necessitates the development of some type of procurement tracking mechanism. Staff must have a system to gather the information, organize it in a meaningful manner, and be able to manipulate the data by a variety of criteria. Each member of the team—buyers, users, management, and those tracking the purchases—must fully analyze past purchases from each of their particular areas of expertise so that they will lead to more successful future purchases. This will result in establishing “best RCP purchasing practices,” prevent some mistakes from being repeated, and should result in feedback for the RCP suppliers on how to improve the RCPs that were not purchased.

10. Building Green

The Benefits of Green Buildings

A “green” or sustainable building is a structure that is designed, built, renovated, operated, or reused in an ecological and resource efficient manner. Green buildings are designed to meet certain objectives, such as protecting occupant health; improving employee productivity; using energy, water, and other resources more efficiently; and reducing environmental impacts associated with the production of raw materials and building construction.⁶

Green buildings provide significant savings in energy and operating costs over the life of the building. Cost savings are fully realized when they are incorporated at the conceptual design phase through construction, and with the assistance of an integrated team of professionals. Additionally, building green promotes waste reduction and the efficient use of resources by reusing building products and utilizing recycled-content products, thereby supporting markets for recycled materials.

The State has the opportunity, when planning and constructing new State buildings, to realize the operating cost savings green buildings provide while providing leadership in waste reduction and recycled-content product procurement practices in the construction industry. The IWMB, in coordination with Cal/EPA, is actively working to incorporate sustainable building measures into several developing State building projects to demonstrate the performance and economic success of sustainable construction in the state.

Available Resources

The IWMB, with assistance from the City of Santa Monica and Gottfried Technology, Inc. (GTek), is developing a statewide plan for a sustainable building program. The program, now in the conceptual stage, will address the benefits and provide support for sustainable buildings in the State, local, and private sectors.

⁶ “Green Building Basics,” draft CIWMB fact sheet, March 12, 1999.

The IWMB develops and distributes educational materials relating to green buildings and provides comments and technical assistance for specific building projects. For more information, contact the Board's green building staff at (916) 255-2319.

11. Landscape Materials Management

Waste-Efficient Landscape Maintenance Practices

Landscape sites at State agency facilities and institutions can be maintained in an environmentally sound and cost-effective manner by using responsible landscape management practices that reduce green waste generation, reuse trimmings and prunings on site, and recycle organic products (mulch and compost) back into the landscape. These management practices include:

- **Controlled Irrigation**—Water just enough to maintain plant health and appearance.
- **Precise Fertilization**—Only apply precise amounts of necessary plant nutrients.
- **Grasscycling**—The natural practice of leaving clippings on the lawn when mowing.
- **Selective Pruning**—Use techniques that result in less green waste and healthier plants.
- **On-Site Composting and Mulching**—Use site-generated trimmings as feedstock.
- **Proper Organic Materials Application**—Use products derived from urban green waste.
- **Environmentally Beneficial Design**—Install low-maintenance, drought-tolerant plants and waste-efficient landscape design features to reduce trimmings and prunings.

Benefits of the "Three Rs" in Landscape Management

Practices that reduce green waste generation produce significant economic and environmental benefits. Direct savings can be realized by reduced maintenance, labor, water and fertilizer cost. Indirect cost benefits include reduced hauling expenses as well as disposal fees and less exposure to workers' compensation claims due to crew injury from lifting heavy loads. On-site management of yard trimmings returns valuable, high-quality nutrients and organic matter to the soil. This encourages healthier, disease and pest resistant plants that improve appearance, prevent erosion, and increase property values.

Using recycled organic materials in landscapes enhances soil fertility and water holding capacity, slows evaporation losses, increases plant drought tolerance, conserves water, and also suppresses the spread of wildfires. Using the environmentally beneficial landscape maintenance practices outlined above will reduce fertilizer and water usage, which in turn reduces toxic runoff that can lead to surface and groundwater pollution.

Case Study

Fountain Circle on the west side of California's State Capitol was selected as a demonstration ground for grasscycling. This was a cooperative effort among the IWMB, Department of General Services, the Office of Buildings and Grounds, and the Toro Company, which supplied the mulching mower. This initial demonstration was so well received that DGS/OBG is now converting its entire fleet to grasscycling mowers.

Results of Grasscycling Demo at State Capitol:

- Mowing time reduced by over 50 percent. Bagging and disposal cost eliminated.
- More than 300 pounds of grass clippings per 1000 square feet recycled annually.
- Nitrogen content of recycled clippings reduced fertilization requirements by 25 percent.
- Similar savings in water usage noted.

Available IWMB Resources

The Board's "Organics Outlook" Web site at www.ciwmb.ca.gov/Organics/Landscaping/ has sections containing specific information on the practices outlined above, a compost and mulch source list, a section for publications, reports, articles, and fact sheets available for downloading or online ordering and a section on composting regulations.

Appendix A: Definitions

Recycled Content Product (RCP) Procurement. The term recycled content product procurement refers to purchasing practices that support markets for recycled materials and minimize environmental impact.

California State Agency. Refers to every State office, department, division, board, commission, or other agency of the State of California.

Waste Reduction. The term waste reduction, as used in this document, refers to the comprehensive efforts of waste prevention, reuse, recycling/collection, and procurement practices.

Appendix B: Waste Reduction Resources for State Government Agencies

General Resources. The Integrated Waste Management Board's Web site has a resource page for State agencies at www.ciwmb.ca.gov/StateAgency/. It includes links to pertinent information, including the other programs in this section.

Publications. The Board's online publications catalog at www.ciwmb.ca.gov/Publications/ provides information on more than 500 IWMB publications. Most are available on line or can be downloaded. Hard copies can be ordered via e-mail.

Business Resource Efficiency and Waste Reduction Program. Developed primarily to assist the business community to divert waste, this program provides factsheets and guides on waste prevention and resource efficiency. Many of the materials are applicable to any

office setting and are available to California State agencies. For more information, contact the Business Resource Efficiency and Waste Reduction Program at (916) 255-2354, www.ciwmb.ca.gov/BizWaste/.

California Materials Exchange Program (CalMAX). CalMAX is a free service designed to help businesses, schools, and nonprofits find markets for materials they have traditionally discarded. The motto, "One business' trash is another business' treasure" has been used to help businesses search for available and wanted materials.

The benefits of CalMAX are also available to California State agencies. For more information, contact the CalMAX program at (916) 255-2369 or visit the Web at www.ciwmb.ca.gov/CalMAX/.

Project Recycle. The IWMB's Project Recycle Program coordinates implementation of waste prevention, reuse, and recycling programs at State-owned and leased buildings and facilities including offices, prisons, youth authority facilities, developmental centers, hospitals, maintenance facilities, and parks.

Project Recycle coordinates and assists State facilities by:

- Managing State recycling contracts.
- Training and advising State employees and recycling coordinators.
- Acting as a liaison between State facilities and recyclers.
- Providing recycling information, supplies, and equipment.
- Gathering and reporting data on materials collected for recycling.

As of January 1999, Project Recycle is coordinating and monitoring programs at more than 1,800 State facilities. During 1998 over 63,000 tons of material were reported collected for recycling from California State facilities. For more information contact Project Recycle at (916) 255-2385, or visit the Web at www.ciwmb.ca.gov/ProjRecycle/.

State Agency Buy Recycled Campaign. The State Agency Buy Recycled Campaign (SABRC) consists of mandates for State agencies to purchase recycled content products (RCP) in 11 categories ranging from copy paper to steel products. The mandates, located in the Public Contract Code (PCC), require each State agency to submit a Recycled Product Procurement Plan and a Recycled Product Procurement Report annually to IWMB. The reports are used to determine compliance with the RCP procurement mandates.

The State Agency Buy Recycled Campaign provides a recycled-content product database for State agencies to assist in procuring recycled-content products, and a guidance document to assist agencies with both procurement and reporting compliance. For more information, contact the State Agency Buy Recycled Campaign coordinator at (916) 255-4454, or visit the Web at www.ciwmb.ca.gov/BuyRecycled/.

Appendix C: Sample Waste Reduction and RCP Procurement Policy Statements

The following are sample waste reduction policies and individual action items to support an agency's steps toward reducing waste. Agencies may need to add, modify, or delete items depending on the particular goals of the organization.

Waste Reduction Policy Statements (General)

1. It is the policy of the (Agency) to assist local government and business in meeting California's waste diversion mandates by practicing waste reduction and recycled content product procurement in all aspects of its internal and external operations.
2. The (Agency) shall continually strive to minimize the generation of waste and support markets for recycled materials through waste prevention, reuse, collection/recycling and composting, and the procurement of recycled content products.
3. The (Agency) recognizes the trust placed in it by the people of California to wisely use resources in the most effective and efficient manner possible so that waste is minimized in all areas of operation, so that procured products contain the maximum amount of recycled content, and so that savings are accounted for and measured.

Waste Prevention Policy Statements and Action Items

The (Agency) shall:

1. Use available information technology to maximize the efficient use of paper:
 - a) Set all electronic systems to default double-sided printing, including individual and network software.
 - b) Print all documents and communications double-sided.
 - c) Use electronic mail and voice mail.
 - d) Promote electronic access of agency information and publications to customers via

-
1. Review standard documents, templates, and publications for waste reduction opportunities.
 - a) Eliminate unnecessary reports and reduce report size.
 - b) Use 1/2 sheets of paper for fax cover sheets instead of a full sheet (and use both sides).
 - c) Design mailers to avoid use of envelopes.
 - d) Proofread documents on screen and preview before printing.
 - e) Annually purge and remove duplicate names and out of date entries from mailing lists.
 1. Submit internal documents with minor legible handwritten corrections.
 - Utilize a centralized mailing system.

3. Review standard distribution/circulation procedures for waste reduction opportunities
 - a) Circulate memos, documents, reports, periodicals, and publications.
 - b) Post announcements on bulletin boards or circulate copies.
4. Maximize waste prevention practices in the custodial, maintenance and landscaping practices of state-owned buildings. Contractual arrangements with facility management in leased buildings shall maximize waste prevention in the custodial, maintenance and landscaping practices.
 - a). Encourage cafeteria discounts for use of own cup, plate, and utensils.
 - b) Encourage use of air dryers or cloth wipes in restrooms instead of paper towels.
 - c) Encourage landscape maintenance to implement grasscycling.

Reuse Policy Statements and Action Items

The (Agency) shall:

1. Establish systems that routinely reuse paper and other office supplies.
 - a) Reuse paper printed on one side:
 - In fax machines.
 - In copiers for draft copies, except where specifically prohibited by equipment warranties.
 - To make scratch paper and pads through DGS.
 - b) Reuse envelopes by placing a label over the old address.
 - c) Institute an office "trading post" next to supplies area to reuse office supplies, etc.
 - d) Investigate whether local libraries, schools, hospitals, nursing homes, etc. could use old trade journals or magazines.

Employee Education/Outreach Policy Statements and Action Items

The (Agency) shall:

1. Develop an ongoing employee education and outreach campaign.
 - a) Use intranet (internal web site) to post in-house waste reduction information (policy, goals, procedures, and accomplishments) for easy reference.
 - b) Provide all new employees with an in-house Waste reduction policy orientation.
 - c) Conduct employee educational activities on at least a quarterly basis.
1. Become a government member of U.S. EPA's WasteWi\$e program to show commitment to waste reduction practices.
2. Ensure all (Agency) documents carry a recycled logo and/or environmental policy statement.

Recycling Collection Policy Statements and Action Items

The (Agency) shall:

1. Work with IWMB to set up, implement, or expand collection programs.
2. Utilize IWMB collection contracts when feasible.
3. Provide, at a minimum, for collection of the following materials: white paper, newspaper, mixed paper, magazines, plastic, glass, and aluminum.
 - a) Provide desktop recycling containers for employees.
 - b) Provide clearly labeled recycling bins near copiers, shipping and receiving areas, and in employee eating areas.
 - c) Print directly on envelopes rather than using labels to increase envelope recyclability.
1. Periodically increase the level of white paper recycling and correspondingly decrease contaminants in white paper bins.
 - a) Don't buy paper that is a contaminant in recycling, e.g., thermal fax paper, glossy/plastic coatings, envelopes with plastic windows, or bright colors (including goldenrod).
 - b) Eliminate use of pressure sensitive adhesives.

Recycled Content Product Procurement Policy Statements and Action Items

The (Agency) shall:

1. Buy recycled content products rather than nonrecycled content products. Quality and availability being comparable, the (Board/Agency) shall:
 - a) Buy only white copy/xerographic paper with at least 30 percent postconsumer recycled content.
 - b) Purchase the product with the greater recycled content when faced with a choice of two recycled products.
 - c) Use recycled-only bids and RCP set-asides to purchase products.
1. Attain the mandated RCP procurement goals.
 - a) Appoint SABRC contact.
 - b) Require recycled content information for all of the products purchased.
 - c) Track all RCP and non-RCP purchases within the product categories.
 - d) Annually submit the SABRC procurement report and plan.

Prevention and Reuse Procurement Policy Statements and Action Items

The (Agency) shall:

1. Purchase products that prevent waste.
 - a) Purchase high-quality, durable products.

- b) Purchase photocopiers with a fast, reliable duplex function designed for heavy loads.
- c) Purchase refillable pens.
- 1. Purchase used or reused products at every opportunity.
 - a) Purchase reused diskettes.
 - b) Reuse disks from software purchases.
 - c) Purchase remanufactured toner cartridges.
- 1. Purchase products with no packaging, less packaging, or reusable packaging.
 - a) Purchase products in bulk.
 - b) Discuss with suppliers a reduction in the amount of packaging of the products purchased.

SixTen and Associates Mandate Reimbursement Services

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August 10, 2001

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, CA 95814

RECEIVED
AUG 13 2001
COMMISSION ON
STATE MANDATES

Re: Test Claim 00-TC-07
Santa Monica Community College District, Co-Claimant
Lake Tahoe Community College District, Co-Claimant
Integrated Waste Management

Dear Ms. Higashi:

I have received the "Opposition to Test Claim of the California Integrated Waste Management Board ("Board") dated May 18, 2001, the Comments of Chancellor's Office of the California Community Colleges ("Chancellor") dated May 18, 2001 and the Comments of the Department of Finance ("DOF") dated June 18, 2001 to which I now respond on behalf of the test claimants.

The Department of Finance position is that the law should only apply to the Chancellor's office, that the proceeds of recycling are probably enough to offset any new costs, and that preparing a college plan is optional since if one is not prepared, the state plan is forced upon the college. The response from the Integrated Waste Management Board shows that they are new to the mandate arena. The board agrees that it is an increased level of service, but alleges that the cost of the waste management plan can be passed on by increasing student fees. The Chancellor's office agrees that it is a new program, but that there are some yet to be identified cost savings and revenues to offset the increased costs.

1. The Comments of the DOF are Incompetent and Should Be Stricken

Test claimants object to the Comments of the Department of Finance ("DOF") dated June 18, 2001, in total, as being incompetent and ask that they be stricken from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

"...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information and belief".

The DOF comments do not comply with this essential requirement. Furthermore, test claimants object to any assertions or representations of fact made in the response [such as the assertion "we understand that proceeds from an on-campus recycling center at Orange Coast Community College has (done certain things)...without using any state funds."] since DOF has failed to comply with Title 2, California Code of regulations, Section 1183.02(c)(1) which requires:

"If assertions or representations of fact are made (in a response), they must be supported by documentary evidence which shall be submitted with the state agency's response, opposition, or recommendations. All documentary evidence shall be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge or information or belief."

Furthermore, these hearsay statements do not even come up to the level of hearsay or the type of evidence people rely upon in the conduct of serious affairs. The entire document submitted by DOF, and any allegations of unsupported facts therein, should be stricken from the record.

2. **California Community Colleges are Required to Develop and Adopt An Integrated Waste Management Plan**

DOF's position is that the use of the term "state agency" in the test claim legislation means that only the Chancellor's Office is required to develop and adopt an integrated waste management plan. The Chancellor correctly states that the test claim legislation results in a new program for Community College districts. The written instructions of the Integrated Waste Management Board¹ instruct that each "large state facility" shall complete a separate plan. The test claim legislation requires each "state agency" to develop and adopt such a plan; and, "state agency" is defined to mean "...every state office...including the California Community Colleges". See: Public Resources Code Sections 42920(b)(1), 40196.3 While "state agency" is defined as the California Community Colleges, the term "large state facility" is defined by statute to include

¹ Test Claim, Exhibit 4A, State Agency Model Integrated Waste Management Plan, February 2000, page 1

"those campuses of ... the California Community colleges". See: Public Resources Code Section 40148 Therefore, by statutory definition, each California Community College is required to develop and adopt its own plan.

Had the legislature intended the Chancellor's Office to develop and adopt an integrated waste management plan, it could have said so, it did not. In addition, the DOF's "belief" would have the Chancellor's Office develop and adopt an individual integrated waste management plan for each of the 73 community college districts and their 108 individual campuses. The comments of the Chancellor's Office report the California Community Colleges have already filed the reports required by the Public Resources Code sections and implementing orders of the Integrated Waste Management Board.

3. Potential Revenues Do Not Preclude an Initial Determination That a Reimbursable Mandate Exists

The DOF and Board have misappropriated the term "offsetting savings" to describe their presumption that there will be offsetting cost reductions from the sale of recyclable materials. The term and scope of "offsetting savings" as historically utilized by the Commission in its parameters and guidelines, applies to any offset achieved by new federal or local funding (i.e., any funding other than state funding) received for the specific purpose of funding a function that is within the scope of the mandate. The use of the phrase "offsetting savings" is counterproductive since it has no definition and is used only as a cost containment tool.

The issue finds its solution in the statutory exceptions. Government Code Section 17556 states in part:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:....

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

As a matter of law, the test claim statutes do not include "offsetting savings" which result in no net costs. A new program was added, and no other mandated program was removed by the statute.

It can be said that the test claim statutes did include "additional revenue that specifically was intended to fund the costs of the mandate" in the form of "revenues" from the sale of recyclable materials. However, there is no competent or relevant evidence before the commission indicating the amount, if any, of the expected revenue. The only competent evidence before the Commission is that those revenues are limited to \$2,000 by the test claim legislation unless, sometime in the future, more revenues are appropriated by the legislature. This being the case, this begs the question of fact of whether the additional revenue is "in an amount sufficient to fund the costs of the state mandate". The mandated duties are certain. The cost of the mandated duties and the amount of revenues are both unknowns.

The Commission can take notice that the entire cost to implement the mandate will vary from district to district, and from campus to campus, so it cannot be determined as a matter of fact that this revenue is sufficient for any or all districts. The revenue can, in the usual course of the mandate process, be addressed by the annual claiming process whereby the claimants are required by law to report their cost of implementing the mandate from which they must deduct other reimbursements and funds received, in this case, any funds received from the sale of recyclable materials. To the extent that revenues are made available, and continue to be made available each subsequent year, such funding might reduce the reimbursable costs, but does not preclude an initial determination of whether a reimbursable mandate exists.

DOF also argues the cost of any identified state-mandated local program would be minimized, or even eliminated because Public Contract Code Sections 12167 and 12167.1 do not apply to local entities and, therefore, campuses of the California Community Colleges may keep all revenue from recycling programs. DOF goes on to argue "*even if*" these sections applied to community college campuses, the Legislature "*would likely*" authorize a campus to keep more than \$2,000 in recycling revenue.

Public Resources Code Section 42925 does not refer to savings of the state agency, it refers to any cost savings realized as a result of the state agency's plan. This would include the savings of community college campuses realized from the plan submitted by their respective districts. These "cost savings" are to be redirected to the agency's integrated waste management plan to fund plan implementation and costs, but only in accordance with Public Contract Code Sections 12167 and 12167.1.

Public Contract Code Section 12167² refers to revenues (not cost savings) and specifically requires that these revenues be deposited in an account controlled by

² Public Contract Code Section 12167, as last amended by Chapter 1116, Statutes of 1992, Section 1:

the Board and (after July 1, 1994) may be expended only upon appropriation by the Legislature for the purpose of offsetting recycling program costs (not program costs).

Public Resources Code Section 12167.1³ is a limited exception to Section 12167: upon approval of the California Integrated Waste Management Board, revenues not exceeding \$2000 are "continuously appropriated" for expenditure by state agencies for the purpose of offsetting recycling program costs. Any revenues (not cost savings) in excess of \$2000 are still subject to appropriation by the Legislature.

The test claim recognizes these revenue sources and their limitations:

"Subject to the approval of the California Integrated Waste Management Board, revenues derived from the sale of recyclable materials by

"Revenues received from this plan or any other activity involving the collection and sale of recyclable materials in state and legislative offices located in state-owned and state-leased buildings, such as the sale of waste materials through recycling programs operated by the California Integrated Waste Management Board or in agreement with the board, shall be used to offset recycling program costs. Any remaining revenues not expended during a fiscal year shall be used to offset recycling program costs in the following year. deposited in the Integrated Waste Management Account in the Integrated Waste Management Fund and are hereby continuously appropriated to the board, without regard to fiscal years, until June 30, 1994, for the purposes of offsetting recycling program costs. On and after July 1, 1994, the funds in the Integrated Waste Management Account may be expended by the board, only upon appropriation by the Legislature, for the purpose of offsetting recycling program costs."

³ Public Contract Code section 12167.1 as last amended by Chapter 1116, Statutes of 1992:

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

community colleges that do not exceed two thousand dollars (\$2,000) annually are continuously appropriated for expenditure by the community college for the purpose of offsetting recycling program costs. (Footnote omitted) Revenues exceeding two thousand dollars (\$2,000) annually, shall be available for expenditure by the community college only when appropriated by the legislature.

To the extent so approved or appropriated and applied to the colleges, these amounts would be a reduction to the total costs mandated by the state to implement Chapter 764, Statutes of 1999." (Test Claim, page 21, line 11 through page 22, line 3)

I also take notice of the letter dated May 18, 2001 submitted by the Chancellor's Office which states, in part: "...there may be some offsetting revenues, and cost savings... (which)... will likely vary among campuses and among districts... (but)... unlikely to offset much of the costs of implementing this requirement..." (emphasis supplied)

The test claim recognizes these facts and these limitations. Therefore, the cost savings (if any), sale revenues (if any) up to \$2,000, and sale revenues (if any) over \$2,000 if and when appropriated by the Legislature, will be offset against mandated costs.

4. **Developing and Adopting an Integrated Waste Management Plan or Obtaining Extensions Are Not Discretionary**

DOF argues since a community college district which "elects" not to submit a plan or have a plan approved would be governed by a model integrated waste management plan prepared by the Board, no community college district is required to develop, adopt or submit its own plan.

The test claim legislation states "On or before July 1, 2000, each state agency shall develop and adopt... an integrated waste management plan"⁴ and "each state agency shall submit an adopted integrated waste management plan... on or before July 15, 2000"⁵. The language is unmistakably mandatory. The alternative for non-compliance, i.e. the mandatory requirement to comply with a board developed plan, makes it none the less so.

The requirement that each state agency shall develop and adopt an integrated waste management plan is mandatory. A choice of methods for a mandated activity (developing own plan versus using model plan) is not the same as the

⁴ Public Resources Code Section 42920(b)(1).

⁵ Public Resources Code Section 42920(b)(2).

initial choice of whether or not to develop and adopt a plan. Here, the initial duty is mandated.

DOF next takes the position that the activities related to extensions of time in which to comply to the initial percentage requirements are not state-mandated activities as those provisions allow, but do not require, community college campuses (actually, the statute in question, Public Resources Code Section 42923, applies to both state agencies and large state facilities) to request time extensions. DOF attempts to bolster its position by the fact that the request for an extension must "identify the means by which the programs will be funded".

The extensions referred to relate to the requirements set forth in subdivision (a) of Public Resources Code Section 42921, i.e. the requirement that each state agency and each large state facility shall divert 25 percent of solid waste generated by January 1, 2002. Both the requirement to divert and the performance date are mandatory. If for some unforeseen reason (which must meticulously be spelled out in a request for an extension) this mandatory time limit cannot be achieved, it would therefore become mandatory to obtain an extension so as not to violate the law. The fact that the means of financing the program be identified as a condition of obtaining an extension of time, does not make the costs of the program non-reimbursable. It is only assurance to the Board that the diversion program can be complied with if the extension is granted.

Finally, DOF takes the position that the activities related to obtaining one or more alternatives to the time necessary to comply with the 50 percent goal by January 1, 2004 are not state-mandated activities as those provisions allow, but do not require, community college campuses (actually, the statute in question, Public Resources Code Section 42922, applies to both state agencies and large state facilities) to request alternatives to the 50-percent requirement.

The goals referred to are found in subdivision (b) of Public Resources Code Section 42921, i.e. the requirement that each state agency and each large state facility shall divert 50 percent of solid waste generated by January 1, 2004. Both the requirement to divert and the performance date are mandatory. If for some unforeseen reason (which must meticulously be spelled out in a request for an alternative) this mandatory percentage goal cannot be achieved, it would therefore become mandatory to obtain an alternative percentage goal so as not to violate the law.

5. The Requirement to Develop and Adopt a Plan is an Ongoing Activity

DOF argues that, if the Commission should identify the requirement to develop and adopt an integrated waste management plan as a state-mandated activity, it is one-time and should be identified as such.

August 9, 2001

Because the plan of any state agency or large state facility is subject to revision when an alternative to the 50-percent requirement is granted⁶, is subject to another revision when a subsequent percentage alternative is granted⁷, and subject to one or more revisions when single or multiyear time extensions are granted⁸, the development of the plan can be ongoing and should be identified as ongoing. Further, it can be anticipated that the means or methods of reducing waste will evolve over time, requiring plan modifications in subsequent years.

6. Districts May Not Charge Students For Services Required By State Law

DOF argued the governing boards "may elect to offer" students "optional" waste diversion or recycling fees. The Board argues that it appears possible, under the permissive provisions of the Education Code and a legal opinion of the Chancellor's Office of the California Community Colleges, to charge students an optional fee for recycling services.

The issue of when "optional fees" may be imposed on students is addressed in Legal Opinion M 00-41 of the California Community Colleges Chancellor's Office, a copy of which is attached hereto as Exhibit "B".

The Legal Opinion states the rule:

"Under current law it is well settled that a student may only be required to pay a fee if a statute requires it (example cited) or if a statute specifically authorizes a district to require it (example cited). In either instance, a student cannot be required to pay a fee in the absence of express legislative authority (citations). The Board of Governors has underscored this policy through the adoption of a minimum standard regulation (Cal. Code Regs., Title 5, §51012) which provides that a district may only establish such mandatory student fees as it is expressly authorized to establish by law." (Opinion, page 1, section I. (emphasis in the original))

Another part of the Opinion is particularly applicable to the issue now before the Commission:

"(I)t is the opinion of the Chancellor's Office that community college districts may not charge students a fee for use of a service which

⁶ Public Resources Code Section 42922(a)

⁷ Public Resources Code Section 42922(d)

⁸ Public Resources Code Section 42923

the district is required to provide by state law...." (Opinion, page 15, section I)

Since the imposition of an integrated waste management plan is required by state law, and there is no statute that requires or authorizes such a charge, the districts may not charge students for complying with the state mandate.

The "permissive code" referred to in the Opinion is Education Code Section 70902(a)⁹ is "permissive" only to the extent that the governing board (of the school district) "may initiate and carry on any program, activity, or may otherwise act in any manner" but limited by the phrase "that is not in conflict with or inconsistent with, or preempted by, any law and that is not in conflict with the purposes for which community college districts are established".

The suggestion that students be charged fees to pay for an integrated waste management plan and all that it entails is in conflict and inconsistent with the well settled current law that a student may not be charged a fee for a service which the district is required to provide by state law. See: Opinion, Page 1, Section 1

The suggestion that students be charged fees to pay for an integrated waste management plan and all that it entails is directly in conflict with the purposes for which community college districts are established. Education Code Section 70902

The suggestion that the prohibition against charging "mandatory fees" be avoided by calling them "optional fees" is not even realistic. These fees for an integrated waste management plan, subject to the development of Parameters and Guidelines, could become substantial. The concept that the students would then "voluntarily" accept this additional levy is unrealistic. Realistic is the fact that, if made "optional", none of the students would "opt" to pay for this costly program.

⁹ Education Code Section 70902:

"(a) Every community college district shall be under the control of a board of trustees, which is referred to herein as the "governing board." The governing board of each community college district shall establish, maintain, operate, and govern one or more community colleges in accordance with law. In so doing, the governing board may initiate and carry on any program, activity, or may otherwise act in any manner that is not in conflict with or inconsistent with, or preempted by, any law and that is not in conflict with the purposes for which community college districts are established.

The governing board of each community college district shall establish rules and regulations not inconsistent with the regulations of the board of governors and the laws of this state for the government and operation of one or more community colleges in the district."

7. "Leasing" Mandate Provision Also Requires Adequate Personnel

Although DOF notes that the activities related to new or renewed leases "appear" to be state-mandated programs as they apply to "large state facilities" (actually, Section 42924(b) applies to each state agency or large state facility) but argues, since colleges are already leasing or re-leasing properties, any additional workload and/or costs should be minimal.

Public Resources Code Section 42924(b)¹⁰ goes beyond the mere leasing or renewals of existing leases. It not only requires that adequate areas be provided for waste management, but also requires adequate personnel be available to oversee, collect, store and load recyclable materials. In addition to the leasing and reletting issues, this is also an ongoing duty to provide adequate personnel.

8. The Reporting Requirements of the Test Claim Legislation Require Substantial New Accounting Activities

DOF argues that the development, implementation and maintenance of an accounting system to enter and track source reduction, recycling and composting activities and the proceeds of the sale of recycled materials is not a state-mandated program since community colleges already have accounting systems in place.

The reporting requirements of Public Resources Code Section 42926(a) and Public Contract Code Section 12167.1; the justifications required to obtain

¹⁰ Public Resources Code Section 42924 added by Chapter 764, Statutes of 1999, Section 4:

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

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

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

alternatives pursuant to Public Resources Code Section 42922(a) and (d), and the justifications required to obtain one or more extensions pursuant to Public Resources Code Section 42923(a) are not casual activities and require substantial reporting requirements not contemplated by the districts' current accounting systems.

Conclusion

For the reasons herein stated, the test claimants respectfully request the Commission to find that the activities described in the test claim result in community college districts and campuses incurring costs mandated by the state, as defined in Government Code Section 17514, by creating new state-mandated duties as set forth in the test claim, without exception.

CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete to the best of my own personal knowledge or information or belief.

Sincerely,



Keith B. Petersen

C: Per: Distribution List attached

ATTACHMENTS:

Exhibit "A"

"State Agency Model Integrated Waste Management Plan, February 2000", page 1: Instructions for Completing the State Agency Model Integrated Waste Management Plan.

Exhibit "B"

California Community Colleges Chancellor's Office, Legal Opinion M 00-41

Exhibit "C"

California Code of Regulations, Title 5, §51012

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EXHIBIT "A"

State Agency Model Integrated Waste Management Plan

February 2000



Instructions for Completing the State Agency Model Integrated Waste Management Plan

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

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

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

Completed plans should be submitted to the following address:

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

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

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

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

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

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

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

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

State agencies must submit this completed form.

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

Large State facilities must submit this completed form.

EXHIBIT "B"

CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE

1102 Q STREET
SACRAMENTO, CA 95814-6511
(916) 445-8752
HTTP://WWW.CCCCO.EDU



December 19, 2000

TO: Board of Governors
Superintendents and Presidents
Presidents, Boards of Trustees
Consultation Council
Chief Business Officials
Chief Instructional Officers
Chief Student Services Officers
Admissions Officers and Registrars
Financial Aid Officers
Community College Attorneys
Other Interested Parties

FROM: Ralph Black
General Counsel

SUBJECT: Update on Student Fees (Opinion M 00-41)

Synopsis: On December 14, 1999, we issued a memo providing information on student fees. The enclosed memo updates that document to reflect changes in student fees resulting from actions of the Legislature during the 2000 session as well as any pertinent formal or informal legal opinions issued from this office. This document will also be available on the Chancellor's Office web site at <http://www.cccco.edu/cccco/lac/Notices/notices.htm>.

Because this material is lengthy and complex, we used italics to indicate changes in the law or our interpretation of the law. Material in boldface is pre-existing information, which we believe deserves particular emphasis.

Action/Date Requested: Districts should take steps necessary to implement the legislative changes discussed in the attached memo.

Contact: Questions regarding financial aid procedures should be directed to Mary Gill at (916) 323-5951. Questions regarding nonresident tuition and treatment of fee revenue should be directed to Helen Simmons at (916) 327-6225. Other questions should be directed to Renee Brouillette at (916) 322-4145.

cc: Cabinet
Helen Simmons
Mary Gill
Renee Brouillette

COMMUNITY COLLEGE STUDENT FEES
(Status of the law as of January 1, 2001)

I. BASIC LAW ON STUDENT FEES

Express statutory authority is required to charge any mandatory student fee; but optional student fees or charges may, under certain circumstances, be charged under the authority of the "permissive code." as set forth in section 70902(a) of the Education Code.

Under current law it is well settled that a student may only be required to pay a fee if a statute requires it (such as the enrollment fee), or if a statute specifically authorizes a district to require it (such as the health fee). In either instance, a student cannot be required to pay a fee in the absence of express legislative authority (see the following opinions of the Attorney General: 60 Ops.Cal.Atty.Gen. 353 (1977), and 61 Ops.Cal.Atty.Gen. 75 (1978)). The Board of Governors has underscored this policy through the adoption of a minimum standard regulation (Cal. Code Regs., Title 5, § 51012) which provides that a district may only establish such mandatory student fees as it is expressly authorized to establish by law.

If a fee must be paid as a condition of admission to a college; or as a condition of registration, enrollment, or entry into classes; or as a condition of completing the required classroom objectives of a course, the fee is mandatory (required) in nature. On the other hand, if the fee is for materials, services, or privileges which will assist a student, but are not otherwise required for registration, enrollment, entry into class, or completion of the required classroom objectives of a course, the fee can be classified as optional in nature. Under the authority of the permissive code, a district may charge a fee which is optional in nature, provided that the fee is not in conflict or inconsistent with existing law, and is not inconsistent with the purposes for which community college districts are established. Examples of optional fees are parking fees (which are also authorized in section 76360 of the Education Code) and a student body card or student activities fee.

If a fee is required for registration, enrollment, entry into class, or completion of the required classroom objectives of a course, it can be classified as a "course fee." If a fee is for materials, services, or privileges which will assist a student, but is not otherwise required for completion of the required classroom objectives of a course, it can be classified as a "service fee." Under this classification structure, specific legislative authority is always required to charge any course fee. A variety of service fees are specifically authorized by statute. In addition, service fees meeting the test of the permissive code may be charged under the authority of that provision.

II. COURSE FEES

Specific statutory authority is required to charge any fee which is required for registration, enrollment, entry into class, or completion of the required objectives of a course. The following fees are specifically authorized by statute:

A. Nondistrict Physical Education Facilities: Education Code section 76395 authorizes districts to impose a fee on participating students for the additional expenses incurred when physical education courses are required to use nondistrict facilities such as bowling alleys and golf courses. This authority became operative on January 1, 1992.

B. Enrollment Fee: the basic enrollment fee is required pursuant to Education Code section 76300. This statute was amended by AB 1118 (Stats. 1999, ch. 72) to reduce the fee to \$11 per unit effective for the Fall 1999 term.

Unless expressly exempted, or entitled to a waiver or defrayal, all students enrolling for college credit must pay the enrollment fee. Fees are to be waived through the Board Financial Assistance Program for students who meet income standards established under regulations of the Board of Governors, those who demonstrate financial need in accordance with the methodology set forth in federal financial aid regulations, and those who, at the time of enrollment, are recipients of benefits under the California Work Opportunity and Responsibility to Kids (CalWORKs) Program (formerly Aid to Families with Dependent Children (AFDC)),¹ the Supplemental Security Income/State Supplementary Program, or a general assistance program.

Generally, students must demonstrate eligibility for these Board of Governors Enrollment Fee waivers at the time of enrollment, but the Chancellor's Office takes the position that districts have the discretion to refund enrollment fees if a student later shows that he or she actually qualified for the waiver at the time of enrollment and applied for the waiver within the *academic year* for which the refund is sought. Fees must also be waived for dependents of certain deceased or disabled veterans and California National Guard members upon certification of fee waiver eligibility by the California Department of Veterans Affairs or the National Guard Adjutant General. (See IV, H, below.)

K-12 students admitted as special full-time or part-time students pursuant to Education Code section 76001 who are enrolled for college credit in community college courses are subject to the enrollment fee, but section 76300(f) permits the district governing board to exempt special part-time students (but not special full-time students) from paying the fee. There is nothing that would preclude a K-12 student who is subject to the enrollment fee from applying for a Board of Governors Waiver. Special full-time or part-time students enrolled in college courses only for high school credit are not subject to the enrollment fee and no waiver or exemption is necessary.

Assembly Bill 3031 (Stats. 1996, ch. 63, § 1) amended Education Code section 76300 to exempt students enrolled in specified credit contract education courses from the

¹Congress passed, and President Clinton subsequently signed H.R. 3734, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), which discontinued the Aid to Families with Dependent Children (AFDC) program and substituted in its place block grants to states for Temporary Assistance to Needy Families (TANF). States were required to implement TANF no later than July 1, 1997, and to this end the California Legislature passed an urgency bill, AB 1542 (Stats. 1997, ch. 270), which amended state laws that refer to the AFDC program and added section 10063, of the Welfare and Institutions Code which changed the name of California's AFDC, Family Group, and Unemployment programs to the California Work Opportunity and Responsibility to Kids program (CalWORKs).

It is thus the opinion of the Chancellor's Office that fee exemptions or waivers referencing AFDC recipients should be construed to refer to those eligible for CalWORKs.

enrollment fee if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting, and if these students are not included in the calculation of the average daily attendance of that district. This change became effective January 1, 1997.

The Board of Governors has adopted regulations to implement the enrollment fee in sections 58500 - 58508 of Title 5 of the California Code of Regulations. The Board's regulations on financial aid are set forth at Title 5, section 58600 et seq.

C. Noncredit Courses: While the law appears to authorize fees for certain noncredit courses, districts actually have very little authority in this area. Education Code section 76380 authorizes governing boards to require students to pay a fee for noncredit courses which are not eligible for state apportionment. Noncredit courses eligible for state apportionment are listed in section 84757 of the Education Code. Before charging a fee for a noncredit course not eligible for state apportionment, a district should ensure that the fee is not prohibited by section 76380 of the Education Code. Section 76380 prohibits fees for adults enrolled in English and citizenship for foreigners, a class in an elementary subject, a class designated by the governing board as a class for which high school credit is granted (when the person taking the class does not have a high school diploma), and any class offered pursuant to sections 8531, 8532, 8533, and 8534 of the Education Code. Since almost all noncredit courses are offered pursuant to one of the above provisions, districts have very little authority to charge fees for noncredit courses.

Finally, it should also be noted that the fact that a district is over cap and is not receiving apportionment does not enable the district to use the authority of section 76380 to charge students a fee for certain courses.

D. Community Service Classes: Education Code section 78300 authorizes districts to charge students taking community service classes a fee not to exceed the cost of maintaining community services classes. Community service classes are intended to be self-supporting, and districts are prohibited from using state General Fund money (apportionment) to establish and maintain such classes.

A number of questions have arisen about the authority of districts to convert noncredit and/or credit offerings to community service classes. This practice is not prohibited by statute; however, it is not possible to award community college credit for taking such community service classes. To allow credit to be awarded within fee-based community service classes would be inconsistent with the enrollment fee statute. On the other hand, in Legal Opinion O 94-25 we concluded that a community college district may convert a noncredit course to a community service class unless the class is a direct and integral part of the credit program (e.g., the class is required as a prerequisite for a credit course).

E. Fee to Audit Courses: Education Code section 76370 authorizes districts to charge students who audit courses a fee not to exceed \$15 per unit per semester. Students auditing are prohibited from changing their enrollment to credit status, and the attendance of auditors is not included for purposes of state apportionment.

Please note that students enrolled for credit in ten or more semester units may audit an additional three or fewer units without paying this fee. There is no authority for districts which establish this fee to allow any other type of waiver.

F. Instructional Materials: Education Code section 76365 allows districts to require that students provide various types of instructional materials and enables districts to sell

such materials to students who wish to purchase the required materials from the district. Generally speaking, there is really no such thing as an "instructional materials fee;" instead, the student is being given the opportunity to purchase certain required course materials from a district.

Section 76365 has been implemented by regulations of the Board of Governors found in sections 59400-59408 of Title 5 of the California Code of Regulations. The law provides that students can only be required to provide materials which are of continuing value to the student outside of the classroom setting, including, but not limited to textbooks, tools, equipment, clothing, and those materials which are necessary for a student's vocational training and employment. The regulations further provide that "instructional and other materials" means tangible personal property that is owned or primarily controlled by the student.

"Required instructional and other materials" are materials which the student must procure or possess as a condition of registration, enrollment, or entry into a class; or any material which is necessary to achieve the required objectives of a course.

Finally, the regulations specify that the material must not be solely or exclusively available from the district. A material will not be considered to be solely or exclusively available from the district if it is provided to the student at the district's actual cost, and there are health and safety reasons for the district being the provider, or if the district is providing the material cheaper than it is available elsewhere.

It is important to remember that these regulations only apply to materials which are required as a condition of registration, enrollment, etc. If a material is helpful to students, but is not required, then it may be sold to students under the authority of the permissive code. The material need not be tangible personal property; it need not be of continuing value outside the classroom setting; and it can be available exclusively from the district.

Education Code section 81458 provides additional authority for districts to sell materials to students taking noncredit classes. Section 81458 authorizes districts to sell materials that may be necessary for the making of articles by persons in the class. The materials are to be sold at the cost to the district, and the article becomes the property of the student.

Please note that districts may not charge an across-the-board or per unit instructional materials fee (see Legal Opinion O 93-12). Students may only be required to pay for instructional materials under the circumstances described above.

Appendix A contains a detailed analysis of the kinds of materials that may and may not be required under the instructional materials regulations.

G. Nonresident Tuition: Section 76140 requires districts to charge a nonresident tuition fee in the event it chooses to admit nonresidents. The statute provides various methods/options for computing the nonresident tuition fee. It also provides that any district that has fewer than 3,001 FTES and whose boundary is within 10 miles of another state that has a reciprocity agreement with California may exempt students from that state from paying nonresident tuition, but such students must pay a fee of \$42 per unit.²

² Pursuant to section 76140(j) districts that have more than 1,500, but less than 3,001, FTES may exempt no more than 100 FTES per year from any bordering state with a reciprocity agreement. *The position of the*

Questions have been raised about charging tuition to students enrolled in distance education courses. At this time, the law does not exempt nonresident students enrolled in distance education courses from paying nonresident tuition. Students enrolled in distance education courses are subject to the same residency determination requirements and exemptions as traditional students. If a student enrolling in a distance education course is deemed to be a nonresident, that student is subject to nonresident tuition.

Districts are authorized (but not required) to exempt all nonresidents who take six or fewer units. Districts are also authorized to exempt, on an individual basis, nonresidents who are both citizens and residents of foreign countries.

It should also be noted that Education Code section 76141 authorizes districts, subject to certain limitations, to charge citizens and residents of foreign countries a fee for the support of capital outlay which may not exceed 50% of the amount charged for nonresident tuition.²

Districts are required to exempt from nonresident tuition various groups of students including:

1. Students taking noncredit classes;
2. Apprentices taking classes of related and supplemental instruction; (Ed. Code § 76350 and Labor Code 3074)
3. Certain police academy trainees, and certain job transferees (See Ed. Code, §§ 76140.5 and 76143);
4. Students who are members of the armed forces of the United States stationed in this state on active duty, except those assigned to California for educational purposes (see Ed. Code, § 68075);⁴
5. Students who are a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces (see Ed. Code, § 68074);⁵

Chancellor's Office is that the \$42 fee specified in section 76140(k) is intended to be a fee in lieu of the enrollment fee required by section 76300. Therefore, students charged this fee should not also be required to pay the enrollment fee. We are pursuing legislation to codify this policy.

³ For holders of a TN/TD visa created for business persons and professionals who are citizens of Canada and Mexico under the North American Free Trade Agreement (NAFTA), in *Carlson v. Trustees*, USDC Case No. 98-8152 R (Ex) (1999), the federal district court found that: 1) The holder of a TN/TD does not have the legal capacity to possess the requisite intent to establish domicile and thus cannot be granted residency status in California; and 2) NAFTA did not intend to allow individuals entering the U.S. under its provisions the ability to establish domicile in the U.S.A. Dismissing the plaintiff's case in its entirety, the court confirmed that opinion as a matter of law on May 24, 1999. Districts were notified shortly thereafter to follow the court's ruling in *Carlson* and deny California residency for purposes of tuition to students with NAFTA TN/TD visas as a matter of law.

⁴ In *Legal Opinion 99-21* we concluded that service in the California National Guard does not constitute being a member of the armed forces of the United States for purposes of Education Code sections 68074 and 68075.

⁵ AB 1346 (Stats. 2000, ch. 571, § 1) amended Education Code section 68074 and repealed section 68074.1 to provide permanent residency for dependents of members of the armed forces rather than the previous one-year waiver prior to establishing residency.

6. A parent who is a federal civil service employee and his or her natural or adopted dependent children if the parent moved to California as a result of a military realignment action that involves the relocation of a least 100 employees (see Ed. Code, § 68084, added by Stats. 1998, ch. 952 (AB 639), eff. Sept. 29, 1998); and

7. Minor students taking a class for high school credit only.⁶

Finally, it is important to keep in mind that students exempted from paying nonresident tuition are still required to pay the enrollment fee unless explicitly exempted from that fee. Students charged nonresident tuition are also subject to the enrollment fee.

H. Athletic Insurance: Prior to January 1, 1991, Education Code section 76470 authorized districts to make medical or hospital service available, through group, blanket or individual policies, to students of the district participating in athletic activities under the jurisdiction of the district. The cost of the insurance could be paid from district funds, by participating students, or by their parents. Effective January 1, 1991, section 76470 was repealed. The repealing legislation, however, explicitly stated that even though section 76470 was being repealed, districts continued to have all of the authority of that provision under the general authority of the permissive code (see also Stats. 1990, ch. 1372, § 1). It is the position of the Chancellor's Office that districts continue to have legal authority to require a student to pay a fee for insurance as a condition of enrollment or participation in an athletic program.

I. Cross Enrollment: During the 1994 session the Legislature passed, and the Governor signed, Senate Bill 1914 (Stats. 1994, ch. 552) which added Chapter 9.5 (commencing with section 66750) to the Education Code concerning cross-enrollment.⁷ This program, which became effective for the Fall 1995 term, permits students who are enrolled at a community college, a campus of the California State University or a campus of the University of California, under certain limited circumstances, to cross-enroll in one state-supported course per term at an institution from one of the other systems on a space-available basis at the discretion of the appropriate campus authorities on both campuses. Such students do not need to go through the formal admissions process and are exempt from required fees, except that the host campus may charge participating students an administrative fee, not to exceed ten dollars (\$10) per academic term.

A student is qualified to participate in the cross-enrollment program if he or she is enrolled in any campus of the California Community Colleges, the California State University or the University of California and meets the following requirements:

- (a) The student has completed at least one term at the home campus as a matriculated student and is taking at least six units at the home campus during the current term;
- (b) The student has attained a grade point average of 2.0 for work completed;
- (c) The student has paid appropriate tuition or fees, or both, required by the home campus for the academic term in which the student seeks to cross-enroll; and

⁶ When the minor takes a class for college credit, the nonresident fee should be charged.

⁷ This section was due to "sunset" on January 1, 2000; however, the sunset provision was extended to January 1, 2004, by SB 361 (Stats. 1999, ch. 688).

(d) The student has the appropriate academic preparation, as determined by the host campus, consistent with the standard applied to currently enrolled students, to enroll in the course in which the student seeks to enroll.

Students who are cross-enrolled from another segment are not required to participate in the community college matriculation program, but such students can be required to meet any prerequisites or corequisites which have been properly established for the course.

The Chancellor's Office worked with representatives from the California State University and the University of California to establish guidelines for this program. These guidelines were issued by the Intersegmental Coordinating Council in June of 1995.

III. FEES FOR SERVICES

Some fees for services are explicitly authorized by statute while others may be charged under the authority of the permissive code so long as they are not required as a condition of registration, enrollment or completion of a course. In other words, the student can be required to pay for a service where the service is truly optional and is not tied to registration, course-enrollment or completion. In deciding whether or not to charge for a particular service, we recommend that districts balance the need to cover their operating costs with the fact that even modest additional fees may effectively restrict access for students who are least able to pay. The State has exempted students receiving public benefits and those who demonstrate financial need from many mandatory fees and districts may wish to consider extending this policy to optional service fees.

The following fees for services are specifically authorized by statute:

A. Health Fee: Education Code section 76355 authorizes a community college district to charge a fee not to exceed \$10 per semester, up to \$7 for summer sessions or intercession of at least four weeks in length, or up to \$7 per quarter for health supervision and health services. The governing board of a district may increase the health fee by the same percentage increase as the Implicit Price Deflator for State and Local Government Purchase of Goods and Services. Whenever the calculation produces an increase of \$1 above the existing fee, the fee may be increased by \$1.⁸

Generally speaking, the fee may be charged of all students, whether or not they choose to use the health services. Part-time students may be exempted *or required to pay a portion of the full fee*. On the other hand, districts must exempt apprentices, low-income students (those eligible for a Board of Governors Enrollment Fee Waiver), dependent children and surviving spouses of members of the California National Guard who are killed or permanently disabled while in the active service of the state, and students who depend on prayer for healing.

Questions have arisen about the authority of districts to exempt additional categories of students such as minors and students taking only distance education courses. Since the language of the statute is permissive, designating additional categories of students as exempt from the health fee is not prohibited under the law.

⁸Pursuant to Education Code section 76355, on March 5, 1997, the Chancellor issued a memo authorizing the districts to raise the maximum health fees by \$1.00 to \$11.00 per semester and \$8.00 per summer session or intercession. The fee increase was based on calculations by the Department of Finance and the Implicit Price Deflator Index and was effective for the first quarter of 1997.

B. Parking Fee: AB 2812 (Stats. 1998, ch. 954), The 1998 Higher Education Omnibus Act, reorganized and consolidated community college parking fee laws by repealing Education Code sections 76360, 76361, 76361.5, 76390, and 76391, and replacing them with new sections 76360 and 76361. As in the previous version, newly enacted section 76360 authorizes districts to require students and employees to pay a fee of up to \$40 per semester (\$20 per intersession) for parking. For students ridesharing or carpooling, as defined, section 76360 retains the previous maximum fee of \$30 per semester and establishes a maximum of \$10 per intersession. Under new section 76360(b), the authority to charge parking fees above these limits, previously restricted to Glendale, Pasadena and Santa Monica Community College Districts, is extended to all districts, but only under specific circumstances as follows:

“(b) The governing board may require payment of a parking fee at a campus in excess of the limits set forth in subdivision (a) for the purpose of funding the construction of on-campus parking facilities if both of the following conditions exist at the campus:

- (1) The full-time equivalent (FTES) per parking space on the campus exceeds the statewide average FTES per parking space on community college campuses.
- (2) The market price per square foot of land adjacent to the campus exceeds the statewide average market price per square foot of land adjacent to community college campuses.

If the governing board requires payment of a parking fee in excess of the limits set forth in subdivision (a), the fee may not exceed the actual cost of constructing a parking structure.”

Under section 76360, low income students remain exempt from parking fees over \$20 per semester. Low income students are described in section 76300(g) as those who demonstrate financial need under federal standards or income standards established by the Board of Governors and students receiving benefits under the CalWORKs Program (formerly Aid to Families With Dependent Children), the Supplemental Security Income/State Supplemental Payment Program or a general assistance program. (See Legal Opinion L 94-12).

Also unchanged under section 76360, parking fees may not exceed the actual cost of providing parking and may only be charged to those who use the parking facilities. Parking fees may only be expended for parking services or for reducing costs to students and employees using public transportation to and from school. And, finally, section 76360 continues to provide that the governing board may require persons other than students and employees to pay fees for using the parking facilities. (However, Education Code section 67301(b) requires the Board of Governors to adopt regulations requiring the governing board of each community college district to provide visitor parking at each campus at no charge for a disabled person or veteran and for persons providing transportation services to individuals with disabilities. Regulations in conformance with this requirement are contained in section 59306(a) of Title 5.)

In legal opinion 00-07 we concluded that while Education Code section 76360 provides that parking fees collected by a community college “shall be expended only for parking services ...” the law does not assign any particular priority to the various types of

parking service expenses. (Ed. Code, § 76360(e)). As such, districts may use their discretion when allocating parking fees for various parking services such as parking security, repair, and maintenance.

C. Transportation Fee: AB 2812 (Stats. 1998, ch. 954) also reorganized and consolidated the statutes related to community college transportation fees by repealing Education Code sections 76360, 76361, 76361.5, 76390, and 76391, and replacing them with new sections 76360 and 76361. In the revised version of section 76361, a district's authority to require students and employees to pay a fee for the purpose of reducing fares for services provided by common carriers or municipally-owned transit systems, is expanded to include the authority to require payment of a fee to partially or fully recover transportation costs incurred by the district. Previously, only Butte Community College District had the authority to require payment of transportation fees to recover district transportation costs. Section 76361(b) provides that only those students and employees who use the transportation services may be required to pay the fees, or in the alternative, a district may charge transportation fees regardless of actual usage, in two situations:

- (1) All students and employees may be required to pay a transportation fee if a majority of the students and a majority of the employees vote for such a proposition; or
- (2) All students may be required to pay a transportation fee if a majority of the students vote that all students will pay. In this instance, the employees are not entitled to use the services.

As before, elections may be held on a campus-by-campus basis. However, the fees levied by election are no longer limited to a two year period, but instead remain valid for "a period of time to be determined by the governing board of the district." (Ed. Code, §§ 76361(b)(1) and 76361(b)(2)). Under previous law, only Butte Community College District had the authority to designate a time period greater than two years, during which the transportation fees authorized by an election would be valid.

Note: As with previous law in this area, it remains unclear whether a majority of all students/employees on a campus is required, or whether a majority of students/employees voting is required. The Chancellor's Office has not rendered an opinion with regard to this issue and believes the Legislature is the appropriate body to clarify intent.

The maximum amount of transportation and parking fees levied by a district may not exceed \$60 per semester or \$30 per intersession, or a proportionate equivalent for part-time students.

Low income students (those eligible for a Board of Governors Enrollment Fee Waiver) must be exempted, and part-time students must have their fees prorated based on the number of units in which the part-time student is enrolled. Finally, the governing board may require payment of a fee, to be set by the governing board, for the use of transportation services by persons other than students and employees.

Additional authority for transportation fees is set forth in Education Code section 82305.6. This section provides that when the district provides for the transportation of students to and from the colleges, the governing board may require the "parents and guardians of all or some of the students transported to pay a portion of the cost of such transportation. . . ." The amount charged can be no greater than that paid for

transportation on a common carrier. Parents and guardians who are indigent are exempt, and no charge can be made for transporting handicapped students.

It is the opinion of the Chancellor's Office that, under the authority of the permissive code, a district can provide for transportation of students to and from the colleges, and that students who wish to avail themselves of this district service can be required to pay a fee. As long as students are not required to take this transportation, but rather have it available as an option, this is a service that may be provided for a fee under the authority of the permissive code.

D. Student Representation Fee: Education Code section 76060.5 provides that a mandatory student representation fee of \$1 per semester may be charged of all students, upon a favorable vote of two-thirds of students voting in an election on the matter (provided that the number of students who vote equals or exceeds the average of the number of students who voted in the previous three student body elections). The statute provides certain reasons that students may refuse to pay the fee. The statute has been implemented by regulations of the Board of Governors, set forth in Title 5, sections 54801-54805.

In Legal Opinion L 98-09, we concluded that a newly formed student government organization cannot order an election for the purpose of having the student body vote to establish a student representation fee without having held three prior student body elections. In specifically requiring three previous student body elections prior to raising the student fee issue, the intent of the Legislature is to ensure meaningful participation in the student body election process. However, under certain circumstances, voting results from student body elections held under a previous and related student government structure may satisfy this requirement.

It is the opinion of the Chancellor's Office that revenues from the student representation fee can be used for any purpose related to representing the views of students with governmental bodies. Such revenue can be used to travel to and from conferences sponsored by CalSACC or similar student organizations, to purchase computer equipment needed to conduct legislative research, to subscribe to legislative publications, or to pay for any other expense reasonably necessary to effectuate student representation activities. (See Legal Opinion O 95-24.)

Districts which have established or are contemplating establishing a student representation fee should be aware that there has recently been considerable litigation on student fee issues, including *Smith v. Regents of the University of California* (1993) 4 Cal.4th 843, cert.den. 114 S.Ct. 181 in which the courts held that the First Amendment to the U.S. Constitution precludes the University of California from charging students a mandatory fee which is used to support political activities. However, we believe a challenge to the community college student representation fee on such grounds is less likely because the fee is explicitly authorized by statute and because students may refuse to pay the fee on political grounds.

E. Student Center Fee: Education Code section 76375 authorizes districts to establish an annual building and operating fee, for the purpose of financing, constructing, enlarging, remodeling, refurbishing, and operating a student body center. The fee may be required of all students attending the community college where the center is located. The fee can only be imposed after the favorable vote of two-thirds of the students voting in an election held for that purpose. The fee cannot exceed \$1 per credit hour, up to a maximum of \$10 per student per year. Noncredit enrollees cannot be required to pay the

fee, nor can recipients of CalWORKs (formerly AFDC), SSI/SSP, or general assistance. The Board of Governors has adopted regulations to implement this fee in section 58510 of Title 5 of the California Code of Regulations.

F. Student Records: Education Code section 76223 authorizes districts to make a reasonable charge in an amount not to exceed the actual cost of furnishing copies of any student record, provided that no charge can be made for furnishing up to two transcripts of students' records or up to two verifications of various records of students. No charge may be made for the cost to search for or retrieve any student record. It should be noted that federal law and regulation prohibit the charging of fees for any documentation required for a student's receipt of Title IV student financial aid.

In Legal Opinion 99-02 we concluded that while Education Code section 76223 does not allow a district to charge a fee for verifying enrollment status for purposes of determining eligibility for district programs and activities, the district may offer the student the right to purchase a card providing quick and convenient verification of enrollment, provided it is completely optional. We also noted that a district may charge a fee for a student identification card that serves as a verification of enrollment when required by outside entities, provided the fee for the card is not a condition of enrollment, is only levied after the student has requested three or more enrollment verifications, and the price of the card does not exceed the cost of making one copy of a verification of enrollment document the student would otherwise be required to obtain. (See also IV, D, Student Identification Card, below.)

G. Dormitory Fee: Education Code section 81670 authorizes districts to construct and maintain dormitories, and to fix the rates that will be charged to students for quarters in the dormitories.

H. Child Care: Prior to January 1, 1991, Education Code section 79121 provided that community college districts could accept student fees, parent fees, and private funds to operate campus child development centers. After a series of complicated legislative changes, section 79121 and a related provision now located at section 66060 continue to authorize operation of child development centers, but neither section expressly mentions fees. Nevertheless, it is the opinion of the Chancellor's Office that districts have the authority to charge student parents a fee for child care services for their children. The fees are being charged to parents who voluntarily choose to use this service. However, a district cannot charge a student a fee other than the enrollment fee to enroll in child development classes.

I. Nonresident Application Processing Fee: Education Code section 76142 authorizes community college districts to charge nonresident applicants who are both citizens and residents of a foreign country a processing fee not to exceed the lesser of (1) the actual cost of processing an application and other documentation required by the federal government, or (2) \$100, which may be deducted from the tuition fee at the time of enrollment. No processing fee can be charged to an applicant who would be eligible for an exemption from nonresident tuition pursuant to Education Code section 76140, or who can demonstrate economic hardship (as defined by the district in accordance with certain parameters specified in statute).

J. Use Fee for Facilities Financed by the Issuance of Revenue Bonds

When the construction of a facility is financed by the issuance of revenue bonds, Education Code section 81901(b)(3) authorizes the governing board of a community college district to "fix rates, rents, or other charges for the use of any project acquired, constructed, equipped, furnished, operated or maintained by the board, or for services rendered in connection therewith." In Legal Opinion L 97-17 we held that section 81901(b)(3) allows districts to charge students a fee for the use of such facilities. In particular, where a student center is constructed using revenue bonds, this allows the district to charge a fee that exceeds the maximum \$10 student center fee provided for in Education Code section 76375. However, Opinion L 97-17 also holds that section 81901(b)(3) authorizes a use fee, and thus does not authorize districts to charge a blanket fee to all students.

It would be justifiable for all students attending classes where the facility is located to be assessed a fee for use of such a facility. It would be reasonable to charge a use fee to students attending classes at other nearby locations, if those students occasionally come to the main campus to use the facility. However, in our view, it is not permissible to charge such use fees to students attending classes at remote locations, especially sites outside of the district, unless there is evidence that students in those classes use the facility on at least an occasional basis. One possible approach would be to give students attending classes at remote locations the option to decline to pay the fee, with the understanding that they then lose any right to use the facility.

K. Credit by Examination: Fees charged for credit by examination offered pursuant to Title 5, section 55753 have been determined to be optional fees for service. A reasonable fee for credit by examination is the per unit fee of \$11.00 established by Education Code section 76300.

IV. PROHIBITED PRACTICES

The following kinds of fees may not be charged under current law:

A. Late Application Fee: Education Code section 72251, effective January 1, 1992, would have authorized districts to charge up to \$2 for a late application fee. However, this section was repealed, effective July 16, 1991, and the Chancellor's Office has determined that a late application fee cannot be charged under the authority of the permissive code.

B. Add/Drop Fee: Education Code section 72250.5, effective January 1, 1992, would have authorized districts to charge up to \$1 for the cost of making program changes initiated by a student. However, this section was repealed effective July 16, 1991, and the Chancellor's Office has determined that an add/drop fee cannot be charged under the authority of the permissive code.

C. Mandatory Student Activities Fee: There is no statutory authority for charging a mandatory student activities fee. However, an optional or voluntary student activities fee is permissible. Questions have been raised regarding the legality of the "negative check-off" approach to collecting a student activities fee. Under this approach the student, when registering or enrolling, is given the option of checking a box that he or she does not choose to pay a student activities fee. If the student checks the box, he or she will not be charged the fee. If the student does not check the box, the fee will be assessed. Since this negative check-off approach preserves a student's option to pay or not pay the fee, it is both legal and appropriate. The test to be applied in implementing a negative check-off approach is that a reasonable student going through the enrollment process and reading

the forms must understand that he or she has the option of paying or not paying the student activities fee.

Questions have also been raised about the legality of a system of student activity fee collection that requires the student to obtain a signature of a district official to waive the fee. Since the student's option to pay is preserved, the method is technically legal. However, because additional tasks are required of both the student and the district to process a student's desire to waive an optional fee, this method is fraught with potential problems. To implement a sign-off system, the district must take every precaution to ensure that officials authorized to sign off the fee for students are on-site and easily accessible during the registration. The test to be applied here is whether opting not to pay the fee is unduly burdensome. For obvious reasons, this system is not an option for mail, on-line, or telephone registration.

D. Student Identification Card: In Legal Opinion L 97-11, we concluded that a district cannot charge a mandatory fee for a student identification card, even if the card also has other purposes, such as use as a debit card for purchase of instructional materials. Education Code section 76365, and the implementing regulations contained in Title 5, section 59400 et seq., permit districts to require students to provide certain instructional materials at the students' own expense. However, Legal Opinion L 97-11 specifically concluded that student ID cards do not fall under the definition of "instructional materials" contained in Title 5, section 59402(b), and thus, charging a fee for a student ID card cannot be justified. *Similarly, in Legal Opinion 00-05, we concluded that since there is no statutory authority for such a fee, a district may not charge a fee to replace a student ID card that was initially issued at no charge.* (See also II, F, Instructional Materials, above.)

This does not mean that a district cannot offer students the opportunity to purchase such a card in order to obtain certain optional benefits such as faster registration, ease of purchasing at the bookstore, etc. We also find no reason to believe that a district may not provide students, at district expense, with a card which students are then required to use for certain identification purposes. *In Legal Opinion 99-02 we concluded that while Education Code section 76223 does not allow a district to charge a fee for verifying enrollment status for purposes of determining eligibility for district programs and activities, the district may offer the student the right to purchase a card providing quick and convenient verification of enrollment, provided it is completely optional. We also noted that a district may charge a fee for a student identification card that serves as a verification of enrollment when required by outside entities, provided the fee for the card is not a condition of enrollment, is only levied after the student has requested three or more enrollment verifications, and the price of the card does not exceed the cost of making one copy of a verification of enrollment document the student would otherwise be required to obtain.* (See also III, F, Student Records, above.)

E. Fees Charged Through Student Body Organizations: Unless expressly provided by statute, a student body organization cannot charge a fee that a district governing board does not have authority to levy. It should be noted, however, that student body organizations may charge students a student activity fee or sell them a student body card so long as the fee or charge is optional as discussed under C, Mandatory Student Activities Fee, above.

F. Nonresident Application Fee: The Chancellor's Office has determined that a nonresident application fee cannot be imposed on residents of other states under the authority of the permissive code. Since payment of the fee would be a condition of enrollment in or attendance in classes, it cannot be imposed without specific legislative authorization. However, as discussed above, such a fee is authorized with respect to citizens and residents of foreign countries under Education Code section 76142.

G. Field Trips: Education Code section 72640, relating to field trips, was repealed, effective January 1, 1991. Provisions on field trips are now found in sections 55450-55451 of Title 5 of the California Code of Regulations. Section 55450(d) prohibits students from being required to pay a fee in order to participate in an instructionally related field trip. Previously, districts could charge students for field trips outside the State, but in May 1993 the Board of Governors amended section 55450 to clarify that students cannot be charged for field trips either inside or outside the State. However, districts are not required to pay the costs of meals, lodging, and other "incidental expenses" of students participating in field trips.

These provisions effectively mean that districts cannot charge fees for arranging field trips, but students can be asked to pick up their expenses of meals, lodging, and incidental expenses. A district would be authorized to put a meals and lodging package together, which a student could choose to purchase from the district or secure on his/her own. Finally, the regulations continue to provide that no student is to be prevented from making a field trip or excursion because of a lack of sufficient funds. This language has been carried over from the statute and continues to apply.

Some questions have been raised regarding districts charging students "entrance fees" for field trips to concerts, museums, plays, etc. In Legal Opinion M 96-17 we held that entrance fees should be considered "incidental expenses" which students can be asked to pay. However, as with other types of field trips, a student cannot be excluded from the event due to lack of funds.

H. Fees for Dependents of Certain Veterans: Education Code section 32320 provides that community college districts are prohibited from charging "any fees, including enrollment fees, registration fees, or incidental fees" to any of the following:

(1) Any dependent eligible to receive assistance under Article 2 (commencing with section 890) of Chapter 4 of Division 4 of the Military and Veterans Code.

(2) Any child of any veteran of the United States military who has a service-connected disability, has been killed in service, or has died of a service-connected disability, where the Department of Veterans Affairs determines the child eligible on the basis that the annual income of the child, including the value of any support received from a parent, does not exceed the national poverty level for one person as most recently calculated by the Bureau of the Census of the United States Department of Commerce.⁹

⁹ Education Code section 32320 was amended by Senate Bill 251 (Stats. 1999, ch. 689) to provide that the maximum income level of a child who would not be charged tuition or fees under this provision would be the national poverty level rather than the existing flat amount of \$7,000 and that a person who is eligible for the waiver of tuition or fees under these provisions may apply for each academic year during which he or she applies for that waiver, but an eligible person may not receive a waiver of tuition or fees for a prior academic year.

(3) Any dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty, and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state.

Section 32320 excludes a dependent of a veteran who is declared missing in action or a prisoner of war as provided in paragraph (4) of subdivision (a) of section 890 of the Military and Veterans Code. Thus, these students may continue to be charged such fees.

It is not entirely clear what is encompassed by the phrase "incidental fees" as used in section 32320. However, in order to be consistent with the policy of the Department of Veterans Affairs, which is applicable at the University of California and the California State University, we recommend that all fees beyond the enrollment fee which are required for admission, registration, enrollment or completion of a course (i.e., required course fees listed in items A, C, D, E, F, and H under section II, above) be considered "incidental fees." Note, however, that colleges are allowed to charge nonresident tuition to these students.

In Legal Opinion 94-14, we specifically held that parking fees are not incidental fees and that a student activity or ID card fee, which is entirely voluntary (see C, D and E under section IV, above), is not an incidental fee so long as admission, registration, enrollment or completion of a course is not effectively restricted for students who decline to pay the fee. Thus, the exemption afforded by section 32320 does not apply to these fees. On the other hand, a student center fee would be considered an incidental fee if a student is precluded from taking credit courses unless he/she pays the fee. But, if the same credit courses are concurrently available elsewhere in the district without payment of the student center fee, the fee would not be an access barrier and the exemption under section 32320 would not apply.

I. Fees for Required or Funded Services: It is the opinion of the Chancellor's Office that community college districts may not charge students a fee for use of a service which the district is required to provide by state law or which the district is already funded to provide. For example, in Legal Opinion L 95-23 we concluded that a district may not charge students a fee for counseling services the district is required to provide under Education Code section 72620 or Title 5, section 51018. Nor may a district charge students an additional fee for use of health services which are already funded from student health fees collected pursuant to Education Code section 76355.

J. Refundable Deposits: In Legal Opinion L 95-23 we also held that a "refundable deposit" amounts to a fee if it is required as a condition of registration, enrollment, or entry into classes, or as a condition of completing the required classroom objectives of a course. Therefore, statutory authority is required in order to impose such a charge on a student regardless of whether it is characterized as a "refundable deposit" or as an ordinary nonrefundable fee.

K. Fees for Distance Education: In Legal Opinion L 95-33 we held that a district may not charge an additional mandatory fee for a credit course delivered via Internet where the additional fee is intended to cover the cost of Internet access. If instruction is offered as a community service class without credit, a district could charge students for the cost of Internet access necessary to participate in the class. Such a fee could also be charged for a credit course if it is truly optional (the student can participate effectively without

paying the additional fee), but, there is no statutory authority for charging such a fee for a credit course if the fee is mandatory.

L. Mandatory Mailing Fees: There is no express authority for requiring students, as a condition of enrollment, to pay a fee to cover the costs of mailing grade reports, registration packets and other student documents. As discussed in III, F, above, Education Code section 76223 authorizes charging students for "the actual cost" of providing copies of student records. However, in Legal Opinion M 96-17 we explained that this permits charging a flat fee for mailing costs only if all the following conditions are met:

- (1) Students are not charged for mailing documents other than individual student records (e.g. published class schedules or registration packets that do not relate specifically to a particular student);
- (2) No student is charged an amount in excess of the actual cost of furnishing the records he or she receives;
- (3) Students are advised that they will not be barred from registering or enrolling in any course if they decline to pay the fee; and
- (4) Students are advised that if they do not wish to be charged for mailing costs they may come to campus to obtain and pay for copies of student records.

M. Mandatory Fee for Rental of Practice Rooms: In Legal Opinion M 96-17 we also considered a situation where a college charged music students a mandatory fee for the use of practice rooms which they were required to use as a part of their class assignments. We held that this could not be justified as an instructional materials fee and that there was no other statutory authority for the practice. However, it would be permissible for a college to make practice rooms available for students who are willing to pay an optional service fee for their use.

N. Apprenticeship Courses: *Education Code section 76350 prohibits community colleges from imposing resident or nonresident charges or fees for apprenticeship courses offered pursuant to Labor Code section 3074. On the other hand, in Legal Opinion 00-22 we concluded that enrollment fees may be charged to apprentices enrolled in courses which are not counted toward satisfying the related and supplemental instruction required under the apprenticeship agreement described in section 3074.*

APPENDIX A

APPLICATION OF INSTRUCTIONAL MATERIALS REGULATIONS TO SPECIFIC INSTANCES

A. SUGGESTED APPROACH

The following is a suggested approach for analyzing the application of Education Code section 76365 and Title 5 regulations on instructional materials (§§ 59400-59408) in specific instances:

1. Required Material? Must the material be procured or possessed as a condition of enrollment or entry into a class, or to achieve those required objectives of a course which are to be accomplished under the supervision of an instructor during class hours? If not, the material may be classifiable as "optional," and the regulations don't apply.
2. Tangible personal property? Is the material tangible personal property? If not, the regulations don't apply and some other legal authority must be found to authorize requiring the material or practice.
3. Owned or Controlled by the student? Is the material owned or primarily controlled by an individual student? If not, such materials can't be required.
4. Solely available from the district? Is the material not available through the district, or because the district requires that the material be purchased or procured from it? If so, do either of the two exceptions under Title 5, section 59402(c) apply so as to allow such material to be required?
5. Continuing value outside classroom setting? Can the material be taken from the classroom setting, and is it not wholly consumed, used up, or rendered valueless as it is applied in achieving those required objectives of a course which are accomplished under the supervision of an Instructor during class hours?

The answers to all of these questions must be "yes" for any material to be required of students.

B. SPECIFIC INSTANCES WITHIN SCOPE OF REGULATIONS

1. Textbooks - Education Code section 76365 specifically mentions textbooks as materials which have continuing value outside of the classroom. As such, the general rule is that districts may require students to provide their own textbooks. However, these textbooks can't be solely or exclusively available from the district unless the exception of Title 5, section 59402(c) applies.

A generally published textbook (e.g. one published by Harcourt-Brace) which the college bookstore carries is generally available, even if local bookstores don't carry the text. On the

other hand, if a district is the sole publisher of a textbook, placing copies of the text in local bookstores will not automatically make it generally available.

2. Syllabi and Instructor-Prepared Materials - Syllabi and instructor prepared material are distinguished from textbooks in that they are generally prepared for specific courses offered by a college or district, and they are almost always solely or exclusively provided by a district. Such materials, in most instances, have continuing value outside of the classroom setting. The district will be required to provide these materials, however, unless the exception to Title 5, section 59402(c) can be applied. Specifically, the syllabi or instructor-prepared material must be provided at the district's actual cost, in lieu of other generally available but more expensive material which would otherwise be required.

A syllabus or instructor-prepared material costing a district \$5.00 to provide to a student could be required in lieu of requiring the students to secure a nationally published textbook on the same subject which retailed for \$10.00. A district's "actual cost" of producing materials which it solely or exclusively provides can include a small markup necessary for selling the item through the college bookstore. The overall premise is that neither a district nor its employees ought to be making a profit on materials which the district solely or exclusively provides.

Syllabi and instructor-prepared materials which are required, but are supplemental or in addition to other required materials, should be provided by the district. On the other hand, a syllabus or instructor-prepared material can be classified as "optional" if it is not required by the district, or is not required to complete the required objectives of a course to be accomplished under the direction of an instructor during class hours. In this regard, a syllabus or other material could be "highly recommended" without being required. Also a material could be designated for "required reading" without it actually being a required material.

3. Lab Books and Workbooks - Lab books and workbooks are distinguished from texts and instructor-produced materials in that they are written in extensively or have various exercises which result in pages being torn out. Generally speaking, even though such materials are altered, they retain some value to the student outside of the classroom setting, and therefore can be required of students. Sheet music is another example of workbook-type material which can be required.

4. Laboratory Animals - Under most conditions, required laboratory animals must be provided by the district because they have no continuing value to the student outside of the classroom setting. This general rule, however, does not require a district to provide an unlimited supply of laboratory animals. Laboratory animals in addition to those reasonably needed for completion of course objectives can be sold as "optional" materials.

5. Clay - Clay is an example of a "transformed" material which, under most circumstances, can retain continuing value outside of the classroom setting. For instance, a district could require that a student provide 20 pounds of a given clay in order to take a course. The clay can be sold through the college bookstore if the student wishes to purchase it there. The clay, converted into objects and fired in a kiln, can be taken from the classroom by the student. The clay is not wholly consumed, used up or rendered valueless in the process of becoming an object.

A critical distinction to apply with respect to transformed materials is whether the transformed material becomes part of something that a student will take from a class, or part of something that is just used for practice, and will not become the property of a student. Materials used in practice--objects which don't become the property of the student--should be provided by the district; whereas if the material is part of an object which becomes the property of the student, it can be required.

Another method to handle transformed materials such as clay is to provide the material for free, but to charge the student for any transformed material which he or she wishes to take from the classroom. Under this method, the material doesn't become the permanent property of the student until he or she chooses to buy it. In any case, if students are required to provide clay, the transformed objects must become their property.

Other examples of transformed materials which can have value to the student outside of the classroom setting include wood, metal, film, photographic paper, oil paints, canvas, cloth, food and paper generally.

6. Welding Rods - Welding rods are an example of a "transformed" material which, under most circumstances, have no continuing value outside of the classroom setting after being used. A welding rod is rendered valueless in the process of being used for practice welds. Hence, a district must provide those rods necessary to complete those required objectives of a course which are to be accomplished under the supervision of an instructor during class hours. Extra welding rods for practice or in addition to those needed to complete required objectives may be sold to the student as optional material.

Welding rods and other transformed materials can have continuing value under limited circumstances, however. If welding rods are used to make a project or material which a student will take from the class, the student can be required to provide the rods that will be used for the project. For instance, if the welding rods are used to make an art object and the art object becomes the property of the student, welding rods may be required. Other examples of transformed materials which are usually rendered valueless after use include chemicals, gasoline, diesel fuel, and medical supplies such as Band-Aids, sterile syringes, and catheters.

7. Uniforms and Clothing - Education Code section 76365 specifically itemizes clothing as a material which is of continuing value to a student outside of the classroom setting. Students can be required to provide their own uniforms and clothing.

8. Bluebooks - Used bluebooks if returned, are materials of continuing value to the student outside of the classroom setting. If the district is the sole provider of bluebooks, they must be provided to students at the district's actual cost. If used bluebooks are not returned they are not of continuing value to the student and thus should be provided by the district.

9. Required Tests - Required tests are instructional materials, and have continuing value to the student, if they are returned. However, in instances where districts are the sole or exclusive

provider of tests and neither of the exceptions in Title 5, section 59402(c) apply, tests should be provided free.

Optional test or tests not required for entry or enrollment into a class can be charged for within the parameters of the "permissive code," Education Code section 70902(a).

10. Computer paper - Computer paper is a material which can be used by many students, but which can have continuing value to students. For instance, a district could require that each student provide a specified quantity and brand of computer paper in order to enroll in a course. A student wouldn't necessarily be using the box of computer paper he or she bought, but as long as he or she was entitled to keep all printouts, and as long as the student would generate roughly the quantity of paper he or she provided, a student could be required to provide computer paper.

11. Photographic Chemicals - Photographic chemicals are a material which can be used by many students, but which usually will have no continuing value to students outside of the classroom setting. Unlike computer paper, photographic chemicals can be tainted through misuse and tend to become used up in the classroom setting. If photographic chemicals are kept separate for each student and are given to students upon completion of the class, students can be required to provide them.

12. Recording Tape, Video Tape, Floppy Discs - Recording tape, video tape, floppy discs and other such reusable recording materials generally have continuing value to students outside of the classroom setting. They are generally available, tangible personal property of continuing value that is owned or controlled by the student.

13. Flowers and Food - Flowers for a flower arrangement class are an example of a material which can be required, with the student having the option to purchase them from the district. The district can specify the required flowers which the student needs and then provide the student with an option to purchase all necessary flowers from the district for a specified price. The same is true of food for a cooking class.

14. Equipment - Education Code section 76365 specifically mentions equipment as a material which has continuing value to the student outside of the classroom setting. Thus, students can be required to provide their own equipment for classes.

C. SPECIFIC INSTANCES OUTSIDE SCOPE OF REGULATIONS

1. Performances - Requiring a student to see a play, film, concert or other performance is not an instructional or other material, and not covered by the regulations. A district may require a student to see a specified play, film, concert or performance, but in order to generate ADA for the student's attendance at the performance the district must provide for attendance free of charge to the student. If seeing a performance is accomplished through a field trip, students may be asked to pay for incidental expenses, including entrance fees to the performance, but no student can be denied the right to participate in the field trip due to lack of funds. (See Title 5, §§ 55450-55451.)

2. Charge for Use of Equipment - In lieu of requiring students to provide certain expensive equipment, one suggestion is that students be given the option to "rent" the equipment from the district for the duration of the course. The instructional materials regulations do not address rental of equipment that is required by a district. Rather, the regulations only address the authority of districts to require the equipment.

Generally speaking, rental of equipment should be classified as an "optional fee," and thus would be authorized within the parameters of the permissive code. Districts should not subsidize their equipment budgets by renting equipment which students should not be expected to own. For instance, it would be improper to require students to provide a certain \$5,000 television camera and then offer them the "option" of renting one for use during the class for \$20 per semester.

3. Models for Art Classes - Models for art classes have no continuing value to the student outside of the classroom setting. They are not owned or primarily controlled by individual students. Therefore, students cannot be required to pay for models in art classes.

EXHIBIT "C"

(b) file a copy of its regulations, and any amendments thereto, with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to standards of scholarship.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51004. Degrees and Certificates.

The governing board of a community college district shall:

(a) adopt regulations consistent with regulations contained in Subchapter 10 (commencing with Section 55800) of Chapter 6;

(b) file a copy of its regulations and any amendments thereto with the Chancellor; and

(c) substantially comply with its regulations and the regulations of the Board of Governors pertaining to degrees and certificates.

NOTE: Authority cited: Sections 66700, and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51006. Open Courses.

(a) The governing board of a community college district shall adopt by resolution the following or a comparable statement: "The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to regulations contained in Article 2.5 (commencing with Section 55200) of Subchapter 1 of Chapter 6 of Division 6 of Title 5 of the California Code of Regulations."

(b) The statement of policy adopted by the board pursuant to Subsection (a) shall be published in the official catalog, schedule of classes, and addenda to the schedule of classes for which full-time equivalent student (FTES) is reported for state apportionment. A copy of the statement shall also be filed with the Chancellor.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 78020 et seq., Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 10-5-93; operative 11-4-93. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 93, No. 42).
3. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51008. Comprehensive Plan.

(a) The governing board of a community college district shall establish policies for, and approve, comprehensive or master plans which include academic master plans and long range master plans for facilities. The content of such plans shall be locally determined, except that the plans shall also address planning requirements specified by the Board of Governors.

(b) Such plans, as well as any annual updates or changes to such plans, shall be submitted to the Chancellor's Office for review and approval in

accordance with Section 70901(b)(9) of the Education Code and with regulations of the Board of Governors pertaining to such plans.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 70901, 70902, 71020.5, 81820, 81821 and 81822, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51010. Affirmative Action.

The governing board of a community college district shall:

(a) adopt a district policy which describes its affirmative action employment program and meets the requirements of Section 53002;

(b) develop and adopt a district faculty and staff diversity plan which meets the requirements of Section 53003;

(c) ensure that its employment patterns are annually surveyed in the manner required by Section 53004;

(d) ensure that a program of recruitment is carried out as required by Section 53021; and

(e) ensure that screening and selection procedures are developed and used in accordance with Section 53024;

(f) ensure that, where necessary, corrective action is taken consistent with the requirements of Section 53006;

(g) ensure that the pattern of hiring and retention, when viewed over time, furthers the goals established in the district's faculty and staff diversity plan; and

(h) substantially comply with the other provisions of Subchapter 1 (commencing with Section 53000) Chapter 4.

NOTE: Authority cited: Sections 70901 and 87105, Education Code, and Section 11138, Government Code. Reference: Article 4 (commencing with Section 87100) of Chapter 1, Part 51, Education Code, and Sections 11135-11139.5, Government Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
3. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 1 (Register 95, No. 15).
5. New subsection (f), subsection relettering and amendment of newly designated subsection (g) and NOTE filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).

§ 51012. Student Fees.

The governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 15).

§ 51014. Approval of New Colleges and Educational Centers.

(a) The governing board of a community college district planning the formation of a new college or educational center shall obtain approval for such college or educational center from the Board of Governors. Approval shall be obtained before classes begin at the new college or educational center.

(b) The provisions of Subchapter 11 (commencing with Section 55825) of Chapter 6 shall govern the approval of new colleges and educational centers.

NOTE: Authority cited: Sections 66700, 70901 and 81805, Education Code. Reference: Sections 66700 and 70901, and Articles 1, 2, and 3 (commencing with Section 81800) of Chapter 4, Part 49, Education Code.

PROOF OF SERVICE

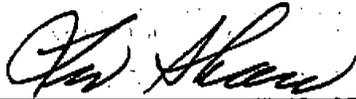
RE: CSM #00-TC-07
Chapter 764, Statutes of 1999
Chapter 1116, Statutes of 1992
Integrated Waste Management

I, the undersigned, declare as follows:

I am employed in the County of San Diego, State of California. I am 18 years of age or older and am not a party to the entitled causes(s). My business address is 5252 Balboa Avenue, Suite 807, San Diego, California 92117.

On August 10, 2001, I served the attached rebuttal of SixTen and Associates, on behalf of test claimants Santa Monica Community College District and South Lake Tahoe Community College District, to the parties on the attached CSM Mailing List for 00-TC-07, dated March 20, 2001 for this claim that was provided by the Commission on State Mandates, by placing a true copy thereof to the Commission and other state agencies and persons in the United States Mail at San Diego, California, with first-class postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 10, 2001 at San Diego, California.



Leo Shaw

Commission on State Mandates

List Date: 03/20/2001

Mailing Information

Mailing List

Claim Number 00-TC-07 Claimant Santa Monica Community College District,
Lake Tahoe Community College District

Subject Chapters 764/99 and 1116/92, Public Resources Code Sections 40148, 40196.3, 42920-42928, et al.

Issue Integrated Waste Management

Harmeet Barkschat, Interested person
Mandate Resource Services

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FAX: (916) 727-1734

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Sacramento CA 95814

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FAX: (916) 446-2011

Mr. Allan Burdick,
DMG-MAXIMUS

4320 Auburn Blvd. Suite 2000
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FAX: (916) 485-0111

Mr. James Lombard, Principal Analyst (A-15)
Department of Finance

915 L Street
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Ms. Cheryl Miller, Assoc. Vice-President
Santa Monica Community College District

1900 Pico Blvd.
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Tel: (310) 434-4221
FAX: (310) 434-4256

Claim Number

00-TC-

Claimant

Santa Monica Community College District,
Lake Tahoe Community College District

Subject

Chapters 764/99 and 1116/92, Public Resources Code Sections 40148, 40196.3, 42920-42928, et al.

Issue

Integrated Waste Management

Ms. Linda Moulton-Paterson, Executive Director
California Integrated Waste Mgt. Board

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Tel: (916) 341-6000
FAX: (916) 000-0000

Mr. Keith B. Petersen, President
Sixten & Associates

5252 Balboa Avenue Suite 807
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Mr. Patrick Ryan,
California Community Colleges
Chancellor's Office

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Mr. Steve Smith, CEO (Interested Person)
Mandated Cost Systems, Inc.

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Jim Spano,
State Controller's Office
Division of Audits (B-8)

300 Capitol Mall, Suite 518 P.O. Box 942850
Sacramento CA 95814

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Mr. Jon Stephens, Vice President

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Community College District One College Drive
South Lake Tahoe CA 96150

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FAX: (916) 000-0000

Claim Number 00-TC-07 **Claimant** Santa Monica Community College District
Lake Tahoe Community College District

Subject Chapters 764/99 and 1116/92, Public Resources Code Section 40148, 40196.3,
42920, 42928, et al.

Issue Integrated Waste Management

Mr. Glenn Haas, Bureau Chief
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Division of Accounting and Reporting
3301 C street Suite 500
Sacramento CA 95816

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STATE OF CALIFORNIA

COMMISSION ON STATE MANDATES

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October 7, 2003

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

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

RE: Draft Staff Analysis and Hearing Date

Integrated Waste Management, 00-TC-07

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

Public Resources Code Sections 40148, 40196.3, 42920-42928

Public Contract Code Sections 12167 and 12167.1

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

Manuals of the California Integrated Waste Management Board

Dear Mr. Petersen:

The draft staff analysis for this test claim is enclosed for your review and comment. We request all parties to provide information on appropriations pursuant to Public Contract Code section 12167 and 12167.1, specifically detailing amounts appropriated in fiscal years 1999-00 through 2003-04.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by **October 28, 2003**. You are advised that the Commission's regulations require comments filed with the Commission to be simultaneously served on other interested parties on the mailing list, and to be accompanied by a proof of service on those parties. If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This test claim is set for hearing on **Tuesday, December 2, 2003** at 1:30 p.m. in Room 126 of the State Capitol, Sacramento, California. The final staff analysis will be issued on or about October 30, 2003. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

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

Sincerely,

Paula Higashi
 Executive Director

Enc. Draft Staff Analysis
 cc. Mailing List (current mailing list attached)

MAILED:
 DATE: 10/3/03
 INITIAL: VS
 FILE:
 WORKING BINDER: _____

ITEM
TEST CLAIM
DRAFT STAFF ANALYSIS

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

Public Contract Code Section 12167 and 12167.1;

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

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

Integrated Waste Management (00-TC-07)

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

EXECUTIVE SUMMARY

STAFF WILL INSERT THE EXECUTIVE SUMMARY IN THE FINAL ANALYSIS

STAFF ANALYSIS

Claimants

Santa Monica and South Lake Tahoe Community College Districts

Chronology

- 3/9/01 Claimants file test claim with the Commission
- 5/18/01 California Integrated Waste Management Board ("Board") files comments on the test claim
- 5/18/01 California Community Colleges Chancellor's Office ("Chancellor's Office") files comments on the test claim
- 6/18/01 Department of Finance (DOF) files comments on the test claim
- 8/10/01 Claimants file comments in response to state agency comments
- 10/7/03 Commission staff issues draft staff analysis

Background

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

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

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

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

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

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

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

Any cost savings as a result of the integrated waste management plan are to be redirected, to the extent feasible, to the community college's integrated waste management plan to fund plan implementation and administration costs, in accordance with sections 12167 and 12167.1 of the Public Contract Code. Each state agency is required to report annually to the Board on its progress in reducing solid waste, with the report's minimum content specified in statute.

The Public Contract Code provisions of the test claim legislation require revenue received from the community college's integrated waste management plan to be deposited in the Integrated Waste Management Account at the Board. After July 1, 1994, the Board is authorized to spend the revenue upon appropriation by the Legislature to offset recycling program costs. Annual revenue under \$2000 is continuously appropriated for expenditure by state agencies and institutions, whereas annual revenue over \$2000 is available for expenditures upon appropriation by the Legislature.

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

The test claim legislation was based on a previous attempt by the same author to enact a state-agency waste reduction bill, Assembly Bill No. 705 (1997-1998 Reg. Sess.), which was vetoed. According to the legislative history of Assembly Bill No. 705, prior to the test claim legislation, most state agencies had implemented some type of a recycling program pursuant to Governor

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

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

Wilson's 1991 Executive Order W-7-91 (approximately 1,200 state sites had recycling programs), but most agencies had not implemented a comprehensive waste management plan.⁶

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

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

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

Claimant's Position

Claimant contends that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514. Claimant seeks reimbursement for labor, materials and supplies, travel,

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

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

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

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

¹⁰ Public Resources Code section 40400 et seq.

¹¹ Public Resources Code section 40500 et seq.

¹² Public Resources Code sections 40900 - 40901 et seq.

¹³ Public Resources Code section 41900 et seq.

data processing services and software, contracted services and consultants, equipment and capital assets, staff training, and student and public awareness training for community colleges to implement the following activities:

- Develop and adopt, on or before July 1, 2000, an integrated waste management plan that will reduce solid waste, reuse materials whenever possible, recycle recyclable materials, and procure products with recycled content pursuant to the general policy statement issued by the Board in its executive order entitled "Waste Reduction Policies and Procedures for State Agencies (August 1999);
- Submit, on or before July 15, 2000, an adopted integrated waste management plan to the Board. According to the Board's Model Integrated Waste Management Plan, the plan would include completion of prescribed information forms, a list of facilities, a worksheet for reporting progress of waste reduction and recycling programs, and a questionnaire regarding the college's mission statement, waste stream and waste diversion activities;
- Provide additional information and clarification to the Board to bring the plan to the level needed for approval;
- Accept and be governed by the model integrated waste management plan prepared by the Board in the event one is not submitted by July 15, 2000 and approved by January 1, 2001;
- Designate and pay at least one person as a solid waste reduction and recycling coordinator who is responsible for implementing the integrated waste management plan and serving as liaison to other state agencies and coordinators;
- Develop, implement and maintain source reduction, recycling and composting activities that divert at least 25 percent of all solid waste generated on campus from landfill disposal or transformation facilities by January 1, 2002.
- Request one or more extensions of time to comply with the 25 percent requirement by January 1, 2002, in the event the community college finds it necessary. In accordance with the request, create and maintain records to present substantial evidence: (1) that the community college is making a good faith effort to implement the programs in its integrated waste management plan, and (2) that would permit the community college to submit a plan of correction that demonstrates it will meet the requirements before the time extension expires, providing a date before the extension expires when the requirements will be met, identifying existing programs that will be modified, and identifying any new programs that will be implemented and the means by which these programs will be funded.
- Develop, implement and maintain source reduction, recycling and composting activities that divert at least 50 percent of all solid waste generated on campus from landfill disposal or transformation facilities by January 1, 2004.
- Request one or more alternatives to the time to comply with the 50 percent requirement by January 1, 2004, in the event the community college finds it necessary. In accordance with the request, create and maintain records to present substantial evidence: (1) that the community college is making a good faith effort to implement the programs in its integrated waste management plan, and has demonstrated progress toward meeting the alternative requirement as described in its annual reports to the Board; (2) as to why the community college has been unable to meet the 50-percent diversion requirement despite implementing

its plan; and (3) that the alternative source reduction, recycling and composting requirement requested represents the greatest diversion amount the community college may reasonably and feasibly achieve.

- Ensure that adequate areas are provided and adequate personnel are available to oversee collection, storage, and loading of recyclable materials when entering into or renewing a lease.
- Submit an annual report to the Board summarizing progress in reducing solid waste, to include at a minimum the following: (1) calculations of annual disposal reduction; (2) information on changes in waste generated or disposed of; (3) summary of progress in implementing the integrated waste management plan; (4) extent to which local agency programs or facilities for handling, diversion, and disposal of solid waste will be used; (5) summary of progress if a time extension was granted; (6) summary of progress toward an alternative requirement if one was granted; (7) other information relevant to compliance with section 42921.¹⁴
- Comply with regulations when adopted by the Board and follow specified criteria in applying for reductions or extensions to individual plans;
- Develop, implement and maintain an accounting system to enter and track source reduction, recycling and composting activities, the costs of those activities, and proceeds from the sale of any recycled materials, and other accounting systems which will allow making annual reports and determining savings, if any, from the source reduction, recycling and composting activities.

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

Claimant responded to other state agency contentions (of DOF, the Board and Chancellor's Office) as discussed in the analysis.

State Agency Positions

Department of Finance: DOF comments that community colleges are not required to develop or submit an integrated waste management plan, perform compliance reviews of the plan, be governed by the Board's model plan, designate a solid waste reduction or recycling coordinator, submit an annual report to the Board summarizing its progress, or comply with Board regulations; for the following reasons. First, these requirements are solely for state agencies, and as such do not apply to community colleges, but only to the Community Colleges Chancellor's

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

Office. Moreover, because a model integrated waste management plan would govern should the community college district not submit or not have an approved plan, DOF argues that local campuses do not have to develop, adopt or submit their own plan. But if the Commission identifies this activity as state-mandated, DOF asserts that some of the activities pled by claimant are one-time activities.

DOF also states that the cost of any program would be minimized or eliminated because: (1) savings from source reduction or increased revenue from recycling or selling compost, which should be excluded from the community college's costs; (2) sections 12167 and 12167.1 of the Public Contract Code state that any revenue exceeding \$2000 annually shall be available to state agencies to offset recycling program costs. DOF argues that these provisions do not apply to community colleges, which therefore should be able to keep all recycling program revenues. (3) The community colleges may institute fees to offset administrative costs and state reimbursement.

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

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

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

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

The Board further argues that Government Code section 17556, subdivision (e) applies in that the test claim legislation provides for offsetting savings and additional revenue. The Board argues that section 42925 of the Public Resources Code, as added by the test claim legislation, shows intent by the Legislature that cost savings be redirected to the agency or college to fund implementation and administration costs. The Board also states that the Public Contract Code

provisions pled by claimant probably do not apply to community colleges, but even if they do, pursuant to Public Resources Code section 42925, cost savings and revenue generation that result from the program are to be directed back to the community college for funding implementation and administrative costs. According to the Board, disposal costs avoidance and reuse of materials that would otherwise be disposed of are other examples of cost avoidance that would occur under the test claim legislation.

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

Discussion

The courts have found that article XIII B, section 6 of the California Constitution¹⁵ recognizes the state constitutional restrictions on the powers of local government to tax and spend.¹⁶ "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."¹⁷ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.¹⁸ In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.

¹⁵ Article XIII B, section 6 provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

¹⁶ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735.

¹⁷ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

¹⁸ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174. In *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal.4th at page 742, the court agreed that "activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds - even if the local entity is obligated to incur costs as a result of its discretionary decision to participate in a particular program or practice." The court left open the question of whether non-

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.¹⁹ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must impose costs mandated by the state.²⁰

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 6.²¹ 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."²²

This test claim presents the following issues:

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

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

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

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

DOF argues that community colleges are not required to perform many of the test claim requirements that apply solely to "state agencies" because community colleges are not state agencies, and as such are not included in the requirements. The test claim legislation contains

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

¹⁹ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

²⁰ *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.

²¹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

²² *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of Sonoma v. Commission on State Mandates*, *supra*, 84 Cal.App.4th at page 1280.

definitions of "large state facility," and "state agency." Section 40148 defines "large state facility" to include "campuses of the ... community colleges," so according to DOF, the only mandated activities are those imposing requirements on large state facilities. Section 40196's definition of "state agency" does not reference *campuses* of the community colleges. Even though the "state agency" definition references community colleges (plural), DOF believes the reference applies to the Chancellor's Office because it is a state agency, as opposed to individual community college campuses, which are local government entities.

Claimant responds that the plain meaning of the statutory definition includes community colleges, and agrees with the Chancellor's Office that the test claim legislation results in a new program for community college districts. As to DOF's assertion that the definition of "state agency" only applies to the Chancellor's Office, claimant states that if that had been the Legislature's intent, it could have said so.²³

Staff disagrees with DOF and finds that the test claim legislation applies to community colleges. "If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs."²⁴

The definitions in the test claim legislation are as follows:

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

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

This definition of "large state facility" states "campuses of the ... California Community Colleges, ... and facilities of other state agencies, that *the board determines*, are primary campuses... or facilities" (emphasis added).²⁵ The plain meaning of this statute indicates that whether something is a "large state facility" is based on a determination by the Board.²⁶

The plain meaning definition of "state agency," on the other hand, specifies "every state office, department, division, board, commission, or other agency of the state, including the California

²³ Letter from Claimant representative to Paula Higashi, August 10, 2001.

²⁴ *Estate of Griswald* (2001) 25 Cal.4th 904, 910-911.

²⁵ In the State Agency Model Integrated Waste Management Plan (February 2000) the Board states: "The Board has determined that each of these large State facilities shall complete a separate integrated waste management plan, signed by the facility director."

²⁶ In its publication, "State Agency Model Integrated Waste Management Plan" (Feb. 2000), the Board stated: "The board has determined that each of these large State facilities shall complete a separate integrated waste management plan, signed by the facility director. This IWMP must also be signed at the facility's State agency level by the chairman, commissioner, director, or president." (p.1)

Community Colleges...." No Board determination is necessary to determine a "state agency" as it is to determine a "large state facility." This explains why the term "campuses" is used in the definition of "large state facility," since it does not necessarily include all campuses. On the other hand, it is unnecessary to mention campuses in defining "state agency" since all campuses are included when the definition specifies the plural "California Community Colleges."

Assuming for the sake of argument there is ambiguity in the statute, we may look to extrinsic sources to interpret it, including the legislative history.²⁷ In this case, the legislative history states that the author attempted to enact a similar bill in 1997 (Assem. Bill No. 705), which was vetoed. The Assembly Natural Resources Committee analysis of Assembly Bill No. 705 indicated that the bill did not define "state agency," and suggested it should do so if the intent was to include community colleges, among other entities, within its scope.²⁸ The July 8, 1997 version of Assembly Bill No. 705 was amended to define state agencies to include community colleges. The author included these definitions from Assembly Bill No. 705 (1997-1998 Reg. Sess.) into the test claim legislation.

There is a sub-issue as to whether the definition of "state agency" includes only each community college district, or each community college campus. The Board has interpreted this definition of "state agency" as follows: "Example: The California Department of Corrections (CDC) has 33 prisons and numerous field offices. A separate IWMP [integrated waste management plan] must be completed and submitted for each of the 33 prisons, as well as one for CDC's headquarters and offices, as described above under "State Agencies."²⁹

Staff extends the Board's interpretation by analogy to community colleges so that each campus as well as each district would constitute a "state agency." Therefore, staff finds that "state agency," as used in the test claim statutes, includes the California community colleges,³⁰ which means each community college district as well as each campus.

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

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

²⁷ *Estate of Griswald, supra*, 25 Cal.4th 904, 911.

²⁸ Assembly Committee on Natural Resources, Analysis of Assembly Bill No. 705 (1997-1998 Reg. Sess.) as amended April 2, 1997, page 4.

²⁹ California Integrated Waste Management Board, State Agency Model Integrated Waste Management Plan (Feb. 2000), page 1.

³⁰ Community college is used interchangeably with "state agency" or "large state facility" in this analysis.

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

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

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

Subdivision (b) of this section states:

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

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

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

This section does not require a community college to enter into or renew a lease. Doing so would be at the college's discretion and so would not result in state-mandated costs.³¹ Therefore, staff finds that pursuant to section 42924, subdivision (b), ensuring that adequate areas and personnel to oversee collection, storage, and loading of recyclable materials when entering into and renewing a lease is not a mandated activity, and thus not subject to article XIII B, section 6.

Board regulations (Pub. Resources Code, § 42928): This section authorizes the Board to adopt regulations that establish criteria for granting, reviewing and considering reductions or extensions pursuant to sections 42922 or 42923. Claimant did not plead any regulations except for the Board publications, none of which addressed criteria for granting or reviewing reductions or extensions. Thus, staff finds section 42928 is not subject to article XIII B, section 6 because it does not impose requirements on a community college.

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

³¹ *Department of Finance v. Commission on State Mandates*, supra, 30 Cal. 4th 727, 742.

Government Code section 17516 defines executive order, for purposes of mandates law,³² as “any order, plan, requirement, rule, or regulation issued by any of the following: (a) The Governor. (b) Any officer or official serving at the pleasure of the Governor. (c) Any agency, department, board, or commission of state government.”

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

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

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

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

Staff disagrees that *Waste Reduction Policies and Procedures for State Agencies* (August 1999), is subject to article XIII B, section 6 for the following reasons. First, it contains no requirements, but merely a list of activities that state agencies “should” do, so it is not an executive order under Government Code section 17516. Moreover, in the *State Agency Model Integrated Waste Management Plan*, it states “The Board’s publication entitled *Waste Reduction Policies and Procedures for State Agencies* provides *suggestions* for ...programs that can be implemented to reduce the waste stream” (p. 3, Emphasis added). Second, *Waste Reduction Policies and Procedures for State Agencies* does not apply to community colleges. The statutes it references (Pub. Contract Code, § 12165, subd. (a); Pub. Resources Code, § 42560 – 42562; and Stats. 1989, ch. 1094) apply only to state agencies, not community colleges.³³ Third, the document

³² Government Code section 17510 states, “the definitions contained in this chapter govern the construction of this part,” meaning part 7 of the Government Code.

³³ The definition of “state agency” that includes community colleges only applies to Division 30 of the Public Resources Code. (Pub. Resources Code, §§ 40100 & 40196.3.)

itself does not refer to community colleges, nor does its own definition of "California State Agency" (p. 14, appendix A).

Therefore, because they do not contain requirements, do not apply to community colleges, or both, staff finds that the following three publications are not "executive orders" as defined in Government Code section 17516 and therefore not subject to article XIII B, section 6:

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

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

In order for the test claim legislation³⁴ to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program," defined as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.³⁵ Only one of these findings is necessary to trigger article XIII B, section 6.³⁶

The issue is whether the remaining test claim legislation³⁷ constitutes a program. These statutes involve the duty of community colleges to more effectively reduce or recycle their waste. This is a program that carries out governmental functions of sanitation and solid waste management and to a lesser extent, public health and environmental protection. The Legislature has indicated "an urgent need for state and local agencies to enact and implement an aggressive new integrated waste management program."³⁸ Although not within the traditional educational function of community colleges, these are governmental functions nonetheless.

Because of the statutory scheme in this test claim that applies to state agencies as well as community colleges, the question arises as to whether the test claim legislation must be unique to "local" government, as opposed to state government. In *County of Los Angeles v. State of California*³⁹ the court did not distinguish between local governmental functions and those at

³⁴ Hereafter, "test claim legislation" refers to the statutes and executive orders subject to article XIII B, section 6. It no longer refers to Public Resources Code sections 42924 and 42928, or the following three Board publications: *Conducting a Diversion Study – A Guide for California Jurisdictions* (September 1999); *Solid Waste Generation, Disposal, and Diversion Measurement Guide* (March 2000); and *Waste Reduction Policies and Procedures for State Agencies* (August 1999).

³⁵ *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

³⁶ *Carmel Valley Fire Protection Dist.* (1987) 190 Cal.App.3d 521, 537.

³⁷ The remaining statutes and executive orders subject to article XIII B, section 6, are: Public Resources Code sections 40148, 40196.3, 42920, 42921, 42922, 42923, 42925, 42926, 42927; Public Contract Code section 12167 and 12167.1; Statutes 1999, chapter 764; Statutes 1992, chapter 1116; "State Agency Model Integrated Waste Management Plan" (February 2000). Subsequent reference to the test claim statutes or legislation is limited to these.

³⁸ Public Resources Code section 40000, subdivision (d), which applies to Division 30.

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

other levels of government. Rather the court stated "the intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out **functions peculiar to government**, not for expenses incurred by local agencies as an incidental impact of laws that apply generally..."⁴⁰ [Emphasis added.] Thus, the program at issue need not be unique to *local* government, rather it need only provide a governmental function or impose unique requirements on local governments that do not apply generally to all residents or entities of the state, as in the definition of "program" cited above.

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

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

Article XIII B, section 6 of the California Constitution states, "whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds." To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.⁴¹

INTEGRATED WASTE MANAGEMENT PLAN

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

Subdivision (b)(1) of section 42920 states, "[o]n or before July 1, 2000, each state agency shall develop and adopt, in consultation with the board, an integrated waste management plan, in accordance with the requirements of this chapter." Subdivision (b)(2) states "[e]ach state agency shall submit an adopted integrated waste management plan to the board for review and approval on or before July 15, 2000." Read in isolation, these statutes appear to be mandates by including the word "shall."⁴²

However, subdivision (b)(3) states

If a state agency has not submitted an adopted integrated waste management plan or the model integrated waste management plan with revisions to the board by January 1, 2001, or if the board has disapproved the plan that was submitted, then the model integrated waste management plan, as revised by the board in consultation with the agency, shall

⁴⁰ *Ibid.*

⁴¹ *Lucia Mar Unified School Dist. v. Honig, supra*, 44 Cal.3d 830, 835.

⁴² Public Resources Code section 15: "'Shall' is mandatory and 'may' is permissive."

take effect on that date, or on a later date as determined by the board, and shall have the same force and effect as if adopted by the state agency.

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

Claimant responded to DOF by arguing that the statutory language is unmistakably mandatory: "each state agency *shall* develop and adopt ... an integrated waste management plan"⁴³ and "each state agency *shall* submit an adopted integrated waste management plan."⁴⁴ Claimant asserts that an alternative for noncompliance, i.e., the mandatory requirement to comply with a Board-developed plan, makes it nonetheless mandatory. Claimant states that a choice of methods for a mandated activity (developing a plan versus using a model one) is not the same as a choice of whether or not to develop and adopt a plan. Thus, claimant contends the initial duty is mandated.

Since the community college can be automatically governed by the model integrated waste management plan adopted by the Board,⁴⁵ a community college that chooses to develop its own plan is exercising its discretion in doing so. A local decision that is discretionary does not result in a finding of state-mandated costs.⁴⁶

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

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

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

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

⁴³ Public Resources Code section 42920, subdivision (b)(1).

⁴⁴ Public Resources Code section 42920, subdivision (b)(2).

⁴⁵ The test claim statute requires the Board to adopt the model plan by February 15, 2000 (Pub. Resources Code, § 42920, subd. (a)).

⁴⁶ *Department of Finance v. Commission on State Mandates*, supra, 30 Cal. 4th 727, 742.

Prior law did not require community colleges to comply with a model integrated waste management plan. Prior law merely required cities⁴⁷ and counties⁴⁸ to submit integrated waste management plans to the Board.

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

SOLID WASTE COORDINATOR

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

Preexisting law authorizes each state agency to appoint a recycling coordinator to assist in implementing section 12159 of the Public Contract Code,⁴⁹ concerning purchasing recycled materials. However, there is nothing in the record to indicate that community colleges are within the purview of section 12159. Moreover, the test claim statute states: "Notwithstanding subdivision (b) of Section 12159 of the Public Contract code, at least one solid waste reduction and recycling coordinator shall be designated by each state agency."⁵⁰

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

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

SOLID WASTE DIVERSION

Diverting solid waste (Pub. Resources Code, §§ 42921 & 42922, subd. (I)): Public Resources Code section 42921 requires each community college ("each state agency and each large state facility") to divert at least 25 percent of all solid waste generated by the agency from landfill

⁴⁷ Public Resources Code section 41000 et seq.

⁴⁸ Public Resources Code section 41300 et seq.

⁴⁹ Public Contract Code section 12159, subdivision (b).

⁵⁰ Public Resources Code section 42920, subdivision (c).

disposal or transformation facilities by January 1, 2002, through source reduction, recycling, and composting activities. Subdivision (b) requires the same entities to achieve at least a 50-percent diversion by January 1, 2004. (Subsequent sections authorize approval of time extensions or alternatives to the 50-percent requirement.) Public Resources Code section 42922, subdivision (i) requires a community college "that is granted an alternative requirement to this section shall continue to implement source reduction, recycling, and composting programs, and shall report the status of those programs in the report required pursuant to Section 42926."

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

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

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

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

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

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

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

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

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

Because the inability to comply with the test claim statute's waste diversion goals may be outside the community college's control, staff finds that section 42927 is not within the discretion of the community college district. This section also uses the word "shall," which is mandatory,⁵¹ and refers to chapter 18.5 as containing "requirements."

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

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

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

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

⁵¹ Public Resources Code section 15.

Subdivision (b) of section 42922 states what the Board must consider in granting to a state agency an alternative to the 50-percent diversion requirement, such as "circumstances that support the request for an alternative requirement, such as waste disposal patterns and the types of waste disposed" by the community college. As explained above, although this subdivision reads as a permissive action "upon request," it is required pursuant to section 42927 if the community college is unable to comply with the 50-percent diversion requirement.

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

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

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

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

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

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

Staff finds that providing this explanation to the Board is not a mandated new program or higher level of service because it is a result of the community college's discretion in first requesting the alternative to the 50-percent requirement, rather than first requesting the time extension pursuant to section 42923. Any local agency decision that is discretionary does not result in finding state-mandated costs.⁵²

⁵² *Department of Finance v. Commission on State Mandates*, supra, 30 Cal. 4th 727, 742.

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

(d) A state agency or a large state facility that has previously been granted an alternative source reduction, recycling, and composting requirement may request another alternative source reduction, recycling, and composting requirement. A state agency or a large state facility that requests another alternative requirement shall provide information to the board that demonstrates that the circumstances that supported the previous alternative source reduction, recycling, and composting requirement continue to exist, or shall provide information to the board that describes changes in those previous circumstances that support another alternative source reduction, recycling, and composting requirement.

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

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

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

Because this provision uses the singular article "an," and singular nouns "alternative" and "extension," it requires seeking only one alternative requirement for community colleges unable to comply with the requirements. Therefore, seeking a subsequent alternative requirement is at the discretion of the community college, which does not result in finding state-mandated costs.

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

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

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

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

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

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

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

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

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

(B) The state agency or the large state facility submits a plan of correction that demonstrates that the state agency or the large state facility will meet the requirements of Section 42921 [the 25 and 50 percent diversion requirements] before the time extension expires, includes the source reduction, recycling, or composting steps the state agency or the large state facility will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, existing programs that it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.

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

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

REPORTS TO THE BOARD

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

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

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

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

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

Subdivision (i) of section 42922 states that a community college that is granted an alternative requirement "shall continue to implement source reduction, recycling, and composting programs, and shall report the status of those programs in the report required pursuant to Section 42926." This implementation requirement is subsumed in the requirements of section 42921 and the more specific requirements in section 42926. Because section 42922, subdivision (i) merely reiterates the existing requirement, staff finds that it is not a new program or higher level of service.

Recycled material reports to the Board (Pub. Contract Code, § 12167.1): This section requires that "[I]nformation on the quantities of recyclable materials collected for recycling shall

be provided to the board on an annual basis according to a schedule determined by the board and participating agencies.”

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

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

In summary, staff finds that the following activities⁵³ are new programs or higher levels of service on community colleges within the meaning of article XIII B, section 6.

- **Comply with the model integrated waste management plan (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan (February 2000).):** Comply with the Board’s model integrated waste management plan, which includes the activity of consulting with the Board to revise the model plan, as well as completing and submitting to the Board the following: (1) state agency or large state facility information form; (2) state agency list of facilities; (3) state agency waste reduction and recycling program worksheet, including the sections on program activities, promotional programs, and procurement activities; and (4) state agency integrated waste management plan questions.
- **Designating a solid waste reduction and recycling coordinator (Pub. Resources Code, § 42920, subd. (c).):** Designating one solid waste reduction and recycling coordinator to perform duties imposed by chapter 18.5 (Pub. Resources Code, §§ 42920 – 42928), including implementing the community college’s integrated waste management plan, and acting as a liaison to other state agencies (as defined by section 40196.3) and coordinators.
- **Diverting solid waste (Pub. Resources Code, §§ 42921 & 42922, subd. (i)):** Diverting at least 25 percent of all solid waste generated by a community college from landfill disposal or transformation facilities by January 1, 2002, through source reduction, recycling, and composting activities, and diverting at least 50 percent of all solid waste from landfill

⁵³ Claimant also seeks reimbursement for developing, implementing and maintaining an accounting system to enter and track source reduction, recycling and composting activities, and the costs and proceeds from selling recyclables, and other accounting systems that will allow making annual reports and determining savings, if any, from source reduction, recycling and composting activities. Claimant contends that the reporting requirements in the test claim legislation, and the justifications required to obtain alternative goals impose substantial reporting requirements not contemplated by the district’s current accounting systems. However, these activities are not included in the test claim legislation and would therefore be more appropriately analyzed in the parameters and guidelines phase should the Commission approve this test claim.

disposal or transformation facilities by January 1, 2004, through source reduction, recycling, and composting.

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

- **Seeking an alternative requirement (Pub. Resources Code, §§ 42927 & 42922, subs. (a) & (b)):** A community college that is unable to comply with the 50-percent diversion requirement must: (1) notify the Board in writing, detailing the reasons for its inability to comply; (2) request of the Board an alternative to the 50-percent requirement; (3) participate in a public hearing on its alternative requirement; (4) provide the Board with information as to (a) the community college's good faith efforts to effectively implement the source reduction, recycling, and composting measures described in its integrated waste management plan, and demonstration of its progress toward meeting the alternative requirement as described in its annual reports to the Board; (b) the community college's inability to meet the 50-percent diversion requirement despite implementing the measures in its plan; (c) the alternative source reduction, recycling, and composting requirement represents the greatest diversion amount that the community college may reasonably and feasibly achieve, and (d) relate to the Board circumstances that support the request for an alternative requirement, such as waste disposal patterns and the types of waste disposed by the community college.
- **Seeking a time extension (Pub. Resources Code, §§ 42927 & 42923 subs. (a) & (c)):** A community college that is unable to comply with the January 1, 2002 deadline to divert 25 percent of its solid waste, must do the following pursuant to section 42923, subdivisions (a) and (c): (1) notify the Board in writing, detailing the reasons for its inability to comply; (2) request of the Board an alternative to the January 1, 2002 deadline; (3) provide evidence to the Board that it is making a good faith effort to implement the source reduction, recycling, and composting programs identified in its integrated waste management plan; and (4) provide information to the Board that describes the relevant circumstances that contributed to the request for extension, such as lack of markets for recycled materials, local efforts to implement source reduction, recycling and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed of by the community college. (6) The community college must also submit a plan of correction that demonstrates that it will meet the requirements of Section 42921 [the 25 and 50 percent diversion requirements] before the time extension expires, including the source reduction, recycling, or composting steps the community college will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, the existing programs that it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.
- **Reporting to the Board (Pub. Resources Code, § 42926, subd. (a)):** Annually submitting, by April 1, 2002 and by April 1 each subsequent year, a report to the Board summarizing its progress in reducing solid waste. The information in the report is to encompass the previous

calendar year and shall contain, at a minimum, the following as outlined in section 42926, subdivision (b): (1) calculations of annual disposal reduction; (2) information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors; (3) a summary of progress implementing the integrated waste management plan; (4) the extent to which the community college intends to use programs or facilities established by the local agency for handling, diversion, and disposal of solid waste. (If the college does not intend to use those established programs or facilities, it must identify sufficient disposal capacity for solid waste that is not source reduced, recycled or composted.) (5) For a community college that has been granted a time extension by the Board, it shall include a summary of progress made in meeting the integrated waste management plan implementation schedule pursuant to section 42921, subdivision (b), and complying with the college's plan of correction, prior the expiration of the time extension. (6) For a community college that has been granted an alternative source reduction, recycling, and composting requirement by the Board pursuant to section 42922, it shall include a summary of progress made towards meeting the alternative requirement as well as an explanation of current circumstances that support the continuation of the alternative requirement.

- **Recycled material reports to the Board (Pub. Contract Code, § 12167.1):** Annually reporting to the Board on quantities of recyclable materials collected for recycling.

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

In order for the activities listed above to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, two criteria must apply. First, the activities must impose increased costs mandated by the state.⁵⁴ Second, no statutory exceptions as listed in Government Code section 17556 can apply. Government Code section 17514 defines "costs mandated by the state" as follows:

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

In the test claim, the claimants stated that they would incur costs in excess of \$1000 per annum,⁵⁵ which is the standard under Government Code section 17564, subdivision (a).

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

⁵⁴ *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 835. *Department of Finance v. Commission on State Mandates* (2003) 30 Cal. 4th 727, 736. Government Code section 17514.

⁵⁵ Declaration of Phyllis Ayers, Santa Monica Community College District and declaration of Tom Finn, Lake Tahoe Community College District.

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

Article XIII B, section 6 of the California Constitution requires the state to provide a subvention of funds to reimburse local governments whenever the Legislature or a state agency mandates a new program or higher level of service that results in increased costs for the local governments. Government Code section 17514 was enacted to implement this constitutional provision. The principle of reimbursement was "enshrined in the Constitution to provide local entities with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources."⁵⁶

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

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

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

⁵⁶ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal. App. 4th 1264, 1282. Two cases have held legislative declarations similar to that in section 42920, subdivision (c) unenforceable. In *Carmel Valley Fire Protection District v. State of California*, (*supra*, 190 Cal.App.3d 521) the court held that "Legislative disclaimers, findings and budget control language are no defense to reimbursement." The Carmel Valley court called such language "self serving" and "transparent attempts to do indirectly that which cannot lawfully be done directly." (*Id.* at p. 541). Similarly, in *Long Beach Unified School District v. State of California* (*supra*, 225 Cal.App.3d 155) the Legislature deleted requested funding from an appropriations bill and enacted a finding that the executive order did not impose a state-mandated local program. The court held that "unsupported legislative disclaimers are insufficient to defeat reimbursement. ... [The district,] pursuant to Section 6, has a constitutional right to reimbursement of its costs in providing an increased service mandated by the state. The Legislature cannot limit a constitutional right." (*Id.* at p. 184).

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

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

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

Public Contract Code sections 12167 and 12167.1 (Stats. 1992, ch. 1116) require revenue received from a recycling plan to be deposited in the Integrated Waste Management Account in the Board. This recycling plan does not apply to community colleges. Rather, the Public Contract Code Provisions only apply to the extent that funds are to be "redirected in accordance" with them. After July 1, 1994, the test claim legislation authorizes the Board to spend the revenue upon appropriation⁵⁷ by the Legislature to offset recycling program costs. Annual revenue under \$2000 is continuously appropriated⁵⁸ for expenditure by state agencies and institutions, whereas annual revenue over \$2000 is available for expenditures upon appropriation by the Legislature.

DOF asserts that sections 12167 and 12167.1 of the Public Contract Code state that any revenue exceeding \$2000 annually shall be available to state agencies to offset recycling program costs. DOF argues that these provisions do not apply to community colleges, which therefore should be able to keep all recycling program revenues.

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

⁵⁷ An appropriation is "an authorization from a specific fund to a specific agency or program to make expenditures/incur obligations for a specified purpose and period of time.

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

⁵⁸ A continuous appropriation is "an amount, specific or estimated, available each year under a permanent constitutional or statutory expenditure authorization that exists from year to year without further legislative action. The amount available may be a specific, recurring sum each year; all or a specified portion of the proceeds of specified revenues that have been dedicated permanently to a certain purpose; or whatever amount is required for the purpose as determined by formula—such as school apportionments." (Governor's 2003-04 Budget, Glossary of Budget Terms, Appendix p. 3)

Claimant responded to DOF and the Board, stating that potential revenues do not preclude the existence of a reimbursable mandate. Claimant, referring to Government Code section 17556, subdivision (e), asserts that as a matter of law, the test claim statutes do not include "offsetting savings" which result in no net costs. Claimant admits that the test claim statutes include "additional revenue that specifically was intended to fund the costs of the mandate"⁵⁹ in the form of revenue from selling recyclable materials, but argues there is no competent evidence before the Commission as to the amount of the expected revenue, except that revenue is limited to \$2000 by the test claim legislation unless more revenue is appropriated by the Legislature. Claimant states that the mandated duties are certain, but the costs of those duties and amount of revenues are unknown. Claimant further states that the costs of implementation will vary among districts and campuses, so it cannot be determined whether the revenue is sufficient. According to claimant, any revenues would be considered offsets to reimbursement, but would not preclude the existence of a mandate.

Further, claimant states that Public Resources Code section 42925 does not refer to savings of the state agency, but to costs savings realized as a result of the state agency's plan, including savings of community college campuses realized from the plan submitted by their respective districts. The savings are to be redirected to the agency's integrated waste management plan to fund plan implementation and costs in accordance with sections 12167 and 12167.1 of the Public Contract Code. Section 12167, claimant argues, refers to revenues (not cost savings) which must be deposited in an account controlled by the Board and, after July 1, 1994, may be spent upon appropriation by the Legislature to offset recycling program costs (not program costs). Section 12167.1, claimant argues, is a limited exception to section 12167, which continuously appropriates revenues not exceeding \$2000 for expenditure by state agencies to offset recycling program costs. Revenues over \$2000 are still subject to appropriation by the Legislature. Claimant restated the portion of the test claim that recognized the revenue sources and their limitations, noting that the Chancellor's Office's comments stated that the offsetting revenue was "unlikely to offset much of the costs."

Staff finds that section 42925 and the Public Contract Code provisions do not preclude the existence of a mandate. Section 42925 states that redirection of cost savings shall be "in accordance with Sections 12167 and 12167.1 of the Public Contract Code." The plain language of section 42925 incorporates Public Contract Code sections 12167 and 12167.1, making them applicable to community colleges to the extent the statutes guide the "redirection" of funds.⁶⁰

Pursuant to section 12167, revenue is to be deposited into the Integrated Waste Management Account in the Integrated Waste Management Fund and may be spent by the Board, only on appropriation by the Legislature, to offset recycling program costs. Pursuant to section 12167.1, revenue from selling recyclable materials that does not exceed \$2000 annually is continuously appropriated to community colleges to offset recycling program costs. Revenue that exceeds \$2000 annually is available for expenditure when appropriated by the Legislature.

As mentioned above, according to Government Code section 17556, subdivision (e), the Commission shall not find costs mandated by the state if the "statute or executive order provides

⁵⁹ Government Code section 17556, subdivision (e).

⁶⁰ So for example, the recycling plan mentioned in section 12167 does not apply to community colleges because it does not impact the redirection of funds.

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

In the recent case *Department of Finance v. Commission on State Mandates*,⁶¹ the court found that costs incurred in complying with the test claim legislation did not entitle claimants to obtain reimbursement because the state already provided funds that may be used to cover the necessary expenses. However, the holding was limited to "the circumstances here presented," and the court found that the costs of the requirements at issue appeared "rather modest." Moreover, the court left open the possibility that:

... with regard to some programs, the increased compliance costs imposed by the state might become so great or funded program grants might become so diminished that funded program benefits would not cover compliance costs, or that expenditure of granted program funds on administrative costs might violate a spending limitation... In those circumstances, a compulsory program participant likely would be able to establish the existence of a reimbursable mandate...⁶²

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

Therefore, staff finds that the revenues cited in Public Resources section 42925 and Public Resources Code sections 12167 and 12167.1 do not preclude the existence of a state-mandated program. Staff recommends that any revenues be identified as offsets in the parameters and guidelines, should the Commission approve this test claim.

Fee authority: The Board and DOF assert that Government Code section 17556, subdivision (d), applies, in which the Commission shall not find costs mandated by the state if the "local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." The Board and DOF argue that community colleges have fee authority, pursuant to Education Code section 70902, subdivision (a), sufficient to pay for the new program or higher level of service. The Board observes that such a fee would be nominal, if necessary at all, given the ability of recycling programs to recover costs through sale of recyclable materials, disposal cost avoidance and reuse of materials.

Claimant responds that, based on the legal opinion of the Chancellor's Office, students may not be charged for services required by state law, and that students may only be required to pay a fee if a statute either requires it or authorizes a district to require it. Claimant believes the Board's

⁶¹ *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal 4th 727, 747.

⁶² *Id.* at 747-748.

reliance on Education Code section 70902, subdivision (a) is misplaced because the section is "permissive" only to the extent that the governing board "may initiate and carry on any program, activity, or may otherwise act in any manner" but limited by the phrase "that is not in conflict with or inconsistent with, or preempted by, any law and that is not in conflict with the purposes for which community college districts are established."⁶³ Claimant argues that charging students for an integrated waste management plan and all that it entails is directly in conflict with the purposes for which community college districts are established. Claimant also asserts that calling the fees "optional" is unrealistic because they could become substantial and students would not likely "voluntarily" accept the additional levy.

Staff finds that there is no evidence in the record that community colleges are authorized to charge fees to pay for the waste reduction and recycling activities in the test claim legislation.

First, there is no statute that requires or authorizes a waste management or recycling fee, so it cannot be a mandatory or required fee.⁶⁴ As for the possibility of an "optional fee," the Chancellor's Office's legal opinion, as submitted by the Board, describes this as follows:

On the other hand, if the fee is for materials, services, or privileges which will assist a student, but are not otherwise required for registration, enrollment, entry into class, or completion of the required classroom objectives of a course, the fee can be classified as optional in nature. Under the authority of the permissive code, [Ed. Code, § 70902, subd. (a)] a district may charge a fee which is optional in nature, provided that the fee is not in conflict or inconsistent with existing law, and is not inconsistent with the purposes for which community college districts are established.⁶⁵

In this case, it is doubtful that the recycling services will "assist a student," at least academically. More on point is the portion the Chancellor's Office's legal opinion that states, "[i]t is the opinion of the Chancellor's Office that community college districts may not charge students a fee for the use of a service that the district is required to provide by state law or that the district is already funded to provide."⁶⁶

The programs in the test claim legislation are required by state law, and therefore, according to the Chancellor's Office's legal opinion, cannot be paid for by student fees.

Staff finds nothing in the record that indicates there is authority for community colleges to charge a mandatory or permissive fee to pay for the expenses of the program in the test claim legislation.

⁶³ Education Code section 70902, subdivision (a).

⁶⁴ California Code of Regulations, title 5, section 51012, states that a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law.

⁶⁵ California Community Colleges Chancellor's Office, Legal Opinion M 00-41, December 19, 2000, page 1. This was submitted as part of the Board's comments.

⁶⁶ *Id.* at page 15.

Although offsetting revenues⁶⁷ may accrue to community colleges as discussed above, staff finds that the test claim legislation imposes costs mandated by the state pursuant to Government Code section 17514 and that the exceptions in Government Code section 17556 do not apply.

CONCLUSION

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

- **Comply with the model integrated waste management plan (Pub. Resources Code, § 42920, subd. (b)(3) & "State Agency Model Integrated Waste Management Plan" February, 2000.):** Comply with the Board's model integrated waste management plan, which includes the activity of consulting with the Board to revise the model plan, as well as completing and submitting to the Board the following: (1) state agency or large state facility information form; (2) state agency list of facilities; (3) state agency waste reduction and recycling program worksheet, including the sections on program activities, promotional programs, and procurement activities; and (4) state agency integrated waste management plan questions.
- **Designating a solid waste reduction and recycling coordinator (Pub. Resources Code, § 42920, subd. (c).):** Designating one solid waste reduction and recycling coordinator to perform duties imposed by chapter 18.5 (Pub. Resources Code, §§ 42920 – 42928), including implementing the community college's integrated waste management plan, and acting as a liaison to other state agencies (as defined by section 40196.3) and coordinators.
- **Diverting solid waste (Pub. Resources Code, §§ 42921 & 42922, subd. (i)):** Diverting at least 25 percent of all solid waste generated by a community college from landfill disposal or transformation facilities by January 1, 2002, through source reduction, recycling, and composting activities, and diverting at least 50 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2004, through source reduction, recycling, and composting.

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

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

⁶⁷ Any offsetting revenues would be identified in the parameters and guidelines phase should the Commission approve this analysis.

college's inability to meet the 50-percent diversion requirement despite implementing the measures in its plan; (c) the alternative source reduction, recycling, and composting requirement represents the greatest diversion amount that the community college may reasonably and feasibly achieve, and (d) relate to the Board circumstances that support the request for an alternative requirement, such as waste disposal patterns and the types of waste disposed by the community college.

- **Seeking a time extension (Pub. Resources Code, §§ 42927 & 42923 subds. (a) & (c).):** A community college that is unable to comply with the January 1, 2002 deadline to divert 25 percent of its solid waste, must do the following pursuant to section 42923, subdivisions (a) and (c): (1) notify the Board in writing, detailing the reasons for its inability to comply; (2) request of the Board an alternative to the January 1, 2002 deadline; (3) provide evidence to the Board that it is making a good faith effort to implement the source reduction, recycling, and composting programs identified in its integrated waste management plan; and (4) provide information to the Board that describes the relevant circumstances that contributed to the request for extension, such as lack of markets for recycled materials, local efforts to implement source reduction, recycling and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed of by the community college. (6) The community college must also submit a plan of correction that demonstrates that it will meet the requirements of Section 42921 [the 25 and 50 percent diversion requirements] before the time extension expires, including the source reduction, recycling, or composting steps the community college will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, the existing programs that it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.
- **Reporting to the Board (Pub. Resources Code, § 42926, subd. (a).):** Annually submitting, by April 1, 2002 and by April 1 each subsequent year, a report to the Board summarizing its progress in reducing solid waste. The information in the report is to encompass the previous calendar year and shall contain, at a minimum, the following as outlined in section 42926, subdivision (b): (1) calculations of annual disposal reduction; (2) information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors; (3) a summary of progress implementing the integrated waste management plan; (4) the extent to which the community college intends to use programs or facilities established by the local agency for handling, diversion, and disposal of solid waste. (If the college does not intend to use those established programs or facilities, it must identify sufficient disposal capacity for solid waste that is not source reduced, recycled or composted.) (5) For a community college that has been granted a time extension by the Board, it shall include a summary of progress made in meeting the integrated waste management plan implementation schedule pursuant to section 42921, subdivision (b), and complying with the college's plan of correction, prior the expiration of the time extension. (6) For a community college that has been granted an alternative source reduction, recycling, and composting requirement by the Board pursuant to section 42922, it shall include a summary of progress made towards meeting the alternative requirement as well as an

explanation of current circumstances that support the continuation of the alternative requirement.

- **Recycled material reports to the Board (Pub. Contract Code, § 12167.1):** Annually reporting to the Board on quantities of recyclable materials collected for recycling.

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

Original List Date: 3/20/2001
Last Updated: 4/17/2003
Last Print Date: 10/07/2003
Claim Number: 00-TC-07
Issue: Integrated Waste Management

Mailing Information: Draft Staff Analysis

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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

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June 18, 2001

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
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Dear Ms. Higashi:

As requested in your letter of March 20, 2001, the Department of Finance has reviewed the test claim submitted by the Santa Monica and South Lake Tahoe Community College Districts (claimants) asking the Commission to determine whether specified costs incurred under Chapter No. 764, Statutes of 1999, (AB 75, Strom-Martin), are reimbursable state mandated costs (Claim No. CSM-00-TC-07 "Integrated Waste Management").

Claimant Allegations and Department of Finance Findings:

Claimant (the Santa Monica and South Lake Tahoe Community College Districts) is seeking reimbursement for activities, which allegedly are state-mandated local program activities. The Department of Finance's findings follow each claimed activity.

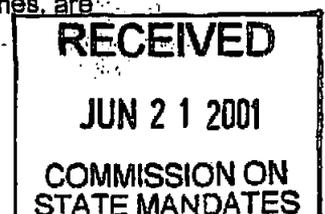
- A. To develop and adopt an integrated waste management plan by July 1, 2000. (Reference 42920 (b)(1), and the Board's "Waste Reduction Policies and Procedures for State Agencies (August 1999)")

The Department of Finance asserts that this activity does not constitute a state-mandated local program because:

- 1) This section requires a higher level of services solely for **state agencies**, and as such does not apply to local community college campuses.

Statute explicitly defines the local **campuses** of the California Community Colleges as a "large state facility"¹, thus the only mandated activities are those requiring large state facilities to perform a higher level of service. The basis for this determination is

¹ The statute defines "Large state facility" as those campuses of the California State University and the California Community Colleges, prisons within the Department of Corrections, facilities of the State Department of Transportation, and facilities of other state agencies, that the board determines are primary campuses, prisons, or facilities.



that the statute's definition of "State agency"² does not reference the campuses of the California Community Colleges specifically. Although the statute does reference the California Community Colleges, we believe the reference applies to the Chancellor's Office since that truly is a state agency, as opposed to the individual campuses that are a local governmental entity.

At a minimum, the Department of Finance thinks that statutory cleanup would be needed to clarify if the State were requiring local community college campuses to perform the same activities required of "state agencies" in this program area.

- 2) Moreover, Section 42920(b)(3) stipulates that if a community college district elected not to submit a plan by June 15, 2000, or did not have an approved plan by January 1, 2001, it would be governed by the model integrated waste management plan prepared by the Board. Accordingly, local campuses did not have to develop, adopt, or submit their own plan.
- 3) Nevertheless, if the Commission identifies this activity as a state-mandated local program, the activity is one-time and should be identified as such. At a minimum, the Department of Finance asserts that activities "A" through "D" are one-time.
- 4) In addition, the Department of Finance asserts that the cost of any identified state-mandated local program would be minimized, or even eliminated, for the following reasons:
 - a) Any state-reimbursable costs should exclude savings (from source reduction, for example) or increased revenue (from recycling or the sale of compost, for example) achieved through the program. In fact, we understand that proceeds from an on-campus recycling center at Orange Coast Community College has enabled the facility to meet its 50 percent waste diversion needs (and fund student scholarships from remaining proceeds) without using any state funds.
 - b) Sections 12167 and 12167.1 of the Public Contract Code state that any revenue that exceeds \$2,000 annually shall be available to state agencies to offset recycling program costs upon appropriation by the Legislature. As these sections do not apply to local entities, campuses of the California Community College may keep all revenue from recycling programs. Even if these sections applied to community college campuses, the Legislature would likely authorize a campus to keep more than \$2,000 in recycling revenue.
 - c) The governing boards of local community colleges may elect to offer optional waste diversion or recycling fees to further offset their administrative costs and state reimbursement. An example of an optional fee offered on some campuses would be for student representation. Several California State University campuses include a recycling fee in their Associated Student Fee.

² The statute defines "State agency" as every state office, department, division, board, commission, or other agency of the state, including the California Community Colleges and the California State University. The law also encourages the Regents of the University of California to implement this division.

- B. To submit an adopted integrated waste management plan to the Board by July 15, 2000. (Reference 42920 (b)(2))

The Department of Finance asserts that this activity does not constitute a state-mandated local program for the same reasons cited under activity 'A'.

- C. To perform a compliance review of the submitted plan, and provide additional information and clarification needed to bring the plan to the level needed for approval. (Reference the Board's "Approval Procedures")

The Department of Finance asserts that this activity does not constitute a state-mandated local program for the same reasons cited under activity 'A'.

- D. For those community colleges that have not submitted an adopted integrated waste management plan by July 15, 2000, to accept and be governed by the model integrated waste management plan prepared by the Board. (Reference 42920 (b)(3))

The Department of Finance asserts that this activity does not constitute a state-mandated local program for the same reasons cited under activity 'A'.

- E. To designate and pay at least one person at each community college as its solid waste reduction and recycling coordinator who shall be responsible for implementing the plan and serve as a liaison to other state agencies and coordinators. (Reference 42920 (c))

The Department of Finance notes that this activity does not constitute a state-mandated local program for reason (1) cited under activity 'A'. However, if the Commission identifies this activity as a state-mandated local program, the Department of Finance asserts that costs for this activity are mitigated and perhaps eliminated due to reasons cited under finding (4) of activity 'A'.

- F. To develop, implement and maintain source reduction, recycling and composting activities that shall divert at least 25 percent of all solid waste generated on campus by January 1, 2002. (Reference 42921 (a) and the Board's "Solid Waste Generation, Disposal, and Diversion Guide for State Agencies and Large State Facilities")

The Department of Finance notes that this activity appears to be a state-mandated local program, as it applies to "large state facilities" including the campuses of the California Community Colleges. Nevertheless, costs for this activity are mitigated and perhaps eliminated due to reasons cited in Department of Finance finding (4) of activity 'A'.

- G. For those community colleges that find it necessary to obtain an extension, to create and maintain records to present substantial evidence that (a) the community college is making a good faith effort to implement the source reduction, recycling and composting programs identified in its plan; and (b) would permit the community college to submit a plan of correction that demonstrates that it will meet the requirements before the time extension expires, includes the source reduction, recycling and composting steps the community college will implement, providing a date prior to the expiration of the time extension when the requirements will be met, identify the existing programs that will be modified; identify any new programs that will be implemented; and identify the means by which these programs will be funded. (Reference 42923)

The Department of Finance finds that these activities are not a state-mandated local program as it allows, but does not require, community college campuses to request time extensions. The only required activity is to conform to the waste diversion goals addressed in elsewhere Items "F" and "H". In addition, the activities may not be reimbursable as the section specifically stipulates that the applicable colleges should identify the means by which these programs will be funded.

- H. To develop, implement, and maintain source reduction, recycling and composting activities that shall divert at least 50 percent of all solid waste generated on campus by January 1, 2004. (Reference 42921 (b) and the Board's "Solid Waste Generation, Disposal, and Diversion Guide for State Agencies and Large State Facilities")

The Department of Finance notes that this activity appears to be a state-mandated local program, as it applies to "large state facilities" including the campuses of the California Community Colleges. Nevertheless, costs for this activity are mitigated and perhaps eliminated due to reasons cited in Department of Finance finding (4) of activity 'A'.

- I. For those community colleges that find it necessary to obtain one of more alternatives to the time necessary to comply with the 50 percent goal by January 1, 2004, to create and maintain records to present substantial evidence that (1) the community college has made a good faith effort to effectively implement the source reduction, recycling and composting measures described in its plan, and has demonstrated progress toward meeting the alternative requirement as described in its annual reports to the Board; (2) to present substantial evidence as to why the community college has been unable to meet the 50 percent diversion requirement despite implementing its plan; and (3) to present substantial evidence that the alternative source reduction, recycling and composting requirement requested represents the greatest diversion amount that the community college may reasonably achieve. (Reference 42922)

The Department of Finance finds that these activities are not a state-mandated local program as it allows, but does not require, community college campuses to request diversions from the stipulated goals. The only required activity is to conform to the waste diversion goals addressed in elsewhere Items "F" and "H".

- J. When entering into a new lease, or renewing existing leases, to ensure that adequate areas are provided, and adequate personnel are available, to oversee the collection, storage, and loading of recyclable materials. (Reference 42924 (b))

The Department of Finance notes that this activity appears to be a state-mandated local program, as it applies to "large state facilities" including the campuses of the California Community Colleges. Nevertheless, we note that colleges are already entering into leases or renewing existing leases. Therefore, any additional workload and/or costs to perform this activity should be minimal. Moreover, any costs for this activity are mitigated and perhaps eliminated due to reasons cited in Department of Finance finding (4) of activity 'A'.

- K. To submit an annual report to the Board summarizing its progress in reducing solid waste, containing at least: (1) calculations of annual disposal reduction; (2) information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors; (3) a summary of progress made in implementing the plan; (4) the extent to which the community college intends to utilize

programs or facilities established by the local agency for the handling, diversion, and disposal of solid waste (if the college does not intend to utilize those established programs or facilities, the college shall identify sufficient disposal capacity for solid waste that is not sources reduced, recycled, or composted); (5) if the college has been granted a time extension by the Board, the college shall include a summary of progress made in meeting the plan implementation schedule pursuant to subdivision (b) of Section 42921 and complying with the college's plan of correction; (6) if the state agency has been granted an alternative source reduction, recycling, and composting requirement, the agency shall include a summary of progress made towards meeting the alternative requirement; and (7) other information relevant to compliance with Section 42921. (Reference 42926 and other sections specified as stated)

The Department of Finance asserts that this activity does not constitute a state-mandated local program for reason (1) cited under activity 'A'. Nevertheless, if the Commission rules this activity constitutes a state-mandate, costs for this activity are mitigated and perhaps eliminated due to reasons cited in Department of Finance finding (4) of activity 'A'.

- L. To comply with regulations when adopted by the Board and follow specified criteria in applying for reductions or extensions to their individual plans. (Reference 42928)

The Department of Finance finds that any regulations adopted by the Board that apply to this activity does not constitute a state-mandated local program for reason (1) cited under activity 'A'. However, if the Commission identifies this activity as a state-mandated local program, the Department of Finance asserts that costs for this activity are mitigated and perhaps eliminated due to reasons cited under finding (4) of activity 'A'.

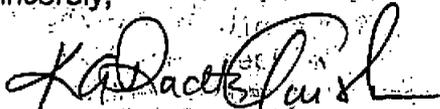
- M. To develop, implement, and maintain an accounting system to enter and track its source reduction, recycling and composting activities, the cost of those activities, the proceeds from the sale of any recycled materials, and such other accounting systems which will allow it to make its annual reports and determine savings, if any, from its source reduction, recycling and composting activities. (No citation identified by claimant)

The Department of Finance finds that this activity is not a state-mandated local program since an accounting system is already in place to record the financial affairs of a community college. (Reference Education Code 84030, and California Code of Regulations Title 5, Section 58303). However, if the Commission rules this activity constitutes a state-mandate, costs for this activity are mitigated and perhaps eliminated due to reasons cited in Department of Finance finding (4) of activity 'A'.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your March 20, 2001, letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Jim Foreman, Principal Program Budget Analyst at (916) 445-0328 or Jim Lombard, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



Kathryn Radtkey-Gaither
Program Budget Manager

Attachment

PROOF OF SERVICE

Test Claim Name: "Integrated Waste Management"
Test Claim Number: CSM-00-TC-07

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, CA 95814.

On June 18, 2001, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7 Floor, for Interagency Mail Service, addressed as follows:

A-16

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

B-8

State Controller's Office
Division of Accounting & Reporting
Attention: Paige Vorhies
3301 C Street, Suite 500
Sacramento, CA 95816

B-8

State Controller's Office
Division of Audits
Attention: Jim Spano
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Sixten & Associates

Attention: Keith Peterson, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Santa Monica Community College District
Attention: Cheryl Miller
1900 Pico Boulevard
Santa Monica, CA 90405-1628

California Integrated Waste Mgt Board
Attention: Linda Moulton-Paterson
1001 I Street
P.O. BOX 4025
Sacramento, CA 95812

South Lake Tahoe Community College District
Attention: Jon Stephens
One College Drive
South Lake Tahoe, CA 96150

California Community Colleges
Attention: Patrick Ryan
1102 Q Street, Suite 300
Sacramento, CA 95814-6549

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

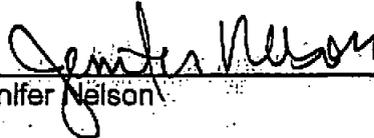
DMG-MAXIMUS

Attention: Allan Burdick
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Mandated Cost Systems, Inc.
Attention: Steve Smith, CEO
2275 Watt Avenue, Suite C
Sacramento, CA 95825

Mandate Resource Services
Attention: Harmeet Barkschat
8254 Heath Peak Place
Antelope, CA 95843

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 18, 2001 at Sacramento, California.



Jennifer Nelson

02707

California Integrated Waste Management Board



Gray Davis
Governor

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

Winston H. Hickox
Secretary for
Environmental
Protection

May 21, 2001

Shirley Opie, Assistant Deputy Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Opie:

Thank you for your letter dated May 18, 2001, regarding the state requirements for waste reduction at state facilities required by AB 75. I have forwarded this letter to our technical staff for their further review and comment. If you have any questions about the AB 75 requirements, please contact Mr. Phil Moralez, manager of the State Agency and Local Assistance Branch at (916) 341-6215.

Public Resource Code §40412 requires that board members must disclose all communication with them outside of a board meeting about matters that may come before the Board. In compliance with the law, your letter will be made a part of the Board's official records.

Again, thank you for your letter.

Sincerely,

Linda Moulton-Patterson

Linda Moulton-Patterson
Board Chair

cc: Pat Schiavo, Deputy Director, Diversion, Planning and Local Assistance
Phil Moralez, Manager, State Agency and Local Assistance Branch

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PROOF OF SERVICE

Test Claim: Integrated Waste Management, 00-TC-07

I, the undersigned, declare as follows:

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

On May 18, 2001, I served the attached OPPOSITION TO TeST CLAIM by placing a true copy thereof to: claimants and non-state agencies enclosed in a sealed envelope with postage thereon fully prepaid in the U. S. Mail at Sacramento, California, and state agencies in the normal pickup location at 1001 I Street, 23rd floor, for Interagency Mail Service, addressed as follows:

Paula Higashi, Executive Director A-16
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile: (916) 445-0278

James Lombard A-15
Principal Analyst
Department of Finance
915 L Street
Sacramento, CA 95814

Jim Spano B-8
State Controller's Office
Division of Audits
300 Capital Mall, Suite 518
P. O. Box 942850
Sacramento, CA 95814

Harmeet Barkschat
Mandate Resource Services
8254 Heath Peak Place
Antelope, CA 95843

1 Dr. Carol Berg, Ph. D.
2 Education Mandated Cost
3 Network
4 1121 L Street, Suite 1060
5 Sacramento, CA 95814

Patrick Ryan
California Community Colleges
Chancellor's Office
1102 Q Street, Suite 300
Sacramento, CA 95814-6549

4 Allan Burdick
5 DMG-MAXIMUS
6 4320 Auburn Blvd., Suite 2000
7 Sacramento, CA 95841

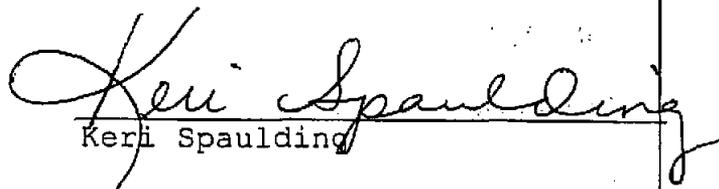
Steve Smith, CEO
Mandated Cost Systems, Inc.
2275 Watt Ave., Suite C
Sacramento, CA 95825

7 Cheryl Miller
8 Associate Vice President
9 Santa Monica Community
10 College District
11 1900 Pico Blvd.
12 Santa Monica, CA 90405-1628

Jon Stephens, Vice President
South Lake Tahoe Community
College District
One College Drive
South Lake Tahoe, CA 96150

11 Keith B. Petersen, President
12 Sixten & Associates
13 5252 Balboa Ave., Suite 807
14 San Diego, CA 92117

14 I declare under penalty of perjury under the laws of the State
15 of California that the foregoing is true and correct, and that
16 this declaration was executed on May 18, 2001 at Sacramento,
17 California.

18
19
20 
Keri Spaulding

21 Dated: May 18, 2001

22 ////

23 ////

24 ////

The Integrated Waste Management Plan referenced in the legislation is intended to set out a plan for all state agencies and large state facilities, including the community colleges, to reduce solid waste generated and disposed, reuse materials whenever possible, recycle recyclable materials, and procure products with recycled content.

The California Integrated Waste Management Board (CIWMB) opposes the allegation that the subject legislation imposes costs reimbursable under Government Code section 17551(a). The basis for this opposition is located in Government Code section 17556, which states in pertinent part that: "[t]he commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

.... (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

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

II. AUTHORITY FOR COMMUNITY COLLEGES TO LEVY SERVICE CHARGES, FEES OR ASSESSMENTS

The Chancellor's Office of the California Community Colleges released Legal Opinion M 00-41, dated December 19, 2000 (see Appendix A), which provides guidance on student fees. This Opinion states the basic law is that express statutory authority is required to charge any mandatory fee but optional student fees or charges may under some circumstances be charged

under authority of the permissive provisions of the Education Code, as set forth in section 70902(a).¹

Optional fees include fees for materials, services or privileges which will assist a student but are not otherwise required for registration, enrollment, entry into class, or completion of the required or student activities fee.²

Thus it appears to be possible, under the permissive provisions of the Education Code as well as this guidance for charging optional fees, to charge students an optional fee for recycling services. We note the opinion recommends "that districts balance the need to cover their operating costs with the fact that even modest additional fees may effectively restrict access for students who are least able to pay."³ However, the opinion further notes that since the State has exempted students receiving public benefits and those who demonstrate financial need from many of the mandatory fees, "districts may wish to consider extending this policy to optional service fees."⁴

Additionally, as noted below, such a fee would be nominal, if necessary at all, given the ability of recycling programs to recover costs through sale of recyclable materials, disposal cost avoidance and reuse of materials that might otherwise be disposed.

III. STATUTE PROVIDES OFFSETTING SAVINGS TO COMMUNITY COLLEGES

Public Resources Code section 42925 was added by AB 75, which states in pertinent part: "[a]ny cost savings realized as a result of the state agency integrated waste management

¹ Community Colleges Student Fees, Legal Opinion M 00-41, page 1

² Ibid

³ Ibid, page 7

⁴ Ibid

plan shall, to the extent feasible, be redirected to the agency's integrated waste management plan to fund plan implementation and administration costs, in accordance with Sections 12167 and 12167.1 of the Public Contract Code."⁵ This provision shows a clear intent by the Legislature that cost savings be redirected to the agency or college to fund implementation and administration costs.

The referenced Public Contract Code provisions place some limitation on the agency's ability to spend revenues derived from the sale of recyclable materials, but it is doubtful that these provisions are applicable to the Community Colleges. The basis for this argument is that the two sections are located within Part 2, Contracting by State Agencies, Chapter 4, State Assistance for Recycling Markets. The provisions are without doubt applicable to state agencies. However, the Public Contract Code devotes an entire article (Article 41) to contracts entered into by Community College Districts within Part 3, Contracting by Public Agencies.

While it is clear that the provisions of AB 75 consider Community Colleges to be state agencies for its purposes, it does not follow that the Public Contract Code provisions intended for state agencies would become applicable to Community Colleges via AB 75. Sections 12167 and

⁵ Public Contract Code section 12167:

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

Public Contract Code section 12167.1:

"Notwithstanding Section 12167, upon approval by the California Integrated Waste Management Board, revenues derived from the sale of recyclable materials by state agencies and institutions that do not exceed two thousand dollars (\$2,000) annually are hereby continuously appropriated, without regard to fiscal years, for expenditure by those state agencies and institutions for the purposes of offsetting recycling program costs. Revenues that exceed two thousand dollars (\$2,000) annually shall be available for expenditure by those state agencies and institutions when appropriated by the Legislature. Information on the quantities of recyclable materials

12167.1 were intended to establish legislative controls over expenditure of revenues recovered by state agencies, which is the ordinary mechanism for establishing such controls. However, the budget that would appropriate funding received from separate revenue producing activities at Community Colleges would ordinarily be established and approved by the Board of Governors for the District⁶ rather than the State Legislature.

However, even if the two Public Contract Code provisions were found to be applicable to Community Colleges, the stated intent of the Legislature in Public Resources Code section 42925 is that any cost savings realized as a result of implementing the integrated waste management plan, including revenue generation from sale of recyclable materials, should be directed back to the agency itself for funding implementation and administrative costs. Based on the statute, it is likely the Legislature would allow such expenditure authority if it were requested, and thus far, no request for keeping such revenues has been denied by the CIWMB.

It must be further noted that use of revenues from the sale of recyclables is only one way of offsetting costs to implement and administer an integrated waste management plan. Disposal cost avoidance and reuse of otherwise disposed materials are two examples of the many avenues for saving money when an entity works toward integrating its waste management systems. Appendix B, Declaration by Trevor O'Shaughnessy, provides additional information regarding this aspect.

Numerous case studies of businesses and other entities have demonstrated that integrated waste management programs of the type that would be implemented by Community Colleges as a result of AB 75 can often result in overall cost savings for the entity. The CIWMB has also

collected for recycling shall be provided to the board on an annual basis according to a schedule determined by the board and participating agencies.

⁶ Education Code section 70902

prepared several fact sheets that provide tips and ideas for waste reduction and recycling activities that could also result in cost savings. These documents are attached in Appendix D.

IV. CONCLUSION

Because the Community College Districts have the authority to assess optional student fees, which would likely be small amounts, and because the CIWMB has provided ample evidence that implementing integrated waste management systems often result in overall cost savings or no net costs to the implementing entity, the CIWMB respectfully requests that the Commission deny this claim.

V. TABLE OF APPENDICES

Appendix A – California Community Colleges Chancellor's Office, Legal Opinion M 00-41

Appendix B – Declaration of Trevor O'Shaughnessy, Manager, AB 75 Implementation Program

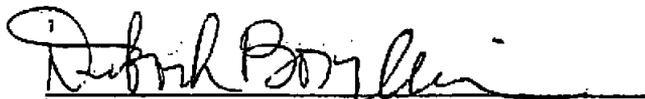
Appendix C – Case Studies, Fact Sheets and other Documents published by the CIWMB providing evidence of cost savings resulting from recycling and waste diversion programs

VI. CERTIFICATION

I certify by my signature below, under penalty of perjury, that I am an authorized representative of the California Integrated Waste Management Board and that the statements

made in this document are true and correct to the best of my personal knowledge or information and belief.

Executed on May 18, 2001, at Sacramento, California, by:



Deborah Borzelleri, Staff Counsel

California Integrated Waste Management Board
1001 I Street
P. O. Box 4025
Sacramento, CA 95812
Telephone: (916) 341-6056
Facsimile: (916) 319-7594

Appendix A

**CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE**

1102 Q STREET
SACRAMENTO, CA 95814-6511
(916) 445-8752
HTTP://WWW.CCCCO.EDU



December 19, 2000

TO: Board of Governors
Superintendents and Presidents
Presidents, Boards of Trustees
Consultation Council
Chief Business Officials
Chief Instructional Officers
Chief Student Services Officers
Admissions Officers and Registrars
Financial Aid Officers
Community College Attorneys
Other Interested Parties

FROM: Ralph Black
General Counsel

SUBJECT: Update on Student Fees (Opinion M 00-41)

Synopsis: On December 14, 1999, we issued a memo providing information on student fees. The enclosed memo updates that document to reflect changes in student fees resulting from actions of the Legislature during the 2000 session as well as any pertinent formal or informal legal opinions issued from this office. This document will also be available on the Chancellor's Office web site at <http://www.cccco.edu/cccco/lac/Notices/notices.htm>.

Because this material is lengthy and complex, we used italics to indicate changes in the law or our interpretation of the law. Material in boldface is pre-existing information, which we believe deserves particular emphasis.

Action/Date Requested: Districts should take steps necessary to implement the legislative changes discussed in the attached memo.

Contact: Questions regarding financial aid procedures should be directed to Mary Gill at (916) 323-5951. Questions regarding nonresident tuition and treatment of fee revenue should be directed to Helen Simmons at (916) 327-6225. Other questions should be directed to Renee Brouillette at (916) 322-4145.

cc: Cabinet
Helen Simmons
Mary Gill
Renee Brouillette

Legal Opinion M 00-41

COMMUNITY COLLEGE STUDENT FEES
(Status of the law as of January 1, 2001)

I. BASIC LAW ON STUDENT FEES

Express statutory authority is required to charge any mandatory student fee; but optional student fees or charges may, under certain circumstances, be charged under the authority of the "permissive code," as set forth in section 70902(a) of the Education Code.

Under current law it is well settled that a student may only be required to pay a fee if a statute requires it (such as the enrollment fee), or if a statute specifically authorizes a district to require it (such as the health fee). In either instance, a student cannot be required to pay a fee in the absence of express legislative authority (see the following opinions of the Attorney General: 60 Ops.Cal.Atty.Gen. 353 (1977), and 61 Ops.Cal.Atty.Gen. 75 (1978)). The Board of Governors has underscored this policy through the adoption of a minimum standard regulation (Cal. Code Regs., Title 5, § 51012) which provides that a district may only establish such mandatory student fees as it is expressly authorized to establish by law.

If a fee must be paid as a condition of admission to a college; or as a condition of registration, enrollment, or entry into classes; or as a condition of completing the required classroom objectives of a course, the fee is mandatory (required) in nature. On the other hand, if the fee is for materials, services, or privileges which will assist a student, but are not otherwise required for registration, enrollment, entry into class, or completion of the required classroom objectives of a course, the fee can be classified as optional in nature. Under the authority of the permissive code, a district may charge a fee which is optional in nature, provided that the fee is not in conflict or inconsistent with existing law, and is not inconsistent with the purposes for which community college districts are established. Examples of optional fees are parking fees (which are also authorized in section 76360 of the Education Code) and a student body card or student activities fee.

If a fee is required for registration, enrollment, entry into class, or completion of the required classroom objectives of a course, it can be classified as a "course fee." If a fee is for materials, services, or privileges which will assist a student, but is not otherwise required for completion of the required classroom objectives of a course, it can be classified as a "service fee." Under this classification structure, specific legislative authority is always required to charge any course fee. A variety of service fees are specifically authorized by statute. In addition, service fees meeting the test of the permissive code may be charged under the authority of that provision.

II. COURSE FEES

Specific statutory authority is required to charge any fee which is required for registration, enrollment, entry into class, or completion of the required objectives of a course. The following fees are specifically authorized by statute:

A. Nondistrict Physical Education Facilities: Education Code section 76395 authorizes districts to impose a fee on participating students for the additional expenses incurred when physical education courses are required to use nondistrict facilities such as bowling alleys and golf courses. This authority became operative on January 1, 1992.

B. Enrollment Fee: the basic enrollment fee is required pursuant to Education Code section 76300. This statute was amended by AB 1118 (Stats. 1999, ch. 72) to reduce the fee to \$11 per unit effective for the Fall 1999 term.

Unless expressly exempted, or entitled to a waiver or defrayal, all students enrolling for college credit must pay the enrollment fee. Fees are to be waived through the Board Financial Assistance Program for students who meet income standards established under regulations of the Board of Governors, those who demonstrate financial need in accordance with the methodology set forth in federal financial aid regulations, and those who, at the time of enrollment, are recipients of benefits under the California Work Opportunity and Responsibility to Kids (CalWORKs) Program (formerly Aid to Families with Dependent Children (AFDC)),¹ the Supplemental Security Income/State Supplementary Program, or a general assistance program.

Generally, students must demonstrate eligibility for these Board of Governors Enrollment Fee waivers at the time of enrollment, but the Chancellor's Office takes the position that districts have the discretion to refund enrollment fees if a student later shows that he or she actually qualified for the waiver at the time of enrollment and applied for the waiver within the *academic year* for which the refund is sought. Fees must also be waived for dependents of certain deceased or disabled veterans and California National Guard members upon certification of fee waiver eligibility by the California Department of Veterans Affairs or the National Guard Adjutant General. (See IV, H, below.)

K-12 students admitted as special full-time or part-time students pursuant to Education Code section 76001 who are enrolled for college credit in community college courses are subject to the enrollment fee, but section 76300(f) permits the district governing board to exempt special part-time students (but not special full-time students) from paying the fee. There is nothing that would preclude a K-12 student who is subject to the enrollment fee from applying for a Board of Governors Waiver. Special full-time or part-time students enrolled in college courses only for high school credit are not subject to the enrollment fee and no waiver or exemption is necessary.

Assembly Bill 3031 (Stats. 1996, ch. 63, § 1) amended Education Code section 76300 to exempt students enrolled in specified credit contract education courses from the

¹Congress passed, and President Clinton subsequently signed H.R. 3734, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), which discontinued the Aid to Families with Dependent Children (AFDC) program and substituted in its place block grants to states for Temporary Assistance to Needy Families (TANF). States were required to implement TANF no later than July 1, 1997, and to this end the California Legislature passed an urgency bill, AB 1542 (Stats. 1997, ch. 270), which amended state laws that refer to the AFDC program and added section 10063, of the Welfare and Institutions Code which changed the name of California's AFDC, Family Group, and Unemployment programs to the California Work Opportunity and Responsibility to Kids program (CalWORKs).

It is thus the opinion of the Chancellor's Office that fee exemptions or waivers referencing AFDC recipients should be construed to refer to those eligible for CalWORKs.

enrollment fee if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting, and if these students are not included in the calculation of the average daily attendance of that district. This change became effective January 1, 1997.

The Board of Governors has adopted regulations to implement the enrollment fee in sections 58500 - 58508 of Title 5 of the California Code of Regulations. The Board's regulations on financial aid are set forth at Title 5, section 58600 et seq.

C. Noncredit Courses: While the law appears to authorize fees for certain noncredit courses, districts actually have very little authority in this area. Education Code section 76380 authorizes governing boards to require students to pay a fee for noncredit courses which are not eligible for state apportionment. Noncredit courses eligible for state apportionment are listed in section 84757 of the Education Code. Before charging a fee for a noncredit course not eligible for state apportionment, a district should ensure that the fee is not prohibited by section 76380 of the Education Code. Section 76380 prohibits fees for adults enrolled in English and citizenship for foreigners, a class in an elementary subject, a class designated by the governing board as a class for which high school credit is granted (when the person taking the class does not have a high school diploma), and any class offered pursuant to sections 8531, 8532, 8533, and 8534 of the Education Code. Since almost all noncredit courses are offered pursuant to one of the above provisions, districts have very little authority to charge fees for noncredit courses.

Finally, it should also be noted that the fact that a district is over cap and is not receiving apportionment does not enable the district to use the authority of section 76380 to charge students a fee for certain courses.

D. Community Service Classes: Education Code section 78300 authorizes districts to charge students taking community service classes a fee not to exceed the cost of maintaining community services classes. Community service classes are intended to be self-supporting, and districts are prohibited from using state General Fund money (apportionment) to establish and maintain such classes.

A number of questions have arisen about the authority of districts to convert noncredit and/or credit offerings to community service classes. This practice is not prohibited by statute; however, it is not possible to award community college credit for taking such community service classes. To allow credit to be awarded within fee-based community service classes would be inconsistent with the enrollment fee statute. On the other hand, in Legal Opinion O 94-25 we concluded that a community college district may convert a noncredit course to a community service class unless the class is a direct and integral part of the credit program (e.g., the class is required as a prerequisite for a credit course).

E. Fee to Audit Courses: Education Code section 76370 authorizes districts to charge students who audit courses a fee not to exceed \$15 per unit per semester. Students auditing are prohibited from changing their enrollment to credit status, and the attendance of auditors is not included for purposes of state apportionment.

Please note that students enrolled for credit in ten or more semester units may audit an additional three or fewer units without paying this fee. There is no authority for districts which establish this fee to allow any other type of waiver.

F. Instructional Materials: Education Code section 76365 allows districts to require that students provide various types of instructional materials and enables districts to sell

such materials to students who wish to purchase the required materials from the district. Generally speaking, there is really no such thing as an "instructional materials fee;" instead, the student is being given the opportunity to purchase certain required course materials from a district.

Section 76365 has been implemented by regulations of the Board of Governors found in sections 59400-59408 of Title 5 of the California Code of Regulations. The law provides that students can only be required to provide materials which are of continuing value to the student outside of the classroom setting, including, but not limited to textbooks, tools, equipment, clothing, and those materials which are necessary for a student's vocational training and employment. The regulations further provide that "instructional and other materials" means tangible personal property that is owned or primarily controlled by the student.

"Required instructional and other materials" are materials which the student must procure or possess as a condition of registration, enrollment, or entry into a class; or any material which is necessary to achieve the required objectives of a course.

Finally, the regulations specify that the material must not be solely or exclusively available from the district. A material will not be considered to be solely or exclusively available from the district if it is provided to the student at the district's actual cost, and there are health and safety reasons for the district being the provider, or if the district is providing the material cheaper than it is available elsewhere.

It is important to remember that these regulations only apply to materials which are required as a condition of registration, enrollment, etc. If a material is helpful to students, but is not required, then it may be sold to students under the authority of the permissive code. The material need not be tangible personal property; it need not be of continuing value outside the classroom setting; and it can be available exclusively from the district.

Education Code section 81458 provides additional authority for districts to sell materials to students taking noncredit classes. Section 81458 authorizes districts to sell materials that may be necessary for the making of articles by persons in the class. The materials are to be sold at the cost to the district, and the article becomes the property of the student.

Please note that districts may not charge an across-the-board or per unit instructional materials fee (see Legal Opinion O 93-12). Students may only be required to pay for instructional materials under the circumstances described above.

Appendix A contains a detailed analysis of the kinds of materials that may and may not be required under the instructional materials regulations.

G. Nonresident Tuition: Section 76140 requires districts to charge a nonresident tuition fee in the event it chooses to admit nonresidents. The statute provides various methods/options for computing the nonresident tuition fee. It also provides that any district that has fewer than 3,001 FTES and whose boundary is within 10 miles of another state that has a reciprocity agreement with California may exempt students from that state from paying nonresident tuition, but such students must pay a fee of \$42 per unit.²

² Pursuant to section 76140(j) districts that have more than 1,500, but less than 3,001, FTES may exempt no more than 100 FTES per year from any bordering state with a reciprocity agreement. *The position of the*

Questions have been raised about charging tuition to students enrolled in distance education courses: At this time, the law does not exempt nonresident students enrolled in distance education courses from paying nonresident tuition. Students enrolled in distance education courses are subject to the same residency determination requirements and exemptions as traditional students. If a student enrolling in a distance education course is deemed to be a nonresident, that student is subject to nonresident tuition.

Districts are authorized (but not required) to exempt all nonresidents who take six or fewer units. Districts are also authorized to exempt, on an individual basis, nonresidents who are both citizens and residents of foreign countries.

It should also be noted that Education Code section 76141 authorizes districts, subject to certain limitations, to charge citizens and residents of foreign countries a fee for the support of capital outlay which may not exceed 50% of the amount charged for nonresident tuition.³

Districts are required to exempt from nonresident tuition various groups of students including:

1. Students taking noncredit classes;
2. Apprentices taking classes of related and supplemental instruction; (Ed. Code § 76350 and Labor Code 3074)
3. Certain police academy trainees, and certain job transferees (See Ed. Code, §§ 76140.5 and 76143);
4. Students who are members of the armed forces of the United States stationed in this state on active duty, except those assigned to California for educational purposes (see Ed. Code, § 68075);⁴
5. Students who are a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces (see Ed. Code, § 68074);⁵

Chancellor's Office is that the \$42 fee specified in section 76140(k) is intended to be a fee in lieu of the enrollment fee required by section 76300. Therefore, students charged this fee should not also be required to pay the enrollment fee. We are pursuing legislation to codify this policy.

³ For holders of a TN/TD visa created for business persons and professionals who are citizens of Canada and Mexico under the North American Free Trade Agreement (NAFTA), in *Carlson v. Trustees*, USDC Case No. 98-8152-R (Ex) (1999), the federal district court found that: 1) The holder of a TN/TD does not have the legal capacity to possess the requisite intent to establish domicile and thus cannot be granted residency status in California; and 2) NAFTA did not intend to allow individuals entering the U.S. under its provisions the ability to establish domicile in the U.S.A. Dismissing the plaintiff's case in its entirety, the court confirmed that opinion as a matter of law on May 24, 1999. Districts were notified shortly thereafter to follow the court's ruling in *Carlson* and deny California residency for purposes of tuition to students with NAFTA TN/TD visas as a matter of law.

⁴ In *Legal Opinion 99-21* we concluded that service in the California National Guard does not constitute being a member of the armed forces of the United States for purposes of Education Code sections 68074 and 68075.

⁵ AB 1346 (Stats. 2000, ch. 571, § 1) amended Education Code section 68074 and repealed section 68074.1 to provide permanent residency for dependents of members of the armed forces rather than the previous one-year waiver prior to establishing residency.

6. A parent who is a federal civil service employee and his or her natural or adopted dependent children if the parent moved to California as a result of a military realignment action that involves the relocation of a least 100 employees (see Ed. Code, § 68084, added by Stats. 1998, ch. 952 (AB 639), eff. Sept. 29, 1998); and

7. Minor students taking a class for high school credit only.⁶

Finally, it is important to keep in mind that students exempted from paying nonresident tuition are still required to pay the enrollment fee unless explicitly exempted from that fee. Students charged nonresident tuition are also subject to the enrollment fee.

H. Athletic Insurance: Prior to January 1, 1991, Education Code section 76470 authorized districts to make medical or hospital service available, through group, blanket or individual policies, to students of the district participating in athletic activities under the jurisdiction of the district. The cost of the insurance could be paid from district funds, by participating students, or by their parents. Effective January 1, 1991, section 76470 was repealed. The repealing legislation, however, explicitly stated that even though section 76470 was being repealed, districts continued to have all of the authority of that provision under the general authority of the permissive code (see also Stats. 1990, ch. 1372, § 1). It is the position of the Chancellor's Office that districts continue to have legal authority to require a student to pay a fee for insurance as a condition of enrollment or participation in an athletic program.

I. Cross Enrollment: During the 1994 session the Legislature passed, and the Governor signed, Senate Bill 1914 (Stats. 1994, ch. 552) which added Chapter 9.5 (commencing with section 66750) to the Education Code concerning cross-enrollment.⁷ This program, which became effective for the Fall 1995 term, permits students who are enrolled at a community college, a campus of the California State University or a campus of the University of California, under certain limited circumstances, to cross-enroll in one state-supported course per term at an institution from one of the other systems on a space-available basis at the discretion of the appropriate campus authorities on both campuses. Such students do not need to go through the formal admissions process and are exempt from required fees, except that the host campus may charge participating students an administrative fee, not to exceed ten dollars (\$10) per academic term.

A student is qualified to participate in the cross-enrollment program if he or she is enrolled in any campus of the California Community Colleges, the California State University or the University of California and meets the following requirements:

- (a) The student has completed at least one term at the home campus as a matriculated student and is taking at least six units at the home campus during the current term;
- (b) The student has attained a grade point average of 2.0 for work completed;
- (c) The student has paid appropriate tuition or fees, or both, required by the home campus for the academic term in which the student seeks to cross-enroll; and

⁶ When the minor takes a class for college credit, the nonresident fee should be charged.

⁷ This section was due to "sunset" on January 1, 2000; however, the sunset provision was extended to January 1, 2004, by SB 361 (Stats. 1999, ch. 688).

- (d) The student has the appropriate academic preparation, as determined by the host campus, consistent with the standard applied to currently enrolled students, to enroll in the course in which the student seeks to enroll.

Students who are cross-enrolled from another segment are not required to participate in the community college matriculation program, but such students can be required to meet any prerequisites or corequisites which have been properly established for the course.

The Chancellor's Office worked with representatives from the California State University and the University of California to establish guidelines for this program. These guidelines were issued by the Intersegmental Coordinating Council in June of 1995.

III. FEES FOR SERVICES

Some fees for services are explicitly authorized by statute while others may be charged under the authority of the permissive code so long as they are not required as a condition of registration, enrollment or completion of a course. In other words, the student can be required to pay for a service where the service is truly optional and is not tied to registration, course enrollment or completion. In deciding whether or not to charge for a particular service, we recommend that districts balance the need to cover their operating costs with the fact that even modest additional fees may effectively restrict access for students who are least able to pay. The State has exempted students receiving public benefits and those who demonstrate financial need from many mandatory fees and districts may wish to consider extending this policy to optional service fees.

The following fees for services are specifically authorized by statute:

A. Health Fee: Education Code section 76355 authorizes a community college district to charge a fee not to exceed \$10 per semester, up to \$7 for summer sessions or intersession of at least four weeks in length, or up to \$7 per quarter for health supervision and health services. The governing board of a district may increase the health fee by the same percentage increase as the Implicit Price Deflator for State and Local Government Purchase of Goods and Services. Whenever the calculation produces an increase of \$1 above the existing fee, the fee may be increased by \$1.⁸

Generally speaking, the fee may be charged of all students, whether or not they choose to use the health services. Part-time students may be exempted *or required to pay a portion of the full fee*. On the other hand, districts must exempt apprentices, low-income students (those eligible for a Board of Governors Enrollment Fee Waiver), dependent children and surviving spouses of members of the California National Guard who are killed or permanently disabled while in the active service of the state, and students who depend on prayer for healing.

Questions have arisen about the authority of districts to exempt additional categories of students such as minors and students taking only distance education courses. Since the language of the statute is permissive, designating additional categories of students as exempt from the health fee is not prohibited under the law.

⁸Pursuant to Education Code section 76355, on March 5, 1997, the Chancellor issued a memo authorizing the districts to raise the maximum health fees by \$1.00 to \$11.00 per semester and \$8.00 per summer session or intersession. The fee increase was based on calculations by the Department of Finance and the Implicit Price Deflator Index and was effective for the first quarter of 1997.

B. Parking Fee: AB 2812 (Stats. 1998, ch. 954), The 1998 Higher Education Omnibus Act, reorganized and consolidated community college parking fee laws by repealing Education Code sections 76360, 76361, 76361.5, 76390, and 76391, and replacing them with new sections 76360 and 76361. As in the previous version, newly enacted section 76360 authorizes districts to require students and employees to pay a fee of up to \$40 per semester (\$20 per intersession) for parking. For students ridesharing or carpooling, as defined, section 76360 retains the previous maximum fee of \$30 per semester and establishes a maximum of \$10 per intersession. Under new section 76360(b), the authority to charge parking fees above these limits, previously restricted to Glendale, Pasadena and Santa Monica Community College Districts, is extended to all districts, but only under specific circumstances as follows:

“(b) The governing board may require payment of a parking fee at a campus in excess of the limits set forth in subdivision (a) for the purpose of funding the construction of on-campus parking facilities if both of the following conditions exist at the campus:

- (1) The full-time equivalent (FTES) per parking space on the campus exceeds the statewide average FTES per parking space on community college campuses.
- (2) The market price per square foot of land adjacent to the campus exceeds the statewide average market price per square foot of land adjacent to community college campuses.

If the governing board requires payment of a parking fee in excess of the limits set forth in subdivision (a), the fee may not exceed the actual cost of constructing a parking structure.”

Under section 76360, low income students remain exempt from parking fees over \$20 per semester. Low income students are described in section 76300(g) as those who demonstrate financial need under federal standards or income standards established by the Board of Governors and students receiving benefits under the CalWORKs Program (formerly Aid to Families With Dependent Children), the Supplemental Security Income/State Supplemental Payment Program or a general assistance program. (See Legal Opinion L 94-12).

Also unchanged under section 76360, parking fees may not exceed the actual cost of providing parking and may only be charged to those who use the parking facilities. Parking fees may only be expended for parking services or for reducing costs to students and employees using public transportation to and from school. And, finally, section 76360 continues to provide that the governing board may require persons other than students and employees to pay fees for using the parking facilities. (However, Education Code section 67301(b) requires the Board of Governors to adopt regulations requiring the governing board of each community college district to provide visitor parking at each campus at no charge for a disabled person or veteran and for persons providing transportation services to individuals with disabilities. Regulations in conformance with this requirement are contained in section 59306(a) of Title 5.)

In legal opinion 00-07 we concluded that while Education Code section 76360 provides that parking fees collected by a community college “shall be expended only for parking services ...” the law does not assign any particular priority to the various types of

parking service expenses. (Ed. Code, § 76360(e)). As such, districts may use their discretion when allocating parking fees for various parking services such as parking security, repair, and maintenance.

C. Transportation Fee: AB 2812 (Stats. 1998, ch. 954) also reorganized and consolidated the statutes related to community college transportation fees by repealing Education Code sections 76360, 76361, 76361.5, 76390, and 76391, and replacing them with new sections 76360 and 76361. In the revised version of section 76361, a district's authority to require students and employees to pay a fee for the purpose of reducing fares for services provided by common carriers or municipally-owned transit systems, is expanded to include the authority to require payment of a fee to partially or fully recover transportation costs incurred by the district. Previously, only Butte Community College District had the authority to require payment of transportation fees to recover district transportation costs. Section 76361(b) provides that only those students and employees who use the transportation services may be required to pay the fees, or in the alternative, a district may charge transportation fees regardless of actual usage, in two situations:

- (1) All students and employees may be required to pay a transportation fee if a majority of the students and a majority of the employees vote for such a proposition; or
- (2) All students may be required to pay a transportation fee if a majority of the students vote that all students will pay. In this instance, the employees are not entitled to use the services.

As before, elections may be held on a campus-by-campus basis. However, the fees levied by election are no longer limited to a two year period, but instead remain valid for "a period of time to be determined by the governing board of the district." (Ed. Code, §§ 76361(b)(1) and 76361(b)(2)). Under previous law, only Butte Community College District had the authority to designate a time period greater than two years, during which the transportation fees authorized by an election would be valid.

Note: As with previous law in this area, it remains unclear whether a majority of all students/employees on a campus is required, or whether a majority of students/employees voting is required. The Chancellor's Office has not rendered an opinion with regard to this issue and believes the Legislature is the appropriate body to clarify intent.

The maximum amount of transportation and parking fees levied by a district may not exceed \$60 per semester or \$30 per intersession, or a proportionate equivalent for part-time students.

Low income students (those eligible for a Board of Governors Enrollment Fee Waiver) must be exempted, and part-time students must have their fees prorated based on the number of units in which the part-time student is enrolled. Finally, the governing board may require payment of a fee, to be set by the governing board, for the use of transportation services by persons other than students and employees.

Additional authority for transportation fees is set forth in Education Code section 82305.6. This section provides that when the district provides for the transportation of students to and from the colleges, the governing board may require the "parents and guardians of all or some of the students transported to pay a portion of the cost of such transportation. . . ." The amount charged can be no greater than that paid for

transportation on a common carrier. Parents and guardians who are indigent are exempt, and no charge can be made for transporting handicapped students.

It is the opinion of the Chancellor's Office that, under the authority of the permissive code, a district can provide for transportation of students to and from the colleges, and that students who wish to avail themselves of this district service can be required to pay a fee. As long as students are not required to take this transportation, but rather have it available as an option, this is a service that may be provided for a fee under the authority of the permissive code.

D. Student Representation Fee: Education Code section 76060.5 provides that a mandatory student representation fee of \$1 per semester may be charged of all students, upon a favorable vote of two-thirds of students voting in an election on the matter (provided that the number of students who vote equals or exceeds the average of the number of students who voted in the previous three student body elections). The statute provides certain reasons that students may refuse to pay the fee. The statute has been implemented by regulations of the Board of Governors, set forth in Title 5, sections 54801-54805.

In Legal Opinion L 98-09, we concluded that a newly formed student government organization cannot order an election for the purpose of having the student body vote to establish a student representation fee without having held three prior student body elections. In specifically requiring three previous student body elections prior to raising the student fee issue, the intent of the Legislature is to ensure meaningful participation in the student body election process. However, under certain circumstances, voting results from student body elections held under a previous and related student government structure may satisfy this requirement.

It is the opinion of the Chancellor's Office that revenues from the student representation fee can be used for any purpose related to representing the views of students with governmental bodies. Such revenue can be used to travel to and from conferences sponsored by CalSACC or similar student organizations, to purchase computer equipment needed to conduct legislative research, to subscribe to legislative publications, or to pay for any other expense reasonably necessary to effectuate student representation activities. (See Legal Opinion O 95-24.)

Districts which have established or are contemplating establishing a student representation fee should be aware that there has recently been considerable litigation on student fee issues, including *Smith v. Regents of the University of California* (1993) 4 Cal.4th 843, cert.den. 114 S.Ct. 181 in which the courts held that the First Amendment to the U.S. Constitution precludes the University of California from charging students a mandatory fee which is used to support political activities. However, we believe a challenge to the community college student representation fee on such grounds is less likely because the fee is explicitly authorized by statute and because students may refuse to pay the fee on political grounds.

E. Student Center Fee: Education Code section 76375 authorizes districts to establish an annual building and operating fee, for the purpose of financing, constructing, enlarging, remodeling, refurbishing, and operating a student body center. The fee may be required of all students attending the community college where the center is located. The fee can only be imposed after the favorable vote of two-thirds of the students voting in an election held for that purpose. The fee cannot exceed \$1 per credit hour, up to a maximum of \$10 per student per year. Noncredit enrollees cannot be required to pay the

fee, nor can recipients of CalWORKs (formerly AFDC), SSI/SSP, or general assistance. The Board of Governors has adopted regulations to implement this fee in section 58510 of Title 5 of the California Code of Regulations.

F. Student Records: Education Code section 76223 authorizes districts to make a reasonable charge in an amount not to exceed the actual cost of furnishing copies of any student record, provided that no charge can be made for furnishing up to two transcripts of students' records or up to two verifications of various records of students. No charge may be made for the cost to search for or retrieve any student record. It should be noted that federal law and regulation prohibit the charging of fees for any documentation required for a student's receipt of Title IV student financial aid.

In Legal Opinion 99-02 we concluded that while Education Code section 76223 does not allow a district to charge a fee for verifying enrollment status for purposes of determining eligibility for district programs and activities, the district may offer the student the right to purchase a card providing quick and convenient verification of enrollment, provided it is completely optional. We also noted that a district may charge a fee for a student identification card that serves as a verification of enrollment when required by outside entities, provided the fee for the card is not a condition of enrollment, is only levied after the student has requested three or more enrollment verifications, and the price of the card does not exceed the cost of making one copy of a verification of enrollment document the student would otherwise be required to obtain. (See also IV, D; Student Identification Card, below.)

G. Dormitory Fee: Education Code section 81670 authorizes districts to construct and maintain dormitories, and to fix the rates that will be charged to students for quarters in the dormitories.

H. Child Care: Prior to January 1, 1991, Education Code section 79121 provided that community college districts could accept student fees, parent fees, and private funds to operate campus child development centers. After a series of complicated legislative changes, section 79121 and a related provision now located at section 66060 continue to authorize operation of child development centers, but neither section expressly mentions fees. Nevertheless, it is the opinion of the Chancellor's Office that districts have the authority to charge student parents a fee for child care services for their children. The fees are being charged to parents who voluntarily choose to use this service. However, a district cannot charge a student a fee other than the enrollment fee to enroll in child development classes.

I. Nonresident Application Processing Fee: Education Code section 76142 authorizes community college districts to charge nonresident applicants who are both citizens and residents of a foreign country a processing fee not to exceed the lesser of (1) the actual cost of processing an application and other documentation required by the federal government, or (2) \$100, which may be deducted from the tuition fee at the time of enrollment. No processing fee can be charged to an applicant who would be eligible for an exemption from nonresident tuition pursuant to Education Code section 76140, or who can demonstrate economic hardship (as defined by the district in accordance with certain parameters specified in statute).

J. Use Fee for Facilities Financed by the Issuance of Revenue Bonds

When the construction of a facility is financed by the issuance of revenue bonds, Education Code section 81901(b)(3) authorizes the governing board of a community college district to "fix rates, rents, or other charges for the use of any project acquired, constructed, equipped, furnished, operated or maintained by the board, or for services rendered in connection therewith." In Legal Opinion L 97-17 we held that section 81901(b)(3) allows districts to charge students a fee for the use of such facilities. In particular, where a student center is constructed using revenue bonds, this allows the district to charge a fee that exceeds the maximum \$10 student center fee provided for in Education Code section 76375. However, Opinion L 97-17 also holds that section 81901(b)(3) authorizes a use fee, and thus does not authorize districts to charge a blanket fee to all students.

It would be justifiable for all students attending classes where the facility is located to be assessed a fee for use of such a facility. It would be reasonable to charge a use fee to students attending classes at other nearby locations, if those students occasionally come to the main campus to use the facility. However, in our view, it is not permissible to charge such use fees to students attending classes at remote locations, especially sites outside of the district, unless there is evidence that students in those classes use the facility on at least an occasional basis. One possible approach would be to give students attending classes at remote locations the option to decline to pay the fee, with the understanding that they then lose any right to use the facility.

K. Credit by Examination: Fees charged for credit by examination offered pursuant to Title 5, section 55753 have been determined to be optional fees for service. A reasonable fee for credit by examination is the per unit fee of \$11.00 established by Education Code section 76300.

IV. PROHIBITED PRACTICES

The following kinds of fees may not be charged under current law:

A. Late Application Fee: Education Code section 72251, effective January 1, 1992, would have authorized districts to charge up to \$2 for a late application fee. However, this section was repealed, effective July 16, 1991, and the Chancellor's Office has determined that a late application fee cannot be charged under the authority of the permissive code.

B. Add/Drop Fee: Education Code section 72250.5, effective January 1, 1992, would have authorized districts to charge up to \$1 for the cost of making program changes initiated by a student. However, this section was repealed effective July 16, 1991, and the Chancellor's Office has determined that an add/drop fee cannot be charged under the authority of the permissive code.

C. Mandatory Student Activities Fee: There is no statutory authority for charging a mandatory student activities fee. However, an optional or voluntary student activities fee is permissible. Questions have been raised regarding the legality of the "negative check-off" approach to collecting a student activities fee. Under this approach the student, when registering or enrolling, is given the option of checking a box that he or she does not choose to pay a student activities fee. If the student checks the box, he or she will not be charged the fee. If the student does not check the box, the fee will be assessed. Since this negative check-off approach preserves a student's option to pay or not pay the fee, it is both legal and appropriate. The test to be applied in implementing a negative check-off approach is that a reasonable student going through the enrollment process and reading

the forms must understand that he or she has the option of paying or not paying the student activities fee.

Questions have also been raised about the legality of a system of student activity fee collection that requires the student to obtain a signature of a district official to waive the fee. Since the student's option to pay is preserved, the method is technically legal. However, because additional tasks are required of both the student and the district to process a student's desire to waive an optional fee, this method is fraught with potential problems. To implement a sign-off system, the district must take every precaution to ensure that officials authorized to sign off the fee for students are on-site and easily accessible during the registration. The test to be applied here is whether opting not to pay the fee is unduly burdensome. For obvious reasons, this system is not an option for mail, on-line, or telephone registration.

D. Student Identification Card: In Legal Opinion L 97-11, we concluded that a district cannot charge a mandatory fee for a student identification card, even if the card also has other purposes, such as use as a debit card for purchase of instructional materials. Education Code section 76365, and the implementing regulations contained in Title 5, section 59400 et seq., permit districts to require students to provide certain instructional materials at the students' own expense. However, Legal Opinion L 97-11 specifically concluded that student ID cards do not fall under the definition of "instructional materials" contained in Title 5, section 59402(b); and thus, charging a fee for a student ID card cannot be justified. *Similarly, in Legal Opinion 00-05, we concluded that since there is no statutory authority for such a fee, a district may not charge a fee to replace a student ID card that was initially issued at no charge.* (See also II, F, Instructional Materials, above.)

This does not mean that a district cannot offer students the opportunity to purchase such a card in order to obtain certain optional benefits such as faster registration, ease of purchasing at the bookstore, etc. We also find no reason to believe that a district may not provide students, at district expense, with a card which students are then required to use for certain identification purposes. *In Legal Opinion 99-02 we concluded that while Education Code section 76223 does not allow a district to charge a fee for verifying enrollment status for purposes of determining eligibility for district programs and activities, the district may offer the student the right to purchase a card providing quick and convenient verification of enrollment, provided it is completely optional. We also noted that a district may charge a fee for a student identification card that serves as a verification of enrollment when required by outside entities, provided the fee for the card is not a condition of enrollment, is only levied after the student has requested three or more enrollment verifications, and the price of the card does not exceed the cost of making one copy of a verification of enrollment document the student would otherwise be required to obtain.* (See also III, F, Student Records, above.)

E. Fees Charged Through Student Body Organizations: Unless expressly provided by statute, a student body organization cannot charge a fee that a district governing board does not have authority to levy. It should be noted, however, that student body organizations may charge students a student activity fee or sell them a student body card so long as the fee or charge is optional as discussed under C, Mandatory Student Activities Fee, above.

F. Nonresident Application Fee: The Chancellor's Office has determined that a nonresident application fee cannot be imposed on residents of other states under the authority of the permissive code. Since payment of the fee would be a condition of enrollment in or attendance in classes, it cannot be imposed without specific legislative authorization. However, as discussed above, such a fee is authorized with respect to citizens and residents of foreign countries under Education Code section 76142.

G. Field Trips: Education Code section 72640, relating to field trips, was repealed, effective January 1, 1991. Provisions on field trips are now found in sections 55450-55451 of Title 5 of the California Code of Regulations. Section 55450(d) prohibits students from being required to pay a fee in order to participate in an instructionally related field trip. Previously, districts could charge students for field trips outside the State, but in May 1993 the Board of Governors amended section 55450 to clarify that students cannot be charged for field trips either inside or outside the State. However, districts are not required to pay the costs of meals, lodging, and other "incidental expenses" of students participating in field trips.

These provisions effectively mean that districts cannot charge fees for arranging field trips, but students can be asked to pick up their expenses of meals, lodging, and incidental expenses. A district would be authorized to put a meals and lodging package together, which a student could choose to purchase from the district or secure on his/her own. Finally, the regulations continue to provide that no student is to be prevented from making a field trip or excursion because of a lack of sufficient funds. This language has been carried over from the statute and continues to apply.

Some questions have been raised regarding districts charging students "entrance fees" for field trips to concerts, museums, plays, etc. In Legal Opinion M 96-17 we held that entrance fees should be considered "incidental expenses" which students can be asked to pay. However, as with other types of field trips, a student cannot be excluded from the event due to lack of funds.

H. Fees for Dependents of Certain Veterans: Education Code section 32320 provides that community college districts are prohibited from charging "any fees, including enrollment fees, registration fees, or incidental fees" to any of the following:

- (1) Any dependent eligible to receive assistance under Article 2 (commencing with section 890) of Chapter 4 of Division 4 of the Military and Veterans Code.
- (2) Any child of any veteran of the United States military who has a service-connected disability, has been killed in service, or has died of a service-connected disability, where the Department of Veterans Affairs determines the child eligible on the basis that the annual income of the child, including the value of any support received from a parent, does not exceed the national poverty level for one person as most recently calculated by the Bureau of the Census of the United States Department of Commerce.

⁹ Education Code section 32320 was amended by Senate Bill 251 (Stats. 1999, ch. 689) to provide that the maximum income level of a child who would not be charged tuition or fees under this provision would be the national poverty level rather than the existing flat amount of \$7,000 and that a person who is eligible for the waiver of tuition or fees under these provisions may apply for each academic year during which he or she applies for that waiver, but an eligible person may not receive a waiver of tuition or fees for a prior academic year.

(3) Any dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty, and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state.

Section 32320 excludes a dependent of a veteran who is declared missing in action or a prisoner of war as provided in paragraph (4) of subdivision (a) of section 890 of the Military and Veterans Code. Thus, these students may continue to be charged such fees.

It is not entirely clear what is encompassed by the phrase "incidental fees" as used in section 32320. However, in order to be consistent with the policy of the Department of Veterans Affairs, which is applicable at the University of California and the California State University, we recommend that all fees beyond the enrollment fee which are required for admission, registration, enrollment or completion of a course (i.e., required course fees listed in items A, C, D, E, F, and H under section II, above) be considered "incidental fees." Note, however, that colleges are allowed to charge nonresident tuition to these students.

In Legal Opinion 94-14, we specifically held that parking fees are not incidental fees and that a student activity or ID card fee, which is entirely voluntary (see C, D and E under section IV, above), is not an incidental fee so long as admission, registration, enrollment or completion of a course is not effectively restricted for students who decline to pay the fee. Thus, the exemption afforded by section 32320 does not apply to these fees. On the other hand, a student center fee would be considered an incidental fee if a student is precluded from taking credit courses unless he/she pays the fee. But, if the same credit courses are concurrently available elsewhere in the district without payment of the student center fee, the fee would not be an access barrier and the exemption under section 32320 would not apply.

I. Fees for Required or Funded Services: It is the opinion of the Chancellor's Office that community college districts may not charge students a fee for use of a service which the district is required to provide by state law or which the district is already funded to provide. For example, in Legal Opinion L 95-23 we concluded that a district may not charge students a fee for counseling services the district is required to provide under Education Code section 72620 or Title 5, section 51018. Nor may a district charge students an additional fee for use of health services which are already funded from student health fees collected pursuant to Education Code section 76355.

J. Refundable Deposits: In Legal Opinion L 95-23 we also held that a "refundable deposit" amounts to a fee if it is required as a condition of registration, enrollment, or entry into classes, or as a condition of completing the required classroom objectives of a course. Therefore, statutory authority is required in order to impose such a charge on a student regardless of whether it is characterized as a "refundable deposit" or as an ordinary nonrefundable fee.

K. Fees for Distance Education: In Legal Opinion L 95-33 we held that a district may not charge an additional mandatory fee for a credit course delivered via Internet where the additional fee is intended to cover the cost of Internet access. If instruction is offered as a community service class without credit, a district could charge students for the cost of Internet access necessary to participate in the class. Such a fee could also be charged for a credit course if it is truly optional (the student can participate effectively without

paying the additional fee), but, there is no statutory authority for charging such a fee for a credit course if the fee is mandatory.

L. Mandatory Mailing Fees: There is no express authority for requiring students, as a condition of enrollment, to pay a fee to cover the costs of mailing grade reports, registration packets and other student documents. As discussed in III, F, above, Education Code section 76223 authorizes charging students for "the actual cost" of providing copies of student records. However, in Legal Opinion M 96-17 we explained that this permits charging a flat fee for mailing costs only if all the following conditions are met:

- (1) Students are not charged for mailing documents other than individual student records (e.g. published class schedules or registration packets that do not relate specifically to a particular student);
- (2) No student is charged an amount in excess of the actual cost of furnishing the records he or she receives;
- (3) Students are advised that they will not be barred from registering or enrolling in any course if they decline to pay the fee; and
- (4) Students are advised that if they do not wish to be charged for mailing costs they may come to campus to obtain and pay for copies of student records.

M. Mandatory Fee for Rental of Practice Rooms: In Legal Opinion M 96-17 we also considered a situation where a college charged music students a mandatory fee for the use of practice rooms which they were required to use as a part of their class assignments. We held that this could not be justified as an instructional materials fee and that there was no other statutory authority for the practice. However, it would be permissible for a college to make practice rooms available for students who are willing to pay an optional service fee for their use.

N. Apprenticeship Courses: Education Code section 76350 prohibits community colleges from imposing resident or nonresident charges or fees for apprenticeship courses offered pursuant to Labor Code section 3074. On the other hand, in Legal Opinion 00-22 we concluded that enrollment fees may be charged to apprentices enrolled in courses which are not counted toward satisfying the related and supplemental instruction required under the apprenticeship agreement described in section 3074.

APPENDIX A

APPLICATION OF INSTRUCTIONAL MATERIALS REGULATIONS TO SPECIFIC INSTANCES

A. SUGGESTED APPROACH

The following is a suggested approach for analyzing the application of Education Code section 76365 and Title 5 regulations on instructional materials (§§ 59400-59408) in specific instances:

1. Required Material? Must the material be procured or possessed as a condition of enrollment or entry into a class, or to achieve those required objectives of a course which are to be accomplished under the supervision of an instructor during class hours? If not, the material may be classifiable as "optional," and the regulations don't apply.
2. Tangible personal property? Is the material tangible personal property? If not, the regulations don't apply and some other legal authority must be found to authorize requiring the material or practice.
3. Owned or Controlled by the student? Is the material owned or primarily controlled by an individual student? If not, such materials can't be required.
4. Solely available from the district? Is the material not available through the district, or because the district requires that the material be purchased or procured from it? If so, do either of the two exceptions under Title 5, section 59402(c) apply so as to allow such material to be required?
5. Continuing value outside classroom setting? Can the material be taken from the classroom setting, and is it not wholly consumed, used up, or rendered valueless as it is applied in achieving those required objectives of a course which are accomplished under the supervision of an Instructor during class hours?

The answers to all of these questions must be "yes" for any material to be required of students.

B. SPECIFIC INSTANCES WITHIN SCOPE OF REGULATIONS

1. Textbooks - Education Code section 76365 specifically mentions textbooks as materials which have continuing value outside of the classroom. As such, the general rule is that districts may require students to provide their own textbooks. However, these textbooks can't be solely or exclusively available from the district unless the exception of Title 5, section 59402(c) applies.

A generally published textbook (e.g. one published by Harcourt-Brace) which the college bookstore carries is generally available, even if local bookstores don't carry the text. On the

other hand, if a district is the sole publisher of a textbook, placing copies of the text in local bookstores will not automatically make it generally available.

2. Syllabi and Instructor-Prepared Materials - Syllabi and instructor prepared material are distinguished from textbooks in that they are generally prepared for specific courses offered by a college or district, and they are almost always solely or exclusively provided by a district. Such materials, in most instances, have continuing value outside of the classroom setting. The district will be required to provide these materials, however, unless the exception to Title 5, section 59402(c) can be applied. Specifically, the syllabi or instructor-prepared material must be provided at the district's actual cost, in lieu of other generally available but more expensive material which would otherwise be required.

A syllabus or instructor-prepared material costing a district \$5.00 to provide to a student could be required in lieu of requiring the students to secure a nationally published textbook on the same subject which retailed for \$10.00. A district's "actual cost" of producing materials which it solely or exclusively provides can include a small markup necessary for selling the item through the college bookstore. The overall premise is that neither a district nor its employees ought to be making a profit on materials which the district solely or exclusively provides.

Syllabi and instructor-prepared materials which are required, but are supplemental or in addition to other required materials, should be provided by the district. On the other hand, a syllabus or instructor-prepared material can be classified as "optional" if it is not required by the district, or is not required to complete the required objectives of a course to be accomplished under the direction of an instructor during class hours. In this regard, a syllabus or other material could be "highly recommended" without being required. Also a material could be designated for "required reading" without it actually being a required material.

3. Lab Books and Workbooks - Lab books and workbooks are distinguished from texts and instructor-produced materials in that they are written in extensively or have various exercises which result in pages being torn out. Generally speaking, even though such materials are altered, they retain some value to the student outside of the classroom setting, and therefore can be required of students. Sheet music is another example of workbook-type material which can be required.

4. Laboratory Animals - Under most conditions, required laboratory animals must be provided by the district because they have no continuing value to the student outside of the classroom setting. This general rule, however, does not require a district to provide an unlimited supply of laboratory animals. Laboratory animals in addition to those reasonably needed for completion of course objectives can be sold as "optional" materials.

5. Clay - Clay is an example of a "transformed" material which, under most circumstances, can retain continuing value outside of the classroom setting. For instance, a district could require that a student provide 20 pounds of a given clay in order to take a course. The clay can be sold through the college bookstore if the student wishes to purchase it there. The clay, converted into objects and fired in a kiln, can be taken from the classroom by the student. The clay is not wholly consumed, used up or rendered valueless in the process of becoming an object.

A critical distinction to apply with respect to transformed materials is whether the transformed material becomes part of something that a student will take from a class, or part of something that is just used for practice, and will not become the property of a student. Materials used in practice--objects which don't become the property of the student--should be provided by the district; whereas if the material is part of an object which becomes the property of the student, it can be required.

Another method to handle transformed materials such as clay is to provide the material for free, but to charge the student for any transformed material which he or she wishes to take from the classroom. Under this method, the material doesn't become the permanent property of the student until he or she chooses to buy it. In any case, if students are required to provide clay, the transformed objects must become their property.

Other examples of transformed materials which can have value to the student outside of the classroom setting include wood, metal, film, photographic paper, oil paints, canvas, cloth, food and paper generally.

6. Welding Rods - Welding rods are an example of a "transformed" material which, under most circumstances, have no continuing value outside of the classroom setting after being used. A welding rod is rendered valueless in the process of being used for practice welds. Hence, a district must provide those rods necessary to complete those required objectives of a course which are to be accomplished under the supervision of an instructor during class hours. Extra welding rods for practice or in addition to those needed to complete required objectives may be sold to the student as optional material.

Welding rods and other transformed materials can have continuing value under limited circumstances, however. If welding rods are used to make a project or material which a student will take from the class, the student can be required to provide the rods that will be used for the project. For instance, if the welding rods are used to make an art object and the art object becomes the property of the student, welding rods may be required. Other examples of transformed materials which are usually rendered valueless after use include chemicals, gasoline, diesel fuel, and medical supplies such as Band-Aids, sterile syringes, and catheters.

7. Uniforms and Clothing - Education Code section 76365 specifically itemizes clothing as a material which is of continuing value to a student outside of the classroom setting. Students can be required to provide their own uniforms and clothing.

8. Bluebooks - Used bluebooks if returned, are materials of continuing value to the student outside of the classroom setting. If the district is the sole provider of bluebooks, they must be provided to students at the district's actual cost. If used bluebooks are not returned they are not of continuing value to the student and thus should be provided by the district.

9. Required Tests - Required tests are instructional materials, and have continuing value to the student, if they are returned. However, in instances where districts are the sole or exclusive

provider of tests and neither of the exceptions in Title 5, section 59402(c) apply, tests should be provided free.

Optional test or tests not required for entry or enrollment into a class can be charged for within the parameters of the "permissive code," Education Code section 70902(a).

10. Computer paper - Computer paper is a material which can be used by many students, but which can have continuing value to students. For instance, a district could require that each student provide a specified quantity and brand of computer paper in order to enroll in a course. A student wouldn't necessarily be using the box of computer paper he or she bought, but as long as he or she was entitled to keep all printouts, and as long as the student would generate roughly the quantity of paper he or she provided, a student could be required to provide computer paper.

11. Photographic Chemicals - Photographic chemicals are a material which can be used by many students, but which usually will have no continuing value to students outside of the classroom setting. Unlike computer paper, photographic chemicals can be tainted through misuse and tend to become used up in the classroom setting. If photographic chemicals are kept separate for each student and are given to students upon completion of the class, students can be required to provide them.

12. Recording Tape, Video Tape, Floppy Discs - Recording tape, video tape, floppy discs and other such reusable recording materials generally have continuing value to students outside of the classroom setting. They are generally available, tangible personal property of continuing value that is owned or controlled by the student.

13. Flowers and Food - Flowers for a flower arrangement class are an example of a material which can be required, with the student having the option to purchase them from the district. The district can specify the required flowers which the student needs and then provide the student with an option to purchase all necessary flowers from the district for a specified price. The same is true of food for a cooking class.

14. Equipment - Education Code section 76365 specifically mentions equipment as a material which has continuing value to the student outside of the classroom setting. Thus, students can be required to provide their own equipment for classes.

C. SPECIFIC INSTANCES OUTSIDE SCOPE OF REGULATIONS

1. Performances - Requiring a student to see a play, film, concert or other performance is not an instructional or other material, and not covered by the regulations. A district may require a student to see a specified play, film, concert or performance, but in order to generate ADA for the student's attendance at the performance the district must provide for attendance free of charge to the student. If seeing a performance is accomplished through a field trip, students may be asked to pay for incidental expenses, including entrance fees to the performance, but no student can be denied the right to participate in the field trip due to lack of funds. (See Title 5, §§ 55450-55451.)

2. Charge for Use of Equipment - In lieu of requiring students to provide certain expensive equipment, one suggestion is that students be given the option to "rent" the equipment from the district for the duration of the course. The instructional materials regulations do not address rental of equipment that is required by a district. Rather, the regulations only address the authority of districts to require the equipment.

Generally speaking, rental of equipment should be classified as an "optional fee," and thus would be authorized within the parameters of the permissive code. Districts should not subsidize their equipment budgets by renting equipment which students should not be expected to own. For instance, it would be improper to require students to provide a certain \$5,000 television camera and then offer them the "option" of renting one for use during the class for \$20 per semester.

3. Models for Art Classes - Models for art classes have no continuing value to the student outside of the classroom setting. They are not owned or primarily controlled by individual students. Therefore, students cannot be required to pay for models in art classes.

Appendix B

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DECLARATION OF TREVOR O'SHAUGHNESSY

I, TREVOR O'SHAUGHNESSY, declare as follows:

1. I am currently employed by the California Integrated Waste Management Board (CIWMB) as a Supervising Integrated Waste Management Specialist. I am the manager responsible for implementing the AB 75 program at the CIWMB. I have been officially employed in this position since March of 2000 but performed the duties in an acting capacity starting in October of 1999.

2. As manager of the AB 75 program, I am familiar with its implementation at the CIWMB as well as the activities necessary to implement it at state agencies and large state facilities. The CIWMB developed and adopted a model Integrated Waste Management Plan for state agencies and large state facilities, incorporating comments from these entities, as required by statute and to streamline their efforts in developing their own Plan. The CIWMB is in the process of developing a streamlined process for annual reporting by state agencies and large state facilities, incorporating comments from these entities, with an emphasis in streamlining the process for these entities. I believe the maximum amount of personnel resources that any entity will need to expend in preparing this annual report will be forty (40) hours per year.

1 3. Based on my knowledge of the AB 75 program and of
2 recycling and recovery processes, I am aware of several means by
3 which a business or governmental entity can recover expenses for
4 implementing and operating these types of programs:

5 • disposal cost avoidance - any materials that are diverted
6 from disposal in a landfill will avoid disposal costs of
7 \$37.71 per ton, based on statewide weighted average costs
8 as published on the CIWMB's website which has tracked these
9 costs for several years

10 • reuse of materials - materials that would ordinarily be
11 disposed of in a landfill can often be reused at the
12 facility, thereby avoiding the cost of purchasing new
13 materials that would serve the same purpose

14 • California Redemption Value (CRV) containers - bottles and
15 cans that are assigned redemption values may be collected
16 and turned in to processing operations for cash value

17 • sale of commodity materials - materials that have market
18 value such as steel and plastic may be collected and sold
19 to processing operations for cash value

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22 Below I have provided some examples of how these types of
23 programs have been and could be implemented:

24 Example 1: Debris resulting from deconstruction of a parking
25 lot and building at a facility, extremely heavy materials, could

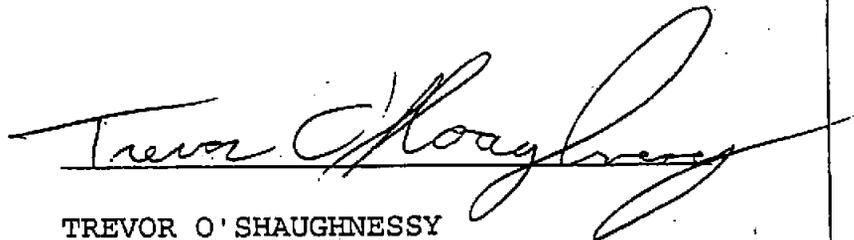
1 be diverted to a recycling facility at no cost other than
2 transportation in lieu of disposal at a landfill, thus avoiding
3 disposal costs. If the new construction required placement of
4 road base, the old asphalt could be crushed and used for this
5 purpose. The reuse of the old asphalt, minus costs for crushing
6 if any, could avoid significant costs for purchasing new or
7 imported road base materials.

8 Example 2: One study conducted by the University of
9 California's Cooperative Extension states that "grasscycling",
10 i.e., mowing grass with a mower that mulches the cut grass into
11 small pieces that can be left on the lawn, can save up to 50 per
12 cent of the total time spent mowing. With this practice, the
13 gardener does not need to pick up the grass clippings for
14 disposal, and the disposal costs are also avoided. There would
15 be additional cost savings for unused fuel and wear and tear on
16 the equipment.

17 Example 3: Through implementation of a cardboard recycling
18 program, at a minimum, disposal costs are avoided. Cardboard
19 may also be sold as a commodity, and depending on location of
20 the facility, could provide a good source of revenue. A
21 northern California average price for cardboard at this time is
22 \$80 per ton based on information published in The Yellow Book, a
23 standard publication for the paper industry.
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1 Example 4: The California Redemption Value (CRV) for aluminum
2 cans is 2.5 cents per can. There are 27 cans per pound of
3 aluminum cans, which means the recovery value of one pound of
4 cans is approximately 67.5 cents. If a facility recycles one
5 ton (2000 pounds) of cans, it could recover \$1350 and avoid the
6 disposal costs as well.

7
8 I declare under penalty of perjury under the laws of the
9 State of California that the foregoing is true and correct to
10 the best of my personal knowledge. If called to testify I could
11 competently do so. Executed on May 18, 2001, in Sacramento,
12 California.

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15 TREVOR O'SHAUGHNESSY
16 Supervising Waste Management Specialist
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Appendix C

Construction and Demolition Recycling Program

Introduction

Construction and demolition (C&D) debris includes concrete, asphalt, wood, drywall, metals, and many miscellaneous and composite materials. C&D debris is generated by demolition and new construction of structures such as residential and commercial buildings and roadways.

C&D accounts for a significant percentage of the municipal waste stream, with current estimates at 28 percent of the total tonnage. Its reduction will help meet the State-mandated diversion goal of 50 percent by 2000. The following projects involve different efforts among the public, industry, and the Integrated Waste Management Board.

Board Programs

CalMAX Classified Ads. The Board's CalMAX (California Materials Exchange) program publishes free ads to help businesses find markets for materials traditionally discarded, including C&D materials. Listings are available on-line and are updated weekly. The hard-copy catalog is published quarterly. *Contact the CalMAX Hotline at (916) 255-2369.*

R-Team—Business Assistance. The California Recycling Business Assistance Team, or "R-Team," is a network that assists businesses that use recycled feedstock in manufacturing. Assistance is provided for financial, marketing, technical, business, and permitting needs. The R-Team is a cooperative effort of the Board, California Trade and Commerce Agency, Business Environmental Assistance Centers, and the U.S. EPA. *Contact the R-Team at (916) 255-1000.*

Zone Loan Program. Low-interest loans are available for businesses starting or expanding recycling operations. The business must be located in a designated Recycling Market Development Zone (RMDZ). *Contact the R-Team at (916) 255-1000.*

Publications/Databases

Most of the publications and databases on the following pages are available both on the Internet and by mail.

To Access Information on the Internet. See "For More Information" at the end of this fact sheet.

To Receive Publications by Mail. Call the Board's Publications Clearinghouse at (800) CA WASTE, or from outside California, call (916) 255-2296.

Lists and Databases

C&D Recyclers—Processors & Receivers. A list of approximately 500 sites in California that receive construction and/or demolition materials for recycling or reuse. Sorted by county. Material categories include asphalt, concrete, brick, appliances, flooring, glass, drywall, paint, plastic, and wood. Pub. #431-96-017. Also a searchable database on the Board's C&D Web site. Contact: Marylou Taylor, (916) 255-2452.

Recycled-Content Building Construction Products. A list of approximately 450 manufacturers (and a few distributors) of recycled-content construction products sold in California. Most are also located in California. Sorted by county (or state). Product categories include aggregate, asphalt, masonry, structural, flooring, walls, insulation, fixtures, paint, roofing, and wood substitutes. Pub. #431-96-018. Also a searchable database on the Board's C&D Web site. Contact: Marylou Taylor, (916) 255-2452.

Recycled-Content Product Database. A database of approximately 10,000 listings of recycled-content products, including C&D products. This is a searchable database available only on the Internet. Selected portions may be printed but not downloaded. Contact: Linda Hennessy, (916) 255-2497.

HTTP://WWW.CIWMIB.CA.GOV



C&D Recycling—Organizations/Publications.

A list of approximately 70 C&D recycling publications and associated organizations (nonprofit, business, and government). Pub. #431-96-019. Contact: Marylou Taylor, (916) 255-2452.

Fact Sheets

Recycled Aggregate. A four-page overview of recycling concrete and asphalt into aggregate base, including Greenbook and Caltrans specifications, organizations, and siting considerations in California. Pub. #431-95-052. Contact: Marylou Taylor, (916) 255-2452.

Asphalt Pavement Recycling. A four-page overview of recycling asphalt pavement back into asphalt pavement, including recycling methods, Greenbook and Caltrans specifications, organizations, and siting considerations in California. Pub. #431-95-067. Contact: Marylou Taylor, (916) 255-2452.

Drywall Recycling. A four-page overview of drywall recycling, including existing and potential markets, drywall processors in California, and a list of reports. Pub. #431-95-069. Contact: Mark Fong, (916) 255-2495.

Caltrans and Recycled Transportation Products. A four-page overview of the types of recycled-content products that Caltrans allows, or could potentially allow, in State road projects. Includes guidelines for introducing a new product, and staff contacts. Pub. #431-97-012. Contact: Marylou Taylor, (916) 255-2452.

Asphalt Roofing Shingles Recycling: Introduction. A three-page overview of processing asphalt roofing shingles for recycling into various potential products. Pub. #431-97-031. Contact: Mark Fong, (916) 255-2495.

Asphalt Roofing in Aggregate Base. A two-page overview of recycling ground asphalt roofing shingles into aggregate base. Pub. #431-97-032. Contact: Mark Fong, (916) 255-2495.

Asphalt Roofing in Asphalt Pavement. A four-page overview of recycling ground asphalt roofing shingles into asphalt pavement. Pub. #431-97-033. Contact: Mark Fong, (916) 255-2495.

Asphalt Roofing in Cold Patch. A three-page overview of recycling ground asphalt roofing

shingles into cold patch for potholes, sidewalks, utility cuts, driveways, ramps, bridges, and parking lots. Pub. #431-98-013. Contact: Mark Fong, (916) 255-2495.

Why Use Recycled Plastic Lumber? A three-page overview of plastic lumber focusing on consumer issues and questions. Pub. #431-97-009. Contact: Edgar Rojas, (916) 255-2585.

Recycled Plastic Lumber: Research and Development. A three-page overview of technology and research around plastic lumber, including studies and contact names. Pub. #431-97-010. Contact: Edgar Rojas, (916) 255-2585.

Urban Wood Waste. A two-page overview that includes estimated quantities of wood waste generated from most construction and demolition operations as well as markets available for the processed wood waste. Pub. #443-95-057. Contact: Mark Fong, (916) 255-2495.

Lumber Waste. A two-page overview of options and current practices being employed to reuse whole or remilled lumber generated from construction and demolition activities. Includes a list of organizations that salvage, remill, and/or regrade whole used lumber. Pub. #443-96-028. Contact: Mark Fong, (916) 255-2495.

Job-Site Source Separation. A two-page overview of steps a contractor should consider that might enhance the likelihood of recycling wastes generated from construction or demolition activities. Pub. #443-95-066. Contact: Mark Fong, (916) 255-2495.

Carpet. A two-page overview of carpet reuse and recycling practices and list of facilities that take used carpet. Pub. #443-96-027. Contact: Relly Briones, (916) 255-2626.

Specialty Manuals

Designing With Vision...A Technical Manual for Material Choices in Sustainable Construction. Discusses guidelines, recycled-content building products, product specifications, and waste prevention techniques during demolition and construction. Pub. #431-99-009. Contact: Rick Muller, (916) 255-2359.

Integrated Waste Management Disaster Plan. A comprehensive plan to help local governments in California divert demolition debris and other solid waste from landfills after a disaster such as an earthquake, flood, or fire. The plan was distributed to California cities and counties in March 1997. Pub. #310-97-006. Contact: Tracy Webb, (916) 255-2307.

Military Base Closure Handbook: A Guide to Construction and Demolition Materials Recovery. A guide to assist military bases in maximizing the amount of solid waste diverted from landfills. Solid waste includes concrete, asphalt, wood, drywall, metals, and green waste. The guide includes a discussion of the contracting and bid process. Pub. #433-96-074. Contact: Marylou Taylor, (916) 255-2452.

Case Studies

Presidio of San Francisco. A case study of the hand deconstruction and recovery of materials of Building 901 at the Golden Gate National Park (formerly the Presidio of San Francisco). The study chronicles the recovery of over 78,800 board feet of lumber from a 2,450-square-foot building built in the late 1940s, and the sale of that lumber to showcase the cost-effectiveness of hand deconstruction. Available on the Board's C&D Web site and included in the *Military Base Closure Handbook* (see above). Contact: Relly Briones, (916) 255-2626.

CANMET Advanced Houses. A nine-page case study showcasing the use of recycled-content building materials and construction and demolition practices that reduce waste in the building of residential homes in Canada. Pub. #433-99-012. Contact Mark Fong, (916) 255-2495.

Market Reports

The following reports have some major or minor connection to C&D materials.

Market Status Report: Urban Wood (October 1996). A six-page report discussing markets for urban wood, which includes pieces generated during the manufacturing or processing of wood products; harvesting or processing woody crops; wood debris from construction, demolition, and renovation; and wood used in packaging and transportation, such as pallets. Pub. #443-96-069.

Market Status Report: Recycled Inerts (October 1996). An 11-page report discussing recycled aggregate, asphalt pavement, asphalt roofing shingles, and drywall. Pub. #431-96-063.

Market Status Report: Ferrous Scrap (October 1996). A five-page report discussing primarily steel cans and "metallic discards" or large appliances. Pub. #421-96-061.

Market Status Report: Container and Plate Glass (October 1996). A nine-page report discussing container cullet and plate glass. Pub. #421-96-060.

Market Status Report: Postconsumer Plastics (October 1996). An eight-page report discussing markets for recycled plastics. Pub. #421-96-066.

Market Status Report: Waste Tires (October 1996). A six-page report discussing markets for recycled tires, including rubberized asphalt. Pub. #421-96-067.

Market Status Report: Urban Compost and Mulch (October 1996). A 12-page report discussing markets for compost and mulch made from urban feedstock. Pub. #421-96-068.

Market Status Report: Pavement (1993). A 67-page report covering concrete and asphalt pavement recycling markets, including sources, demand, and barriers.

Action Plan: Pavement (1993). A 30-page report on CIWMB strategies for improving markets for recycled pavement and aggregate base.

Other Resources

National Association of Home Builders (NAHB)

NAHB has several publications on construction waste management, including fact sheets and the field guides listed below. Available on line at www.nahbrc.com/bullders/green/WASTEPUB.htm or call NAHB at (301) 249-4000.

Residential Construction Waste Management: A Builder's Field Guide. Written for new home builders, the 30-page field guide presents several methods that builders can use for construction waste management, and provides real case studies to support the recommended actions.

Waste Management and Recovery: A Remodelers' Field Guide. Written for residential remodelers, the 30-page field guide presents several waste management strategies and provides real case studies to support the recommended actions.

On-Site Grinding of Residential Construction Debris: The Indiana Grinder Pilot. A pilot project in Indiana determined that grinding and reusing the wood, drywall and cardboard components of the waste stream can save builders money. Written for new home builders, the 35-page report describes servicing construction sites with a mobile grinder and reusing the processed material on-site as erosion control and as a soil amendment.

Community Environmental Council Constraints and Opportunities: Expanding Recovery in the Demolition Industry. This 25-page paper discusses the economic, technical, and regulatory factors that influence salvage, identifies strategies for increasing recovery, and outlines recommendations to implement recovery programs.

For More Information

Call the Construction and Demolition Recycling Program at (916) 255-2149 if you have questions.

Most of the information in this fact sheet, as well as additional related information, is available from the Board's Web site at www.ciwmb.ca.gov. See below for how to access specific information from the site.

C&D Home Page

For more information on the C&D program (or others), use the "Select a CIWMB Program" option on the Board's home page. Choose Construction/Demolition Recycling. Or type in the address directly—www.ciwmb.ca.gov/ConDemo/. You may want to bookmark this page.

Publications—Fact Sheets, Case Studies, and Market Reports

From the Board's home page at www.ciwmb.ca.gov, choose "Publications" on the left-hand side. Once at the Publications Catalog (www.ciwmb.ca.gov/Publications/), choose from the topics on the left side ("Construction and Demolition" is one). You can also access C&D publications from the C&D home page (choose "Publications" on the left-hand side).

Databases

C&D Recyclers Database and Recycled-Content Construction Products Database. Both databases are listed on the menu on the left-hand side of the C&D home page.

Recycled-Content Product Database. Type in the address directly (www.ciwmb.ca.gov/RCP/), or from the Board's home page, choose "Databases" from the left-hand menu and choose the RCP database from the alphabetical list.



Kaiser Permanente Buy\$ Big and \$aves Big on Recycled Products

*Kaiser Permanente Medical Center
Sacramento, California*

Background. Kaiser (KP) is committed not just to the health care of individuals, but also to the planet they live on. "Protection of the earth's environment is essential to a healthy community," according to leading health maintenance organization's environmental policy.

KP's policy promotes conserving natural resources, reducing waste through recycling and reuse, and buying recycled-content products. KP aims to eliminate or minimize environmental risk to employees and the community; to meet or exceed all environmental regulations; and to participate with other organizations in the community to encourage environmental values and practices.

Out of this pledge have come three major prescriptions for implementation:

- A Northern California region Green Team, made up of volunteers to promote environmental programs.
- Membership in the Recycled Paper Coalition
- A recycled products committee

KP's CEOs, David G. Pockell and Walter H. Caulfield, M.D., expect the full participation of each facility and the sustained commitment of all its physicians and employees in support of this policy. One KP physician, Anthony De Riggi, M.D., a pediatrician at KP's Roseville offices, helped initiate KP's environmental programs in 1990. Inspired by the 20th anniversary of Earth

Buying recycled products is an extremely important facet of your integrated waste management program. Until materials are made into new products, they are not really recycled (your trash is just tidily separated.) Recycling won't work unless those products are purchased regularly. In the interest of encouraging you to consider all facets of waste prevention and recycling, these case studies include not only the buy-recycled practices of model companies, but give you a glimpse of their overall approach to waste management. Some companies highlighted in these studies are winners of the CIWMB Waste Reduction Awards Program (WRAP). KP is one of them.

Day, he has promoted recycling as Green Team Chairperson. Dr. De Riggi has also done an outstanding job in the still up-and-coming (and sometimes challenging) side of recycling—*closing the loop* through buying recycled-content products. Dr. DeRiggi's committee has discovered not only how to buy good recycled products, but how to save money on them. The Green Team has helped KP Sacramento win honors from the California Integrated Waste Management Board's Waste Reduction Awards Program (WRAP) two years in a row.

Recycled-Content Products Purchases. KP has discovered that "green" refers not only being pro-environment, but to saving money. See the chart on the next page for the story of KP's average annual savings on key products needed to do business at their 15 Northern California hospitals and 30 office buildings—many of them the same types of materials you need in your business. Note that even where the cost was the same or slightly more to "buy recycled," the overall savings were superlative!

Scope of Recycling Program. KP's buy-recycled program is just one facet of an integrated approach to waste management. At its various facilities, KP recycles white and colored paper, newspaper, cardboard, glass, plastic, cans, phone books, and magazines. Staff reuses folders, large envelopes, boxes, and toner cartridges (the latter at the huge savings noted in the chart). The Green Team encourages double-sided copying and the paperless use of electronic and voice mail. Under waste prevention, KP staff are encouraged to use reusable mugs or cups by a cafeteria discount for those who "bring their own." Environmental Action Awards are given to employees for outstanding recycling efforts. Unused medical supplies are collected and donated to needy medical facilities in developing countries.

At the Sacramento Medical Center, the recycling and waste reduction programs cut the number of trash compactor pickups needed in half, from six to three per week, at a savings of \$40,000 per year. Additional income from the sale of nearly 120 tons of recyclables is approximately \$10,000 annually. When you total the combined avoided disposal costs (\$40,000), and the sale of recyclables (\$10,000), KP saves \$50,000 at this one facility due to waste reduction, plus many thousands more in Northern California (noted in chart) due to the buy-recycled program, and thanks to the Green Team's efforts. In today's climate of rising medical costs, it's nice to know that one HMO is not only trimming an important part of its budget, but improving the health of the local ecosystem in the process.

What's New in Recycled-Content Products? Among the newer recycled-content products are 80 percent recycled tissue packs. They are not only better for the environment, but also better for the patient's nose. A survey found the new tissues to be softer and higher in quality than the nonrecycled tissue. The Sacramento Medical Center now uses 100 percent postconsumer (PC) napkins in the cafeteria. (See KP's "Buy Recycled Record.") Eco-minded people everywhere are getting over the idea that all paper products need to be white as snow, and as those mindsets melt, practical uses for recycled paper are steadily increasing. Another discovery: cafeteria staff found that by placing them on the table instead of in the food line, people tend to use fewer napkins. (There's one for the psychologists.)

Kaiser Permanente's Buy-Recycled Record

PRODUCT	SAVINGS OR COST TO BUY RECYCLED	POSTCONSUMER CONTENT/COMMENTS
Computer paper, continuous feed	\$19,590 saved	20% postconsumer (PC), non-chlorine bleach. It's a little less white, used for everyday work, not official documents.
Pharmacy bags	\$22,000 saved	Switch from white to brown Kraft bag with 40% PC content. Cost savings of 20%.
Letterhead/envelopes	\$8,000 saved	10% PC
Copy paper	\$ 60,000 increase	35% PC content. Cost increase of 12%.
Business cards	Same as nonrecycled	10% PC
Exam table paper	Same as nonrecycled	100% recycled, 30% PC
Exam gowns (paper drapes)	\$106,000 – \$212,00 depending on usage	100% recycled, 30% PC. Cost savings of 27%. ²
Pulse oximeter probes	\$500,000 ¹ (potential annual savings)	Used to measure oxygen in blood. "Closed loop recycling system." Probes are sterilized and rebuilt. If recycled, save \$4/sensor.
Laser toner cartridges	\$107,000 ¹ (potential annual savings)	Cartridges are refurbished and refilled.
Tissues (small boxes)	No change	80% recycled
Napkins (cafeteria)	\$1,000 ³	100% postconsumer
TOTAL SAVINGS → → → → →	\$756,590	← ← ← ← ← TOTAL SAVINGS

¹ Anticipated annual savings on new program based on past volume of usage of items.

² Average (mid) range of \$159,000 used to estimate overall savings

³ Usage at Sacramento Medical Center only.

Tip: According to Dr. De Riggi, it's the "team" in Green Team that is really responsible for KP Sacramento's modern-day waste management makeover. These key departments are involved in KP's *green growth* on an ongoing basis: Environmental Services (Housekeeping), Materials Management, Engineering, Pharmacy, Surgery, Transportation, External Affairs, Administration, and Food Services. But it's not just the department heads that make it happen. Dedicated Green Team volunteers sponsor an Earth Day Fair every year, so that the Green Team spirit is alive and visible to each employee. Vendor tables are featured, displaying a variety of waste management, recycling, and ecological information and inspiring messages. It's also a great time for one of the staff doctors to show off his electric car. The real tip is: Not only do you need an environmental commitment that you act on, but in a large organization, it is essential to keep it visible.

For more information: Call the KP Sacramento Green Team at 973-7199.



This case study is compliments of:
The State of California
Integrated Waste Management Board
Buy Recycled Section
8800 Cal Center Drive
Sacramento, CA 95826
(916) 255-2406
<http://www.ciwmb.ca.gov>

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HP Reduces Waste by 93 Percent

Hewlett-Packard Company—Roseville, California

Background

The Hewlett-Packard Company (HP) is a provider of computing, Internet and intranet solutions, services, communications products, and measurement solutions. In accordance with its environmental policy, HP is committed to conducting its business in an ethical and socially responsible manner. To HP, that commitment means a major responsibility to protect the ecology, the health and safety of its employees, its customers, and the locales in which it operates worldwide.

The Roseville plant, one of approximately 25 HP entities in California, is home to sales, engineering, and manufacturing distribution activities. With nearly 4,000 employees, the Roseville plant makes a significant contribution to the local economy. HP aims to be an asset and a positive influence on the community of which it is a part. Some examples of HP's community involvement include assisting local schools, supporting proactive environmental legislation, and fund raising for, and operating its plant with strict environmental safeguards.

Recycled-Content Product Purchases

HP buys virtually all recycled-content office products:

- Computer paper (50-100 percent recycled/10-30 percent postconsumer or "PC").
- Paper towels and toilet tissue (100 percent recycled).
- Post-It® notes (100 percent recycled fibers, 20 percent PC).
- Avery® labels and phone message pads (all 5-10 percent PC).

- Pendaflex® files and manila folders, (all 100 percent recycled, 10-50 percent PC).

HP is a member of the Recycled Paper Coalition, an organization of companies and public agencies committed to purchasing environmentally preferred paper products with a minimum of 20 percent postconsumer content whenever possible.

Scope of Recycling Program

HP recycles a wide range of materials: all grades of paper, cardboard, glass, scrap metal, phone books, magazines, motor oil, folders, large envelopes, boxes, packing material (polystyrene, polyethylene, polyurethane, and polypropylene), assorted plastics, reels, shrink wrap, trays, toner and inkjet cartridges, wood pallets, scrap wood, electronic equipment and yard wastes. It has been well worth it! For the 1997 fiscal year, the Roseville plant's actual disposal costs were \$66,881; avoided costs were \$1,323,820; and recycling income totaled

Buying recycled products is an extremely important facet of your integrated waste management program. Until materials are made into new products, they are not really recycled (your trash is just tidily separated.) Recycling won't work unless those products are purchased regularly. In the interest of encouraging you to consider all facets of waste prevention and recycling, these case studies include not only the buy-recycled practices of model companies, but give you a glimpse of their overall approach to waste management. Some companies highlighted in these studies are winners of the CIWMB Waste Reduction Awards Program (WRAP). Hewlett-Packard is a three-year WRAP winner.

HTTP://WWW.CIWMB.CA.GOV



\$296,790. Even considering the labor costs involved in recycling, the company comes out ahead (to say nothing of the gains to the overall region and ecosystem by conserving resources). Best of all, the plant's landfill diversion rate has improved despite an increase in employees. For FY 1997, statistics show a 92.52 percent diversion rate in Roseville! (These statistics are up from 92.5 percent in FY '96, 84 percent in FY '95, and 74 percent in FY '94.) This exceeds the State's "50 by 2000" goal by a long shot, and worldwide, HP's global diversion rate is over 75 percent.

HP also practices waste reduction by making double-sided copies and encouraging worldwide use of e-mail. The company at large has made significant strides in reducing their packaging material to the minimum amount needed to ensure safe transport of a product. HP introduces and updates employees on the company's waste reduction practices and environmental policy. Acting in an environmentally responsible manner is an expected employee performance standard.

Other prevention-oriented activities include conversion of printed paper reports to on-line computer access, saving 100,000 pages of fan-fold computer reports in a three-month period. Similarly, HP switched to network-distributed software, documentation, and support, saving 2,000 individual program purchases containing 6,000 manuals; 16,000 diskettes; and 2,000 shipping cartons. HP recycles 95 percent of its foam packaging peanuts; eliminates film plastic overwrap on incoming products; reuses pouches to transport and handle PC boards; and recycles used computer equipment—both from customers and in house.

HP has hosted "spring cleaning" days for its employees, an event that generated over 10,000 pounds of reusable supplies (older calculators, phones, paper products, binders, folders, and small office equipment). These items were donated to local schools. HP also donates reusable cafeteria equipment to local schools after upgrades.

In Placer County, where the Roseville HP plant is located, there is no curbside recycling program available. HP sponsors a monthly Employee Recycle Day on site. That helps employees divert approximately 2,000 pounds per month from the landfill. Collected materials include all paper, junk mail, magazines, newspaper, food boxes, plastics #1 and #2, steel cans, glass, and cardboard.

Tip

It is often said and almost sounds trite, but the truth is that it takes a paradigm shift—a major change in thinking—to make the kind of changes HP has made over the past few years. One has to think about the ramifications of designing and manufacturing each item and what happens to them at the end of their life cycle. HP has long been involved in product stewardship issues and created a corporate position to coordinate divisional activities.

Like many companies, HP has contributed to bringing awareness about environmental concerns to corporate America. This awareness benefits everyone. Once one company excels in a particular operation that benefits the environment, everyone soon follows. That means anything you do for the environment in the business world will have a positive domino effect. Here's where little things mean a lot—and add up to a lot of savings in both company dollars, and health and well-being—in that big Global Company where we all live and work.

For more information

Information about HP and its products can be found on the World Wide Web at www.hp.com. For more information on this case study, contact Debbie Cancillia at Hewlett-Packard, (916) 785-5650.

For more information about this topic, visit the Board's business resource efficiency Web site at www.ciwmb.ca.gov/BizWaste/.

DON'T THROW YOUR PROFITS OUT WITH THE TRASH, 2ND EDITION

THE BOTTOM LINE

When you get right down to it, making a profit is the driving force behind almost all businesses. Successful businesses maximize their income and minimize expenses. Why, then, are so many potential profits going out with the trash?

Of the approximately 45 million tons of garbage produced in California each year, more than half originates from the commercial and industrial sectors. By practicing waste prevention, reusing products, recycling whenever possible, and making environmentally conscious purchases, your business can cut costs and increase profits.

Here are just a few examples of northern and central California businesses that have positively impacted their bottom line.

BEN FRANKLIN PRESS, NAPA, CA

Ben Franklin Press is a high-quality commercial print shop in the Napa Valley, doing award-winning printing for the wine and food industry. Ben Franklin Press distributes leftover paper and paper scrap to many schools in the area. The shop recycles all cardboard and all uncoated paper it receives and uses recycled stock for printing on a daily basis. This waste reduction and recycling program enables Ben Franklin to save approximately \$500 per month, while also benefiting its clients and local schoolchildren.

BRODERBUND SOFTWARE, NOVATO, CA

Broderbund Software, Inc., a diversified consumer software company with a broad selection of products for homes, schools, and small businesses, has implemented a comprehensive recycling and waste reduction program targeting aluminum, paper, glass, cardboard packaging, and printer toner cartridges.

With a recycling bin at every desk, each employee recycled over 170 pounds of paper in 1994, doubling their 1993 efforts! Broderbund has saved over \$20,000 in disposal fees annually.

DOUBLETREE HOTEL, SAN FRANCISCO, CA

The Doubletree Hotel at the San Francisco Airport offers 291 guest rooms, a restaurant, lounge and banquet/meeting facilities for individuals and groups. Since February 1992, the hotel's 160 employees have been participating in a recycling program. The commitment the hotel has made to its recycling program has resulted in a reduction of the size of containers used and fewer pickups for an approximate savings of \$10,000 per year.

EDEN MEDICAL CENTER, CASTRO VALLEY, CA

Eden, a 324-bed, not-for-profit, district medical center, offering a full range of medical, surgical, and rehabilitative services, adopted their 4R program: reduce, reuse, recycle, re-purchase; in 1992. Employees and staff accepted this program with great enthusiasm and kept approximately 18 tons of paper and 22 tons of cardboard from the landfill. This represents a cost savings of over \$25,000, reducing compactor pickups from three times a week to once a week.

FARMERS INSURANCE GROUP, MERCED, CA

This regional office donates the proceeds from paper recycling to local community charities and all cardboard is given to a local facility for handicapped adults who, in turn, receive the recycling profits. Surplus equipment is donated to local schools and organizations rather than being sent for disposal. The office has reduced its waste disposal costs by about one-third, saving approximately \$1,800 per year and raising \$1,200 annually by recycling.

FETZER VINEYARDS, REDWOOD VALLEY, CA

Fetzer Vineyards, a worldwide producer and marketer of fine wines, has found that waste reduction makes environmental AND economic sense. From 1991 through 1994, the company reduced its waste by 86 percent, saving more than \$50,000 in disposal fees. Since 1991, Fetzer Vineyards has diverted 1.5 million pounds of solid waste from the landfill. The winery composts more than 10,000 tons of grape seeds and stems each year, and recycles 13.5 tons of plastic shrink wrap. Fetzer is also constructing a new administration office, which will feature the latest in solar photovoltaics, nontoxic paints and glues, and recycled wood and doors.



GENCORP AEROJET, SACRAMENTO, CA

Aerojet is a major aerospace/defense contractor specializing in rocket propulsion systems, space sensor systems and smart munitions. Employees at Aerojet's Sacramento operations have recycled 290 tons of paper over the last 31 months, which they estimate has saved over 1000 cubic yards of municipal waste landfill space and over 5600 trees! These efforts have resulted in combined receipts and cost avoidance totaling \$31,000.

HYATT AT FISHERMAN'S WHARF, SAN FRANCISCO, CA

The Hyatt at Fisherman's Wharf is located in the heart of famous Fisherman's Wharf, San Francisco. They have an active employee and client education program, consisting of bulletin board notices in employee areas and informational door hangers on guests' doors. The Hyatt has donated used linen and uniforms to the Salvation Army and building materials to the City's Homeless Task Force. The Hyatt has recycled more than 40,000 pounds of cardboard and mixed paper, and has saved more than \$26,000 on disposal fees.

NILSEN ACE HARDWARE, FERNDALE, CA

This family-owned-and-operated retail hardware, feed, and seed sales company has reduced their waste disposal expenses by recycling all cardboard. This has resulted in a monthly savings of approximately \$100.

SMITH & VANDIVER, INC., WATSONVILLE, CA

Smith & Vandiver manufactures and distributes natural ingredient fine toiletries and aromatherapeutic body care products. To minimize packaging waste, Smith & Vandiver reuses boxes in which they have received shipments by re-cutting the cardboard into smaller case pack cartons. Their waste reduction program has enabled the company to reduce its inventory of shipper cartons, saving both storage space and \$20,000 annually for cardboard.

SONOMA RACQUET CLUB, ROHNERT PARK, CA

Sonoma Racquet Club, a 241-unit condominium complex in Rohnert Park, has an extensive residential recycling program, which concentrates on educating residents. The program has

reduced waste at the complex by 53 percent (not including green waste) and has resulted in monthly savings of \$3,000.

VALIN CORPORATION, SUNNYVALE, CA

Valin Corporation distributes products and provides engineering support for controlling gases, liquids, and processes found in manufacturing environments. Two years ago Valin Corporation had no formal recycling program. With the cooperation of management and employees, they are now recycling all white paper, aluminum cans, packing materials, and cardboard, and ordering recyclable packaging materials. They have reduced their weekly trash pickup from three times a week to two times a week, with a goal of once a week, for an annual savings of \$1,353.

VASQUEZ DELICATESSEN, VACAVILLE, CA

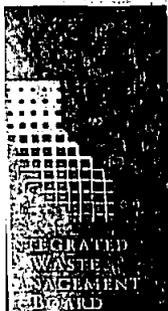
Vasquez Delicatessen, a Mexican deli, has recycled over 7000 lbs of glass and 250 lbs of aluminum, and reduced their trash from 6 cubic yards a week to 3 cubic yards a week, for an annual savings of \$1,600.

NEED ASSISTANCE?

For more help in establishing a program to keep your profits from going out with the trash, call the Integrated Waste Management Board at (916) 255-2354. You can also call your City or County Recycling Coordinator or Solid Waste Manager for local referrals and more information on industry-specific programs and waste evaluations.

The California Materials Exchange, CALMAX, facilitates the reuse and recycling of excess products, materials, and discards from California businesses. An online service and a bimonthly CALMAX catalog list materials available and materials wanted. Any business, nonprofit group, or government entity may list, at no charge, materials they have available or materials they need. For more information call CALMAX at (916) 255-2369.

Publication # 441-95-022, 4/95



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YOUR PROFITS OUT
WITH THE TRASH,
3RD EDITION**

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Here are just a few examples of northern and central California businesses that have positively impacted their bottom line.

**BABETTE'S RESTAURANT & WINE BAR,
SONOMA, CA**

Babette's Restaurant & Wine Bar is a two-part enterprise that features elegant French food in one room and a casual "bohemian" wine bar in another. Babette's uses organically grown foods and returns all non-animal organic waste to a local farm to be composted. Babette's also has an extensive recycling and reuse program—everything possible is recycled—and, whenever possible, hard plastic "field boxes" are used, which entails no waste whatsoever. The savings to the restaurant is approximately \$1,500 a year in reduced garbage bills.

**CASTLE MANAGEMENT DBA ROUND TABLE
PIZZA, SONORA, CA**

Sonia Hurt, the manager of this Round Table Pizza restaurant in Sonora, has a deep commitment to recycling and community involvement. She integrated waste reduction activities into all aspects of operations, and recycles almost everything that can possibly be recycled. Vegetable scraps are donated to a local school for their "Let it Rot" composting program. Her waste reduction program has enabled this Round Table to reduce weekly trash pickups by one third, saving more than \$1,000 during the first year.

DURA-METRICS, INC., SANTA ROSA, CA

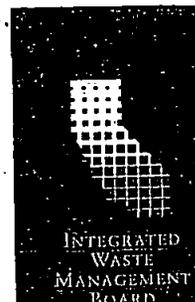
Dura-Metrics, a dental laboratory, has reduced their landfill waste by more than 50 percent over the last 12 months by recycling all office paper, cardboard, newspaper, plastics, fluorescent tubes, and aluminum cans. Annually, over 1000 surplus plastic buckets are donated for reuse to schools, other businesses, and public agencies. Dura-Metrics' waste reduction program has enabled the company to reduce its weekly trash pickups in half, saving over \$3,000 annually.

EG&G RETICON, SUNNYVALE, CA

EG&G Reticon manufactures Analog Signal Processing Integrated Circuits and high performance cameras for industrial, military, and scientific applications. EG&G expanded its recycling program to include all types of paper and corrugated cardboard. EG&G reduced the amount of trash going to landfill by 22 tons and reduced its annual cost of trash service by 67 percent for a savings of \$13,700 annually.

**IBM CORPORATION - STORAGE SYSTEMS
DIVISION, SAN JOSE, CA**

IBM Storage Systems Division develops and manufactures high capacity information storage technology products. The San Jose plant, with over 5000 employees, achieved a recycling rate of 81 percent in 1993. IBM has significantly reduced manufacturing and product packaging waste by using innovative environmental packaging which has saved more than \$4.7 million. IBM also reuses parts and recycles material from products returned at end of life, recovering more than 6.8 million pounds of material in 1993.



KRAFT GENERAL FOODS, TULARE, CA

Kraft General Foods in Tulare manufactures processed and natural cheese, and Boboli pre-baked bread shells. Their solid waste per pound of production decreased from 4.2 percent in 1991 to 3.3 percent in 1994. Their program has not only reduced their solid waste disposal fees, but also generated approximately \$39,000 in 1994 from the sale of recyclable materials.

LSI LOGIC CORPORATION, MILPITAS, CA

LSI Logic Corporation is a Fortune 500 designer and manufacturer of high-performance semiconductors. LSI Logic has successfully implemented a solid waste reduction program which encourages employees to reduce, reuse, and recycle. Through its Green Team efforts, LSI Logic has decreased usage of paper, increased usage of recycled products, and recycled over 300 tons of materials per year. In 1993 the company saved over \$500,000 from its solid waste reduction efforts.

MARKETING RESPONSE SYSTEMS, SANTA CLARA, CA

Marketing Response Systems (MRS) is a direct mail firm, offering data and mail processing services to the Bay Area since 1978. MRS annually donates 25 tons of cardboard to a local nonprofit organization, while also recycling wood pallets and excess paper stocks with local companies. MRS is committed to the purchase of recycled products (towels, tissues, paper stocks, and envelopes) as well as the reuse of toner cartridges and line printer ribbons. Marketing Response Systems' recycling and reuse programs have cut trash pickups in half and saves close to \$1,000 annually.

SILICON GRAPHICS, INC., MOUNTAIN VIEW, CA

Silicon Graphics, Inc., a leading manufacturer of high-performance visual computing systems, delivers interactive three-dimensional graphics, digital media, and multiprocessing supercomputing technologies to technical, scientific, creative, and informational management professionals. Their newest products are shipped in recycled kraft boxes printed with water-based inks. Silicon Graphics recycles glass, aluminum, computer paper, white paper, cardboard, polystyrene, polyurethane foam, wood pallets, computer components, toner cartridges, compact discs, landscape waste, fluorescent bulbs, plastic food containers, tin cans, and

cooling oil and grease. In fiscal year 1994, Silicon Graphics received over \$10,000 from the sale of recycled materials.

SUN MICROSYSTEMS, INC. - CORPORATE ENVIRONMENTAL HEALTH AND SAFETY, MOUNTAIN VIEW, CA

Sun Microsystems, Inc. is a supplier of computer workstations and servers with a commitment to sustainable business. Sun conscientiously applies business, design, and manufacturing processes, including redesigning products to reduce packaging and refurbishing/reusing pallets. From 1991-1993, Sun reduced its solid waste volume by an average of 61 percent annually, saving over \$250,000 in disposal fees each year. Additionally, over 588 tons of proprietary paper were recycled in 1992.

VARIAN ASSOCIATES, PALO ALTO, CA

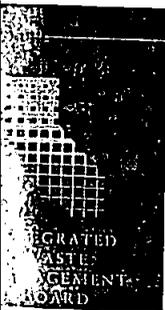
Varian Associates, a diversified, international, high technology company, produces systems and components for medical, communications, scientific, industrial, and defense markets worldwide. In 1994, Varian began a new aggressive paper recycling program and began recycling scrap wood such as broken pallets and crates. They also initiated a program to recycle plastic packaging materials including polystyrene peanuts and molded foams, bubble wrap, and rubber foam. Despite a 30 percent increase in landfill fees and a rise in production, Varian's landfill costs remained level in 1994!

NEED ASSISTANCE?

For more help in establishing a program to keep your profits from going out with the trash, call the Integrated Waste Management Board at (916) 255-2354. You can also call your City or County Recycling Coordinator or Solid Waste Manager for local referrals and more information on industry-specific programs and waste evaluations.

The California Materials Exchange, CALMAX, facilitates the reuse and recycling of excess products, materials, and discards from California businesses. An online service and a bimonthly CALMAX catalog list materials available and materials wanted. Any business, nonprofit group, or government entity may list, at no charge, materials they have available or materials they need. For more information call CALMAX at (916) 255-2369.

Publication # 441-95-023 4/95



DON'T THROW YOUR PROFITS OUT WITH THE TRASH, 4TH EDITION

THE BOTTOM LINE

When you get right down to it, making a profit is the driving force behind almost all businesses. Successful businesses maximize their income and minimize expenses. Why then, are so many potential profits going out with the trash?

Of the approximately 45 million tons of garbage produced in California each year, over half originates from the commercial and industrial sectors. By practicing waste prevention, reusing products, recycling whenever possible, and making environmentally conscious purchases, your business can cut costs and increase profits.

Here are just a few examples of southern California businesses that have positively impacted their bottom line.

AMI SOUTH BAY HOSPITAL, REDONDO BEACH, CA

AMI South Bay Hospital, a full service 208-bed health care facility in Redondo Beach, has embarked upon an aggressive waste management program aimed at packaging waste and recycling. Disposal tonnage has been cut by 50 percent, with cost savings of \$100,000 since program inception. The hospital actively seeks vendors who provide items with postconsumer recycled content.

BAXTER DIAGNOSTICS INC - PARAMAX CHEMISTRY, IRVINE, CA

Paramax Chemistry manufactures the Paramax, a blood chemistry analyzer used in hospitals. Through its waste reduction and recycling efforts, the facility has reduced landfill waste by 77 percent since 1989. Paramax's Ovette Reuse Project allows customers to return empty spools and cardboard boxes free

of shipping charges. This project is estimated to reduce 203,760 pounds of cardboard and 180,000 pounds of plastic waste annually.

BAZAAR DEL MUNDO, INC., SAN DIEGO, CA

Located in the Old Town San Diego State Historic Park, the Bazaar instituted an extensive recycling program in 1990 and recycles cardboard, glass, plastic, steel cans, and grease. By diverting approximately 200 tons of material a year from the landfill, the Bazaar del Mundo has realized a savings to date of \$10,700.

BECKMAN INSTRUMENTS, INC., BREA, CA

Beckman Instruments, Inc. provides quality products and services, from academic bioresearch to applications in the bioindustrial and diagnostic laboratory. The facility involves all 1200 employees in recycling white paper, cardboard, computer paper, plastics, and aluminum cans. In addition, Beckman has a program that allows customers to return polystyrene shipping containers (at Beckman's expense) for reuse. Since the inception of their program in May of 1993, Beckman has diverted over 275 tons of waste from local landfills, and has earned over \$35,000 from both sales of recyclable items and reduced landfill costs.

DOUBLETREE HOTEL - ORANGE COUNTY, ORANGE, CA

The Doubletree Hotel, Orange County, is a 450-room, first-class, full-service, corporate hotel located near Disneyland. Unclaimed guest items and used employee uniforms are donated to charities. The hotel also offers green suites: environmentally friendly guest rooms with recycled products and filtered air and water. In 1994 they recycled 73,000 pounds of materials and saved \$12,000.

EAST SHORE RV PARK, SAN DIMAS, CA

East Shore R.V. Park rents sites to recreational vehicles on a daily, weekly, or monthly basis, supplying renters with full hookups, telephone, cable TV, grass, trees, and other convenient amenities, and lake access for fishing. In an effort to reduce their weekly trash pickups, they have started a program of mulching their grass cuttings three times a month back on to their 37 acres of lawns, and once a month picking the clippings up and composting them on site. They mix the composted grass clippings with chips from tree trimmings and spread it in planter beds for weed control, thereby reducing their use of chemical weed control. East Shore's efforts to reduce weekly trash pickups have resulted in a savings of at least \$7,000, or 46 fewer trash hauls a year.



**KAISER PERMANENTE -
SHERMAN WAY REGIONAL LABORATORIES,
NORTH HOLLYWOOD, CA**

Kaiser Permanente Sherman Way Regional Reference Laboratories donates used computers, microscopes, and medical equipment to public schools and less developed countries. Listings with the California Materials Exchange and Los Angeles Sanitation District Recycling Directory have helped maximize waste reduction by offering used cardboard, paper, and glass to other companies that can use them. Also, by reusing plastic containers and sterilized test tubes, the company is saving \$62,000 annually.

**LAKWOOD REGIONAL MEDICAL CENTER,
LAKWOOD, CA**

Lakewood Regional Medical Center recycles paper and cardboard and has cut compactor waste hauling in half, saving approximately \$24,000 per year.

NISSAN MOTOR CORPORATION, GARDENA, CA

Nissan Motor Corporation U.S.A. has reduced the use of paper and diskettes by placing their environmental and safety manual on the local area network computer system. Nissan's memo-head and business cards are made from recycled paper. Nissan's Master Parts Distribution Center in Compton has saved over \$80,000 in packaging costs by reuse and recycling.

**NORTON'S PALM DRY CLEANERS INC.,
PLACENTIA, CA**

Norton's Palm Dry Cleaners, Inc. is promoting the use of a reusable garment bag to reduce packing material waste. At present, it is estimated this service reduces material use about 25 percent, resulting in a cost saving for plastic bags of 25 percent, or about \$4,000 annually.

PLAZA CAMINO REAL, CARLSBAD, CA

Plaza Camino Real is a super regional shopping center located in North San Diego County within the cities of Oceanside and Carlsbad. The center recycles all mixed paper, cardboard, glass & plastic bottles, aluminum and metal cans, green wastes, and construction debris. A special program during eight months of the year diverts food wastes from their restaurants to feedlots in the Riverside County area. The 145 retail stores and restaurants and the five major department stores at Plaza Camino Real have cut 51 percent from their waste stream, thus saving over \$25,000 in hauling and dumping fees in 1994 alone.

RICOH ELECTRONICS, INC., TUSTIN, CA

Ricoh Electronics, Inc. manufactures copier machines and related supplies such as toner, developer, parts and thermal paper products. By separating corrugated paper boxes and recycling them, the company reduced trash hauling fees by \$800 per month. All areas of the company have collection boxes for white and nonwhite paper which is collected for recycling. This recycling program earns the company \$300 - \$600 per month.

SEA WORLD OF CALIFORNIA, SAN DIEGO, CA

Sea World's recycling efforts have resulted in the diversion of 881,252 pounds of trash from local landfills. The "clean green" waste and cardboard recycling programs results in nearly 320,200 pounds of clean green waste and 438,760 pounds of cardboard recycled annually. In 1993, Sea World of California's recycling program yielded a savings of \$19,284.

**TOYOTA TECHNICAL CENTER, USA, INC.,
TORRANCE, CA**

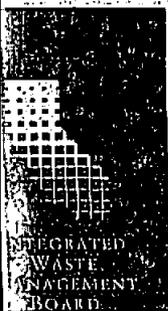
Toyota Technical Center, USA, Inc., (TTC) is an automotive research and development company, with locations in Michigan, California, and Arizona. Each location has a dedicated recycling program. In California, TTC has reduced the number of trash pickups, resulting in a 76 percent savings in the company's waste removal budget between 1993 and 1994. Also, money saved at TTC in California due to purchasing fewer supplies has resulted in a 15 percent reduction in costs.

NEED ASSISTANCE?

For more help in establishing a program to keep your profits from going out with the trash, call the Integrated Waste Management Board at (916) 255-2354. You can also call your City or County Recycling Coordinator or Solid Waste Manager for local referrals and more information on industry-specific programs and waste evaluations.

The California Materials Exchange, CALMAX, facilitates the reuse and recycling of excess products, materials, and discards from California businesses. An online service and a bimonthly CALMAX catalog list materials available and materials wanted. Any business, nonprofit group, or government entity may list, at no charge, materials they have available or materials they need. For more information call CALMAX at (916) 255-2369.

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FOOD SERVICE

WASTE

REDUCTION

TIPS AND IDEAS

Restaurants, fast food establishments, and cafeterias can do a lot to minimize or reduce potential cost increases by incorporating simple waste prevention and recycling programs and procedures that will eliminate much of the waste that is thrown away. With proper purchasing and handling, and careful preparation and storage, food service establishments can help reduce waste and save money!

BEVERAGES

- Serve beverages from a beverage gun or dispenser, buy bar mixes in concentrate form, and buy milk in 5 gallon dispenser boxes.

GROCERY ITEMS

- Use health department-approved, refillable condiment dispensers instead of individual packets.
- Buy shelf-stable food supplies in bulk when sales volume and storage space allows.
- Consider buying your lettuce pre-cut during those times of the year when the pre-cut cost is equal to (or less than) the cost of the bulk product.
- Buy meats in bulk or uncut form and cut to size.
- Consider buying shelled eggs in bulk, if your egg usage for general cooking or baking is three or more cases per week.

PRODUCE HANDLING AND STORAGE

- Donate unserved food to a local food bank.
- Check your produce deliveries carefully for rotten or damaged product, and return any substandard product.

- Rotate perishable stock at every delivery to minimize waste due to spoilage.
- Clean coolers and freezers regularly to ensure that food has not fallen behind the shelving and spoiled.
- Store raw vegetables and other perishables in reusable airtight containers to prevent unnecessary dehydration and spoilage.
- Rehydrate vegetables (e.g., celery, lettuce, carrots, broccoli, etc.) that have wilted by trimming off the very bottom part of the stalk and immersing in warm water (100°F) for 15 to 20 minutes.

FOOD PREPARATION AND STORAGE

- Use hourly or daily production charts to minimize overprepping and unnecessary waste.
- Whenever possible, prepare foods to order.
- When prepping food, only trim off what is not needed.
- Use vegetable and meat trimmings for soup stock.
- Adjust the size of meal portions if you find they are consistently being returned unfinished.
- Reuse leftover foods that have been stored at proper temperature within two days of preparation to prevent waste due to spoilage.
- Store leftover hot foods from different stations in separate containers to reduce the chance of spoilage.
- Wrap freezer products tightly, label, and date them. Make sure they are used in a timely fashion, to minimize waste due to freezer burn.

PURCHASING

- Ask your suppliers to take back shipping boxes for reuse or recycling and to keep you informed about new and existing products that are packaged in ways which can reduce waste.

PAPER SUPPLIES

- Purchase paper products made from recycled materials.
- Use reusable coasters (or nothing at all) instead of paper napkins when serving beverages from the bar.
- Store and handle unwrapped paper supplies to prevent the products from inadvertently falling on the floor.

JANITORIAL AND RESTAURANT SUPPLIES

- Use reusable table linen and dinnerware.
- Use cloth towels for cleaning, rather than the paper equivalents.



JANITORIAL AND RESTAURANT SUPPLIES (CONT.)

- Use plastic trash can liners made of recycled HDPE instead of ones made of LDPE or LLDPE. They contain less raw material, work equally well for most uses, and generally cost less.
- Purchase cleaning supplies in concentrate form.

PRODUCTION AND SERVICE AREAS

- Implement a monthly cleaning and maintenance program for all your equipment.
- Keep refrigeration in good running order to prevent unnecessary spoilage and reduce energy costs.
- Check the syrup-to-water calibration on beverage dispensers regularly.
- Keep oven equipment calibrated to prevent overbaking.
- Clean fryers and filter the oil daily. Use a test kit to determine when to change fryer oil.

BACK-OF-THE-HOUSE

- Create incentives for staff to reduce breakage of china and glass.
- Place rubber mats around bus and dish washing stations to reduce china and glass breakage.
- Have employees use permanent-ware mugs or cups for their drinks.
- Check for discarded trays and flatware before throwing out dining room trash.

FRONT-OF-THE-HOUSE

- Distribute condiments from behind the counter instead of offering self-service.
- Serve straws from health department-approved dispensers rather than pre-wrapped, and offer only one straw per drink.
- Use serving containers in sizes that meet the packaging needs of your menu items without having excess packaging material.
- Minimize the use of unnecessary extra packaging of take-out foods.
- Use less packaging for eat-in foods than for food being taken out, or use none at all.

RECYCLING ACTIVITIES

- Set up a rendering service for your waste grease, fat, or used cooking oil.

- Set up a recycling program with one of your local collectors (e.g., cardboard, glass).
- If you serve beverages in cans or bottles, place a recycling bin in the dining area for your customers' empty beverage containers.
- Donate empty plastic pails or buckets to schools, nurseries, churches, customers, or employees. Donate old uniforms to thrift shops.

ASK YOUR EMPLOYEES

Don't forget to ask your staff for their input and assistance on what can be done to reduce waste. Reward them for good ideas. Including employees in the decision-making process will help ensure participation in your efforts to reduce waste, and will result in higher productivity, better morale, and lower costs.

TELL YOUR CUSTOMERS

Educate customers and advertise your waste reduction program by posting signs highlighting your efforts.

Offer customers a discount if they bring their own mugs, containers, or bags.

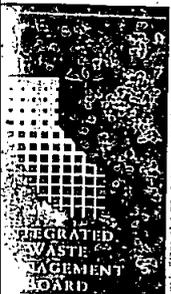
Eat Your Vegetables, Sacramento, CA, donates 250 pounds of unserved food every week to local food banks. To date, they have donated approximately 60,000 pounds of food. They return plastic berry baskets to the produce dealer for reuse and have arranged for their produce supplier to pick up cardboard boxes which are repacked with produce. Office paper, printed on one side only, is saved and made into notepads by their printer. Eat Your Vegetables is participating in a pilot composting program operated by the County of Sacramento and has reduced the volume of garbage that is landfilled by 90%.

FOR MORE HELP

- California Integrated Waste Management Board (CIWMB) Residential and Business Education, (916)255-2296
- Source: Food for Thought, Restaurant Guide to Waste Reduction and Recycling, 1992 City and County of San Francisco.

Publication number 500-94-027

8/94



CREATING A PAPER REDUCTION CAMPAIGN

Offices use a lot of paper, nearly 1.5 pounds per person per day, according to a study done by the City of Los Angeles, so they are a prime target for waste reduction.

A paper reduction campaign is a focused effort to promote paper reduction by: using less paper; reusing paper where appropriate; and recycling. To make a campaign successful, management and staff participation and support are essential.

The following steps and ideas can help you start a paper reduction campaign in your office. See also the California Integrated Waste Management Board's (CIWMB), "In-house Waste Prevention Plan;" this and other CIWMB publications can be ordered by calling (800)553-2962.

GETTING STARTED

- Form a committee to plan and carry out the paper reduction campaign; include representatives from management and all levels of staff. The committee should then do the following:
 - Identify quantities of different types of paper in the waste stream. Typical types of paper include: white office paper, envelopes, colored paper, newspaper, boxboard, cardboard. See the waste evaluation worksheets in the CIWMB publication, "Reduce, Reuse, Recycle — It's Good Business — A Guide for California Business."
 - Decide your priorities; consider:
 - how much of the particular paper type contributes to your office's waste stream;
 - how you might be able to support existing waste reduction efforts;
 - ease of implementing new waste reduction practices.

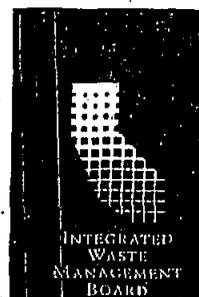
- Develop measurable goals, strategies (see below for strategy suggestions), and a timeline for implementation.
- Obtain organizational approval and support for the plan.
- Have your organization adopt a formal waste reduction policy which supports the paper reduction campaign.
- Design logos and develop slogans for use in the campaign.
- Have a formal kick-off event. Explain the campaign to all staff; announce formal goals.

MAKING IT WORK

- Implement the campaign in phases so that people aren't overwhelmed with changes. New ideas can be pilot tested in a few areas to obtain feedback before expanding office wide.
- Use volunteer section or division "leaders" who will help implement projects and take responsibility for encouraging employees in their area to practice waste reduction.
- Acknowledge and respond to people's concerns. Some ideas for reducing waste may work better than others and every office will be different.
- Be patient; new behaviors are often required to reduce waste and there may be some frustration on the part of staff or management who need to be persuaded to change the way they do things.
- Be flexible, persistent and willing to try new ideas.

KEEPING PEOPLE MOTIVATED

- Many people will have good ideas about how to reduce paper usage; ask for and encourage those ideas.
- Make the campaign fun by holding contests, posting interesting visual displays, and putting out entertaining reminders and announcements. They can be sent out through electronic mail, voice mail, routed in the office or posted in conspicuous locations.
- Have employees sign a pledge to reduce paper.
- Give awards for reducing paper use, good ideas, and general waste reduction efforts.
- Publicize successes, let people know when goals are met.
- Be sure that new employees are informed about in-house waste reduction policies, practices and projects. Give them a new employee kit which contains a desk-top paper collection box, information about the waste reduction program, etc.



STRATEGIES FOR ENCOURAGING REDUCED PAPER USE

- Promote a "think before you copy" attitude. Workers should be encouraged to make sure they really need the copies they are making and not to make excess copies.
- Adopt an organizational policy that all individual documents will be two sided (this does not mean combining documents in order to use both sides, for documents with odd-numbered pages, this will mean that the last page is blank.)
- Keep copiers and printers in good repair and make it policy to only buy copiers and printers which will do 2-sided copying reliably.
- Let people know that two-sided copying not only saves paper, it saves postage (from reduced mail volume) and storage space.
- Remind people to double-sided copy by posting reminders near the copiers, using interesting posters or entertaining slogans ("2 sides are better than one", "make a 2 (copies) for 1 (page) offer", "get a second impression", etc.) and changing them often to maintain interest.
- Set up computer software for default 2-sided printing including word processing, spreadsheets, electronic mail and others.
- Promote getting the most out of paper by using both sides:
 - Encourage people to save and reuse single-sided paper at their desks.
 - Collect paper that has been used on one side for reuse in copiers, printers, fax machines and to be made into scratch pads.
- Encourage reuse of envelopes, etc. Your office can buy recyclable labels with the office address and logo to place over addresses on envelopes being reused.
- Encourage people to reuse items such as file folders at their desk; excess reusable items can be centrally collected.
- Reduce and double-side standard forms. In its effort to reduce paper, Bank of America saved significant amounts of paper by reducing and consolidating various standard forms.
- Use e-mail for forms and document transmittals. As part of their paper reduction campaign, AT&T switched its vendor billing, employee newsletter and other documents to electronic mail saving millions of sheets of paper annually.
- Check the CIWMB fact sheet on Waste Reduction Ideas for Offices for more ways to reduce paper usage.

ENCOURAGING RECYCLING

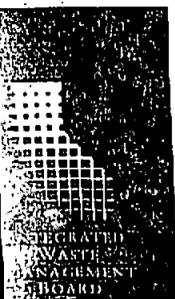
- Set up an office recycling program. See the CIWMB brochure, "Waste Reduction for Business & Industry" for information about getting your recyclables collected.
- Choose appropriate recycling containers. The size and style of recycling equipment varies. Many vendors will supply a variety of small-size containers for business recycling programs and nearly all provide and service the larger storage dumpsters. You may wish to purchase your own personalized recycling bins with your organization's logo or convert an existing trash container into a recycling container. Many recycling containers are made of recycled materials, so purchase and use them whenever possible.
- Locate recycling bins strategically and label them clearly. Place recycling bins in all heavy traffic areas, common work areas, and most importantly, in locations where recyclables are typically generated.
- Monitor recycling containers for contaminants on a regular basis. Also check trash cans for items that should be recycled. Focus reminders, contests etc. on any problem areas.
- Make it organizational policy to purchase and use products made with recycled materials. This "closes the recycling loop" by making sure there are end-products and markets for recycled materials. Examples of paper products with recycled content are bond paper, computer paper, kraft envelopes, file folders, tissue paper products, etc.
- Ask your suppliers and contractors to make these recycled content products available to you.
- Use savings from waste prevention efforts to offset the costs of buying recycled products in those instances where they cost more.

FOR MORE HELP

- To order CIWMB publications or for the name of your local government recycling coordinator, call the CIWMB hotline: (800)553-2962.
- For technical assistance and sample outreach materials from other organizations, call the California Waste Prevention Info Exchange, 8800 Cal Center Drive, Sacramento, California 95826. Phone: (916)255-INFO.

Publication Number 500-94-034

8/94



WASTE REDUCTION IDEAS FOR OFFICES

This list of waste reduction ideas is intended to help you think of new ways to prevent waste and save money.

Brainstorming with others is bound to result in more ideas!

All noted publications from the California Integrated Waste Management Board (CIWMB) can be ordered by calling (800)553-2962.

PAPER, PAPER EVERYWHERE

REDUCE

- Eliminate unnecessary reports and reduce report size.
- Eliminate unnecessary forms and redesign to use less paper.
- Don't use cover sheets on faxes.
- Make fewer copies. Share copies and don't make more copies than you need.
- Print or copy on both sides.
- Proof documents on screen and preview before printing.
- Set up computers to automatically print 2-sided.
- Use light weight paper.
- Remove duplicate names and out-of-date entries from mailing lists.
- Design mailers which avoid the use of envelopes (fold and staple the paper).
- Use electronic mail and voice mail.
- Post announcements on bulletin boards or circulate copies.
- Circulate memos, documents, reports, and publications.
- Allow internal documents to be circulated with legible minor hand corrections rather than retyping drafts.

REUSE

- Collect paper that has been used on one side and reuse as draft paper in fax machines, for scratch pads and copiers (in copiers with multiple trays, one tray can be stocked with draft paper).
- Buy only copiers and printers that will make 2-sided copies reliably.
- Reuse envelopes by placing a label over the old address.
- Use reusable envelopes for inter-office mail.
- Use outdated letterhead for in-house memos.
- Reuse file folders.
- Shred newspapers and reuse for packaging.
- Investigate whether local libraries, schools, hospitals, nursing homes, etc. could use your old trade journals or magazines.

RECYCLE

- Estimate how much waste paper your office produces and arrange to have it picked up by your waste hauler or a recycler.
- If your office is small, consider combining your recyclables with other small offices nearby.
- Provide desktop recycling containers for employees.
- Provide clearly labeled recycling bins near copiers, shipping and receiving areas, and in employee eating areas to collect white paper, mixed paper, newspaper, magazines, cardboard as well as non-paper products (glass, aluminum, plastic, etc.).
- Don't buy paper that is a contaminant in recycling, e.g. thermal fax paper, glossy/plastic coatings, plastic windows, bright colors including goldenrod, laser printer inks, adhesive products.
- Print directly on envelopes rather than using labels.
- For more information on implementing paper reduction, see the Paper Reduction Campaign fact sheet.

MAKE YOUR PURCHASES COUNT

- Buy and use paper with at least 25% post-consumer recycled content.
- Purchase products with no packaging, less packaging, or reusable packaging.
- Look for products in concentrate or bulk form.
- Request that deliveries be shipped in returnable containers and return cardboard boxes to distributor.
- Ask vendors to take back packaging. In some cases they may be able to reuse it.



MAKE YOUR PURCHASES COUNT (CONT.)

- Prior to recycling or disposing, check to see if anyone can reuse packaging materials. Cardboard and polystyrene may be used for art projects. Some mail companies are willing to reuse packaging (e.g., check with Mail Boxes, etc.)
- Repack in the same cartons that transported materials to the facility.
- Set-up an area for employees to exchange used items.
- Advertise surplus and reusable waste items through the California Materials Exchange (CALMAXSM) or a local material exchange. Call (916)255-2369 for more information.
- Rent equipment that you only use occasionally.
- Use remanufactured office equipment.
- Invest in equipment which is high quality, durable and repairable.
- Buy fluorescent rather than incandescent bulbs.
- Sell or give old furniture and equipment to employees or donate it to a local charity.
- See CIWMB fact sheet on Purchasing for Waste Prevention.

FOOD, GLORIOUS FOOD

- Encourage employees to keep reusable cups, plates and silverware at their desks.
- Encourage employees to bring lunch to work in reusable containers.
- Work with cafeteria and food vendors to reduce food and packaging waste by providing condiments in bulk dispensers; giving customers a discount when they use their own cups, etc.
- If possible, arrange to compost food scraps (no meat, grease, or dairy products).
- Make worm bins available for inside composting; properly managed they are odor free and convenient. See the CIWMB Worms brochure.

LANDSCAPING

- Plant landscaping that requires low maintenance and generates less waste (grows slowly, doesn't need to be trimmed and uses less water).
- Encourage your building's landscaper to grasscycle, compost, and mulch to reduce green waste.
- See CIWMB fact sheet on Landscape Contractors.

BUILDING MAINTENANCE AND CUSTODIAL

- See CIWMB fact Sheet on Property Management.

TRANSPORTATION

- Encourage employees to take public transportation by offering discounted tickets or passes.
- Provide reserved parking spaces for carpoolers.
- Use public transportation for office business.
- Encourage biking and walking by providing bike racks and showers.

REDUCE TOXICS

- Use vegetable-based inks when printing.
- Use non-toxic cleaners and washable rags for cleaning.

TELL THEM ABOUT IT

- Tell your clients about your waste reduction efforts.
- Print or type "recycled content" on products with recycled content.
- Keep staff and management informed about the results of their efforts to reduce waste.
- Post informational signs near recycling and composting bins to let people know what you are doing and why.

FOR MORE HELP

- To order CIWMB publications or for the name of your local government recycling coordinator, call (916)255-2296 or the CIWMB hotline: (800)553-2962.
- For technical assistance and sample outreach materials from other organizations, call the California Waste Prevention Info Exchange, 8800 Cal Center Drive, Sacramento, California 95826. Phone: (916)255-INFO.

Publication number 500-94-028

8/94



WASTE

REDUCTION

IDEAS FOR

MEETINGS AND

CONFERENCES

This list of waste reduction ideas is intended to help you think of new ways to prevent waste and save money. Brainstorming with others is bound to result in more ideas.

DO IT RIGHT FROM THE START

- Plan for a low-waste event; include waste reduction strategies in all parts and phases of the event.
- Select a location which practices waste reduction (e.g., waste prevention, recycling, buying recycled) or one which will work with you in achieving a "green meeting".
- Make displays and decorations from used items and design them so they can be reused. Exchange decorations with other groups so they are "new."
- Remind attendees to bring their own totes and have a few on hand for those who forget.
- Don't release balloons into the environment as these create litter and harm wildlife.

TRANSPORTATION

- Inform participants about public transportation alternatives for getting to the conference and around town once they arrive.
- Select hotels along public transportation routes.
- Arrange for carpools, including to and from airports or train stations.

ALL THAT PAPER

- Reduce the quantity of written material prepared. Don't pre-stuff conference packets, let participants take the handouts they think they will use.
- Plan for what you need and avoid excess copies.
- Print or copy on both sides.
- Use lighter weight paper.
- Remove duplicate names and out-of-date entries from mailing lists.
- Post agendas or program information instead of handing out individual copies.
- Use both sides of paper and poster board before recycling.
- Buy and use paper with at least 25% post-consumer recycled content.
- Collect paper used at the conference for recycling (white, mixed, newspaper, and other).
- If name tags are needed, select ones that can be reused. Collect the tags at the end of the event and use them again.
- Avoid paper contaminants such as: glossy/plastic coatings, plastic windows, bright colors including goldenrod, adhesives.

RECYCLE

- Request that the facility set up recycling, or arrange for recycling yourself (contact local government for assistance).
- Provide clearly labeled recycling bins to collect paper, glass, plastic, aluminum cans, cardboard, and other locally recyclable materials.
- Place the recycling bins in convenient locations: meeting rooms, trade show floor, hospitality areas, lobby, corridors, registration area, loading dock, and the food service area.

PUBLICIZE YOUR EFFORTS

- Advertise the event as "green" and let people know how they can contribute (such as by bringing their own mug and tote).
- Include a description of what was done to make the event green in any programs/agendas.
- Provide environmental educational materials.
- Post informational signs near recycling and composting bins to let people know what you are doing and why.
- Print or type "recycled content" on products with recycled content.



TIME TO EAT

- Select a caterer that practices waste reduction.
- When feasible, select a menu that eliminates the need for serviceware. For example, serve sandwiches, fruit, cookies, and other finger foods. When serviceware is needed, use reusables not disposables.
- Donate unserved food to a local food bank or homeless shelter.
- If possible, arrange to compost food scraps (no meat, grease, or dairy products).
- Use reusable table coverings, plates, cups, and utensils.
- If disposable cups are used, have everyone label their cup for reuse.

PURCHASE LESS WASTE

- Purchase products with no packaging, less packaging, or reusable packaging. Look for products in concentrate or bulk form.
- Request that deliveries be shipped in returnable containers. Ask vendors to take back packaging; some may be able to reuse it.
- Prior to recycling or disposing, check to see if anyone can reuse packaging materials. For example cardboard and polystyrene may be used for art projects. Also some mail companies are willing to reuse packaging (e.g., check with Mail Boxes, etc.)

EXHIBITS

- Ask exhibitors to reduce paper and packaging.
- Use reusable, recycled, and recyclable materials in exhibits.
- Print handouts on recycled and recyclable paper.
- Promote the use of reusable handouts.
- Recommend that participants pick up only what they need from exhibitors.
- Encourage exhibitors to reduce giveaways or only to give away items which are long-lasting, useful and made with recycled content.
- Provide collection boxes so people can return what they don't want.

REDUCE USE OF TOXICS

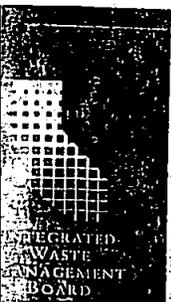
- Use only non-toxic cleaners and washable rags for clean up and request that the facility and food caterer do the same.
- Print programs and other materials with vegetable-based inks.

FOR MORE HELP

- To order CIWMB publications or for the name of your local government recycling coordinator, call (916)255-2296 or the CIWMB hotline: (800)553-2962.
- For technical assistance and sample outreach materials from other organizations, call the California Waste Prevention Info Exchange, 8800 Cal Center Drive, Sacramento, California 95826. Phone: (916)255-INFO.

Publication number 500-94-033

8/94



WASTE

REDUCTION

IN HOTELS

AND MOTELS

The lodging industry in California, with over 396,000 guest rooms, produces approximately 600,000 tons of garbage every year! Hoteliers have many opportunities to reduce waste by establishing waste prevention and recycling programs and by purchasing recycled products. Besides reducing waste and saving money, these actions can increase employee morale and customer satisfaction.

Management should adopt an environmental policy to reflect how the company sees itself in relation to the environment, neighbors, and the people it employs and serves. Chains with multiple locations may want to encourage each hotel to evaluate and establish its own program.

For your program to be successful, management should appropriate the necessary staff and funds to run your environmental program, and offer training to staff.

Promote your program and successes to guests and conference attendees through your advertising.

Conduct a waste evaluation to identify waste prevention ideas and estimate the amount of recyclable materials generated at your hotel. Chances are, you can use many of the following ideas, which are being successfully used by many hotels and motels and can help you reduce waste and save money!

WASTE PREVENTION

Waste prevention means not creating waste in the first place. Waste that is not created does not have to be disposed, which saves money.

- Minimize waste by replacing disposable room amenities with refillable or reusable substitutes.

- Establish purchasing guidelines to encourage the use of durable, repairable equipment, and high-quality, reusable products, such as linen and tableware.
- Donate soap and toiletries to local shelters.
- Distribute restaurant condiments from behind the counter, rather than in single-service packets.
- Donate unserved food to local food banks. California's "Good Samaritan" law protects the donor from liability if the food is properly stored and handled. Produce scraps can be composted on site, or donated to local farmers for composting or animal feed.

Le Chateau Montbello in Quebec, Canada has constructed a composting site which will be used to fertilize and mulch its herb garden.

- Reuse old linens as aprons or towels, or donate them to local charities. Donate old furniture and equipment to institutions or charity.

The Ritz-Carlton in Pasadena makes aprons and napkins from stained, worn linens. By also determining just the right amount of chemicals to use in laundering, the hotel saved \$45,000 in one year!

The Seattle Sheraton Hotel and Towers donated 2000 telephones from guest rooms to a local housing organization which made them available to low-income tenants.

- Purchase cleaning supplies in bulk to minimize packaging and save money. For example, concentrated cleaning solutions can be diluted on site and dispensed in reusable pump-spray bottles.
- Ask your vendors and suppliers to provide supplies that are not overpackaged. Ask them to take back excess packaging for reuse.
- Change lighting from incandescent to fluorescent. Fluorescent bulbs last much longer, meaning that you have fewer bulbs to dispose of and spend less time changing them. The initial outlay will quickly pay for itself in reduced energy costs.



WASTE PREVENTION (CONT.)

- Practice grasscycling, that is, the natural recycling of grass by leaving clippings on the lawn to decompose. They quickly release valuable nutrients back into the soil. Have groundskeepers mulch or compost landscape wastes.

RECYCLING

Hotels and motels generate large amounts of highly recyclable materials, such as office paper, newspaper, corrugated cardboard, plastics, metals, and glass. Work with your waste hauler or recycler to arrange a recycling program for these materials. Other materials, such as cooking grease from the restaurant, can also be recycled through a special service.

- Work with suppliers to minimize the use of materials that are difficult to recycle, such as waxed cardboard.
- Collect old telephone books, magazines, newspapers, beverage containers, etc., from guest rooms. Put out recycling containers for guests to use or have cleaning staff collect them.
- Recycle office materials. Examples are computer and bond paper, beverage containers, copier and printer cartridges.
- Recycle motor oils, antifreeze, paint, etc., used by groundskeeping and maintenance staff.

BUY RECYCLED PRODUCTS

The collection of recyclable materials is only the first step of the process we call recycling. Interesting new products are being manufactured from your recyclables and turning up in the marketplace. When you buy goods with recycled content, your purchases help to create a demand for materials collected in recycling programs. Remember to ask about a product's "post-consumer content." This means the product was made from materials that were used and recycled by consumers, rather than from manufacturing wastes.

Review your existing purchasing policies to assure they do not exclude buying goods with recycled content. Remove discriminatory standards that prevent the purchase of recycled products. State in bid packets that your organization expects vendors to supply products with recycled content.

Hotels in Florida have saved up to 50% in waste disposal costs by implementing aggressive waste reduction efforts. These savings come from reduced garbage hauling costs and the sale of recyclable materials.

WASTE REDUCTION AT MEETINGS, CONFERENCES, AND EXPOS

Conferences and trade shows are often overlooked as a major source of waste generated at hotels. The average trade show attendee takes home up to ten pounds of paper, and the typical expo generates the equivalent of 170 trees in waste paper! Hotels and meeting planners can reduce waste by planning low-waste meetings. Work with the corporations and associations holding the meetings, and urge them to try some of these ideas:

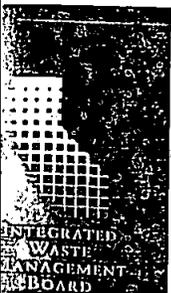
- Announce to participating corporations, associations, and attendees, through mailings, that waste prevention and recycling will be taking place.
- Urge attendees to reduce waste in their guest rooms as well. For instance, a guest may choose not to have linens and towels replaced every day.
- If plastic badge holders are used, place collection bins at the meeting to collect them for reuse at another conference.
- Ask trade show and expo vendors to limit the amount of material they bring to the show floor to that which they plan to distribute. (Some hotels are asking vendors to remove the materials, rather than picking up the tab for disposal or recycling.)
- Use recycled paper products and plan for recycling by placing recycling containers at all meeting sites.
- Print promotional materials on both sides of the paper, and minimize the use of glossy paper.

FOR MORE HELP

- For more information on waste prevention in the hotel industry, call the Waste Prevention Information Exchange, (916)255-INFO.
- Food For Thought, Restaurant Guide to Waste Reduction and Recycling, 1993, California Integrated Waste Management Board (CIWMB) Residential and Business Education, (916)255-2296
- Reduce, Reuse, Recycle — It's Good Business — A Guide for California Businesses, 1994, CIWMB Residential and Business Education, (916)255-2296
- CIWMB Buy Recycled Program, (916)255-2406
- Recycling Hotline at (800)553-2962, for CIWMB publications and the name and phone number of your local recycling coordinator.

Publication number 500-94-029

8/94



CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE

102 Q STREET
SACRAMENTO, CA 95814-6511
(916) 445-8752
HTTP://WWW.CCCCO.EDU



May 18, 2001

Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street
Sacramento, CA 95814

Dear Ms. Higashi:

This letter is in reference to the test claim 00-TC-07 for Integrated Waste Management, submitted by Santa Monica and Lake Tahoe Community College Districts.

The transmittal letter dated March 20, 2001, from Paula Higashi to Keith B. Petersen refers to questions to be answered by interested state agencies.

- Do the subject statutes, executive orders, standards and procedures result in a new program or higher level of service within an existing program upon local agencies within the meaning of Government Code, section 17514, and section 6, Article XIII B of the California Constitution? If so, are there associated costs mandated by the state that are reimbursable?
- Do any of the provisions of Government Code, section 17556, preclude the Commission from finding that the provisions of the subject statutes impose a reimbursable state mandated program upon local agencies?

Upon reviewing the test claim with those questions in mind, the Chancellor's Office has the following comments.

The Chancellor's Office believes that the subject statutes indeed result in a new program for community colleges. And the Chancellor's Office believes that there are reimbursable costs associated with this state mandate.

According to the staff of the California Integrated Waste Management Board, all campuses and districts within the California Community Colleges system have filed the reports required by Public Resources Code, sections 40148, 42920, et al., and implementing executive orders promulgated by the Integrated Waste Management Board.

The Chancellor's Office also believes that there may be some offsetting revenues, and cost savings attributable to these mandated efforts. The mandated costs and offsetting revenues and savings will likely vary among campuses and among districts.

We believe that none of the provisions of Government Code, section 17556, apply to community college districts in complying with the mandate. Costs avoided and additional revenues are unlikely to offset much of the costs of implementing this requirement.

If you have any questions about the Chancellor's Office comments on this test claim, please call Patrick Ryan of my staff at (916) 327-6223.

Sincerely,

Frederick E. Harris, Director
College Finance and Facilities Planning

Attachment: Proof of Service List

cc: Patrick Lenz
Michael Wilkening
Cheryl Miller
Jon Stephens
Proof of Service List

I:\F\FS\M\00-TC-07

AB 75

Page 1

CONCURRENCE IN SENATE AMENDMENTS

AB 75 (Strom Martin)
As Amended September 7, 1999
Majority vote

ASSEMBLY: 73-5 (June 1, 1999) SENATE: 22-13
(September 9, 1999)

Original Committee Reference: NAT. RES.

SUMMARY : Requires each state agency to develop and adopt an integrated waste management plan (plan) before July 15, 2000. Requires all state agencies and large state facilities (including prisons and state and community colleges) to divert 25% of their solid waste from landfills by January 1, 2002, and 50% by January 1, 2004.

The Senate amendments :

- 1) Require each state agency to submit an adopted plan to the California Integrated Waste Management Board (CIWMB) for review and approval on or before July 15, 2000. CIWMB is required to adopt procedures for reviewing and approving these plans and complete the plan review process on or before January 1, 2001.
- 2) Limit to January 1, 2006, the authorization for CIWMB to establish a source reduction, recycling, and composting requirement that would be an alternative to the 50% reduction required by this bill.
- 3) Authorize CIWMB to grant single- and multi-year extensions from the diversion requirements, until January 1, 2006.
- 4) Require CIWMB to develop and adopt, by March 1, 2000, collection, storage, and loading requirements for recyclable materials.
- 5) Require each state agency to submit an annual report to CIWMB regarding solid waste reduction and require this information to be included in CIWMB's annual report to the Governor and Legislature.
- 6) Authorize CIWMB to adopt regulations that would be operative

□

AB 75

Page 2

until January 1, 2006, regarding the granting of alternative reduction requirements or extensions.

- 7) Require a community service district that provides solid waste handling services to provide the city, county, or regional agency in which it is located, information on programs implemented by the district and the amount of waste disposed and diverted within the district.
- 8) Authorizes CIWMB to adopt regulations pertaining to the format of the information to be provided by the community service districts and deadlines for supplying that information to the appropriate local entities.

AS PASSED BY THE ASSEMBLY , this bill:

- 1) Required each state agency, including departments, divisions, boards, commissions, and the California State University (CSU) and California Community College (CCC) systems, to develop an integrated waste management program on or before January 1, 2001.
- 2) Required each state agency and each large state facility, including individual prisons within the Department of Corrections and the campuses of CSU and CCC systems to divert at least 25% of the solid waste they generate from landfill or transformation facilities by January 1, 2002, and at least 50% by January 1, 2004.
- 3) Allowed CIWMB to grant an exemption from the waste diversion requirement if a state agency can demonstrate its inability to comply due to low waste generation, poor market conditions, existing contractual obligations, or significant cost limitations. This bill also allowed CIWMB to determine whether the exemption will be temporary or permanent.

FISCAL EFFECT : According to the Appropriations Committee analysis, there will be moderate one-time costs, totaling at least \$500,000 spread over dozens of state agencies, to implement these solid waste diversion programs, as well as moderate ongoing costs, perhaps \$250,000 annually, to administer

□

AB 75

Page 3

the programs and report to CIWMB. There will also be moderate costs, about \$200,000 annually from the Integrated Waste Management Account, to CIWMB to provide technical assistance to these state agencies, to review requests for exemptions, and to review reports submitted by these agencies.

COMMENTS : A recent study by CIWMB estimates that state agencies generate between 520,000 and 850,000 tons of solid waste (1-2% of the state total) annually. It further estimates that state agency solid waste diversion hovers around 12%, well below the current statewide local government average of 33%. (California Integrated Waste Management Board, Project Recycle: Overview, Issues and Recommended Actions-Report to the Legislature-March 1, 1999. .)

The Legislative Analyst's Office (LAO) estimates that the diversion rate of state facilities was between 3.6% and 5.2% in 1997. Both CIWMB and LAO conclude that the low diversion rates of state agencies may have a significant, adverse effect on many local governments' waste diversion rates and thus their ability to comply with the 50% solid waste diversion requirement by 2000.

Analysis Prepared by : Scott H. Valor / NAT. RES. / (916)
319-2092

0003602

FN:

AB 705
Page 1

Date of Hearing: April 8, 1997

ASSEMBLY COMMITTEE ON CONSUMER PROTECTION,
GOVERNMENTAL EFFICIENCY, AND ECONOMIC DEVELOPMENT
Susan Davis, Chair

AB 705 (Strom-Martin) - As Amended: April 2, 1997

SUBJECT : Requires state agencies to develop an integrated waste management plan and comply with the 25 percent and 50 percent waste reduction mandates currently applicable to local agencies

SUMMARY : Applies existing local agency waste reduction mandates to state agencies and extends and expands the state purchasing preference program for recycled products. Specifically, this bill :

- 1) State legislative findings recognizing current state recycling efforts and the need for additional effort, and the intent to not duplicate existing programs.
- 2) Expands the definition of recycled products to include building and construction materials, outdoor furniture, and landscape materials for purposes of state procurement of recycled content products.
- 3) Re-enacts the state's five percent purchase preference program for procurement of recycled content automotive products and paints, which expired on January 1, 1997, until January 1, 2001.
- 4) Requires each state agency to conduct, prior to April 1, 1998, a waste audit to determine the amount of solid waste generated and the amount that can be reduced, recycled, composted, or reused.
- 5) Requires each state agency to develop, prior to June 1, 1998, an integrated waste management program for reducing solid waste, reusing and recycling materials, and purchasing recycled materials and to designate at least one waste coordinator who shall be responsible for implementing that agency's waste management program.
- 6) Requires the California Integrated Waste Management Board (board) to provide technical assistance to state agencies for development of the audits and implementation of their programs.
- 7) Requires each state agency to divert, by January 1, 1999, at least 25 percent of its solid waste from landfill or transformation facilities through source reduction, recycling, and composting activities. Further requires each state agency to increase diversions to 50 percent by January 1, 2002.

- 8) Authorizes each state agency to utilize previously initiated diversions to meet the bill's diversion requirements and mandates procedures to ensure that adequate space is made

□

AB 705

Page 2

available for on-site waste reduction activities.

- 9) Specifies that the program is to be implemented within existing resources at each state agency and that any cost savings realized as a result of the program be redirected back into the program.

EXISTING LAW :

- 1) Requires the board to administer the state's waste management program which requires cities and counties to divert 25 percent of solid waste from landfill or transfer facilities by January 1, 1995 and 50 percent by January 1, 2000 through source reduction, recycling, and composting. (Integrated Waste Management Act, Chapter 1095, Statutes of 1989, AB 939, Sher)
- 2) Establishes various state purchasing preference programs for the procurement of recycled content products.
- 3) Sunsets the state purchasing preference program for recycled automotive products, paint, and solvent on January 1, 1997.

FISCAL EFFECT :

- 1) Unknown costs to the board to provide technical assistance to state agencies for development of waste audits and implementation of waste management programs.
- 2) Unknown costs to state agencies for conducting a waste audit and designing and implementing a comprehensive waste management program.
- 3) Unknown costs to the state for the five percent purchase preference program for recycled content products.

COMMENTS :

- 1) Measure Intended to Reduce Solid Waste and Subject State Agencies to the State-Mandated Solid Waste Diversion Requirements Currently Imposed on Cities and Counties

According to the sponsor, the overall purpose of this bill is to reduce solid waste by requiring state agencies to do their fair share in contributing to the state's recycling and waste reduction efforts as mandated in the Integrated Waste Management Act. In addition, this bill is designed to help cities and counties meet their state-mandated recycling goals

by requiring state agencies, which are located in cities and counties and contribute to the total solid waste in those cities and counties, to meet the same recycling mandates.

Supporters of the bill

argue that due to the state agency exemption from mandated solid waste diversion programs, cities and counties with large state facilities that generate a considerable percentage of the locality's aggregate waste, such as prisons, school districts, and parks, have trouble meeting the recycling mandates.

□

AB 705

Page 3

2) Local Level Achievements at Risk

According to the board, local agencies are meeting the 25 percent diversion mandate on a statewide aggregate basis. However, it is unclear whether the 50 percent mandate can be met without the full participation of state agencies.

Supporters argue that state participation is necessary because under the requirements of existing law, cities and counties have the duty to meet

the 25% and 50% reduction goals, not individual state agencies. However, waste generated by the state counts against the reduction efforts of the local jurisdiction where the state facility is located. In some jurisdictions, the state may generate a significant portion of the waste that must be dealt with. In such situations, the local jurisdiction may be making a reasonable effort to comply with reduction requirements, but may not be able to meet its goals due to a lack of effort by state agencies.

3) Can Goal be Achieved Through Existing Administrative Action ?

Information available indicates that while most state agencies have implemented some type of a recycling program pursuant to Governor Wilson's 1991 Executive Order W-7-91 (approximately 1,200 state sites currently have recycling programs), the majority of state agencies have not implemented a comprehensive waste management plan. Supporters of the bill argue that absent a comprehensive plan at the state level, cities and counties will not achieve the 50 percent diversion mandate by 2000.

Are the current efforts by state agencies sufficient?

4) Differs From Past Legislative Efforts

There have been several past efforts to require state agencies to meet recycling goals, including AB 3285 of 1996 (Davis). This bill differs from earlier past efforts (AB 1902 of 1995, McPherson and AB 3689 of 1992, Gotch) in two significant ways. First, it gives state agencies the flexibility to develop and design their own programs. Second, it allows more time for

compliance than prior versions.

5) Lacks a Definition of State Agency

As currently written, the bill does not include a definition of state agency. Thus, potentially it can be argued that the bill does not apply to agencies such as community colleges, school districts, the lottery, or the California State University system.

If it is the author's intention to include these programs, clarifying amendments should be made.

6) Are Audit and Program Dates Reasonable ?

□

AB 705
Page 4

The bill currently gives state agencies until April 1, 1998 to complete waste audits and June 1, 1998 to develop waste management programs.

Do these dates give state agencies sufficient time to comply with the bill?

REGISTERED SUPPORT / OPPOSITION :

Support

- California Landscape Contractors Association
- California Refuse Removal Council
- Californians Against Waste (sponsor)
- City of San Rafael
- E-Coat Recycled Paint Products Division of Kelly-Moore Paint Co.
- Planning and Conservation League
- Santa Clara County Household Hazardous Waste Program

Opposition

None on file

Analysis prepared by : Sailaja Cherukuri / aconpro / (916)
324-7440

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

FILED
in the office of the Secretary of State
of the State of California

APR 12 1991

MARION FONGUEL, Secretary of State

Deputy



EXECUTIVE ORDER W-7-91

WHEREAS, April 15 through 21, 1991 has been designated California Recycle Week; and

WHEREAS, reducing the amount of solid waste landfilled in California has been established as a high priority for the State; and

WHEREAS, California's cities and counties are developing waste management plans to divert 25 percent of waste from landfills by 1995 and 50 percent by 2000; and

WHEREAS, recycling diverts valuable recyclable material from landfills; and

WHEREAS, buying recycled goods creates markets for recyclable materials; and

WHEREAS, state agencies are mandated to buy recycled content products to meet certain goals; and

WHEREAS, the State of California is dedicated to the wise use of public funds and the conservation of natural resources; and

WHEREAS, the State of California should set the example of leadership in minimizing waste and promoting increased use of recycled products; and

WHEREAS, the Department of Conservation, the California Integrated Waste Management Board and the Department of General Services are committed to assisting all state agencies in achieving the goals stated herein;

NOW, THEREFORE, I, PETE WILSON, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California declare that all State agencies abide by the following orders, effective immediately:

IT IS ORDERED that all State agencies provide for:

- * collection and recycling of aluminum, glass, plastic and metal containers;
- * collection and recycling of white office paper, colored paper, corrugated cardboard, newspaper, surplus reusable equipment and other materials generated in sufficient quantities for a viable recycling and reuse effort;
- * printing of all documents on recycled-content paper to the maximum extent feasible;
- * requiring contractors, through State contracts, to use recycled content paper and products, when feasible;
- * use of two-sided copying of all State documents, to the maximum extent feasible;

PAGE 2

- * use of electronic mail, computer-based bulletin boards and postings, rather than distribution of information by printed memos or hard copy documents, to the extent feasible;
- * reduction in the number of intra-department and intra-agency filing copies and make standard forms available by computer to avoid paper waste in matching printed forms with printers;
- * consolidation within executive departments, all public mailings of official documents and notices; using the smallest mailing envelopes appropriate to the size of the contents; avoiding mailings with non-recyclable windows where feasible; and monitoring, updating and revising mailing lists frequently to minimize duplication;
- * minimize duplicate newspaper, journal and publication subscriptions;

IT IS FURTHER ORDERED that:

- * the California Integrated Waste Management Board, and the Department of Conservation shall perform at least five (5) waste audits at work sites to determine the presence of other waste that could be addressed; and
- * the Department of General Services shall conduct ongoing education and training for all State, university and college, and local government procurement offices regarding the availability of recycled-content products for all State purchasing, including delegated purchasing decisions; and

IT IS FURTHER ORDERED that in all waste reduction and recycling efforts undertaken by the State, consideration must be given to the amount of recyclables generated in each facility, the local market for recyclable materials, and the capacity and characteristics of facilities, including storage space and fire and safety regulations; and

IT IS FURTHER ORDERED that the Department of General Services shall revise the necessary policies and guidelines to implement the provisions of this order.

NOW, THEREFORE, BE IT RESOLVED that all state agencies begin compliance with this order during California Recycle Week and continue such compliance thereafter.

FURTHER BE IT RESOLVED, that the University of California, State College systems, State Legislature and Constitutional Officers are strongly encouraged to adopt similar policies to those outlined in this Executive Order.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 10th day of April 1991.

Pat Wilson

Governor of California

ATTEST:

March Jong Eu

Secretary of State

25 Cal.4th 904
 24 P.3d 1191, 108 Cal.Rptr.2d 165, 1 Cal. Daily Op. Serv. 5116, 2001 Daily Journal D.A.R. 6305
 (Cite as: 25 Cal.4th 904)

Page 1

H

Estate of DENIS H. GRISWOLD, Deceased.
 NORMA B. DONER-GRISWOLD, Petitioner and
 Respondent,

v.

FRANCIS V. SEE, Objector and Appellant.

No. S087881.

Supreme Court of California

June 21, 2001.

SUMMARY

After an individual died intestate, his wife, as administrator of the estate, filed a petition for final distribution. Based on a 1941 judgment in a bastardy proceeding in Ohio, in which the decedent's biological father had confessed paternity, an heir finder who had obtained an assignment of a partial interest in the estate from the decedent's half siblings filed objections. The biological father had died before the decedent, leaving two children from his subsequent marriage. The father had never told his subsequent children about the decedent, but he had paid court-ordered child support for the decedent until he was 18 years old. The probate court denied the heir finder's petition to determine entitlement, finding that he had not demonstrated that the father was the decedent's natural parent pursuant to Prob. Code, § 6453, or that the father had acknowledged the decedent as his child pursuant to Prob. Code, § 6452; which bars a natural parent or a relative of that parent from inheriting through a child born out of wedlock on the basis of the parent/child relationship unless the parent or relative acknowledged the child and contributed to the support or care of the child. (Superior Court of Santa Barbara County, No. B216236, Thomas Pearce Anderle, Judge.) The Court of Appeal, Second Dist., Div. Six, No. B128933, reversed.

The Supreme Court affirmed the judgment of the Court of Appeal. The court held that, since the father had acknowledged the decedent as his child and contributed to his support, the decedent's half siblings were not subject to the restrictions of Prob. Code, § 6452. Although no statutory definition of

"acknowledge" appears in Prob. Code, § 6452, the word's common meaning is: to admit to be true or as stated; to confess. Since the decedent's father had confessed paternity in the 1941 bastardy proceeding, he had acknowledged the decedent under the plain terms of the statute. The court also held that the 1941 Ohio judgment established the decedent's biological father as his natural parent for purposes of intestate succession under Prob. Code, § 6453, subd. (b). Since the identical issue was presented both in the Ohio proceeding and in this California proceeding, the Ohio proceeding bound the parties *905 in this proceeding. (Opinion by Baxter, J., with George, C. J., Kennard, Werdegar, and Chin, JJ., concurring. Concurring opinion by Brown, J. (see p. 925).)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d) Parent and Child § 18--Parentage of Children-- Inheritance Rights--Parent's Acknowledgement of Child Born Out of Wedlock:Descent and Distribution § 3--Persons Who Take--Half Siblings of Decedent.

In a proceeding to determine entitlement to an intestate estate, the trial court erred in finding that the half siblings of the decedent were precluded by Prob. Code, § 6452, from sharing in the intestate estate. Section 6452 bars a natural parent or a relative of that parent from inheriting through a child born out of wedlock unless the parent or relative acknowledged the child and contributed to that child's support or care. The decedent's biological father had paid court-ordered child support for the decedent until he was 18 years old. Although no statutory definition of "acknowledge" appears in § 6452, the word's common meaning is: to admit to be true or as stated; to confess. Since the decedent's father had appeared in a 1941 bastardy proceeding in another state, where he confessed paternity, he had acknowledged the decedent under the plain terms of § 6452. Further, even though the father had not had contact with the decedent and had not told his other children about him, the record disclosed no evidence that he disavowed paternity to anyone with knowledge of the circumstances. Neither the language nor the history of § 6452 evinces a clear intent to make inheritance

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contingent upon the decedent's awareness of the relatives who claim an inheritance right.

[See 12 Witkin, Summary of Cal. Law (9th ed. 1990) Wills and Probate, §§ 153, 153A, 153B.]

(2) Statutes §
29--Construction--Language--Legislative Intent.

In statutory construction cases, a court's fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. A court begins by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, the court presumes the lawmakers meant what they said, and the plain meaning of the language governs. If there is ambiguity, however, the court may then look to extrinsic sources, including the *906 ostensible objects to be achieved and the legislative history. In such cases, the court selects the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoids an interpretation that would lead to absurd consequences.

(3) Statutes §
46--Construction--Presumptions--Legislative Intent--Judicial Construction of Certain Language.

When legislation has been judicially construed and a subsequent statute on the same or an analogous subject uses identical or substantially similar language, a court may presume that the Legislature intended the same construction, unless a contrary intent clearly appears.

(4) Statutes § 20--Construction--Judicial Function.

A court may not, under the guise of interpretation, insert qualifying provisions not included in a statute.

(5a, 5b) Parent and Child § 18--Parentage of Children--Inheritance Rights--Determination of Natural Parent of Child Born Out of Wedlock: Descent and Distribution § 3--Persons Who Take--Half Siblings of Decedent.

In a proceeding to determine entitlement to an intestate estate, the trial court erred in finding that the half siblings of the decedent, who had been born out of wedlock, were precluded by Prob. Code, § 6453 (only "natural parent" or relative can inherit through intestate child), from sharing in the intestate estate. Prob. Code, § 6453, subd. (b), provides that

a natural parent and child relationship may be established through Fam. Code, § 7630, subd. (c), if a court order declaring paternity was entered during the father's lifetime. The decedent's father had appeared in a 1941 bastardy proceeding in Ohio, where he confessed paternity. If a valid judgment of paternity is rendered in Ohio, it generally is binding on California courts if Ohio had jurisdiction over the parties and the subject matter, and the parties were given reasonable notice and an opportunity to be heard. Since the Ohio bastardy proceeding decided the identical issue presented in this California proceeding, the Ohio proceeding bound the parties in this proceeding. Further, even though the decedent's mother initiated the bastardy proceeding prior to adoption of the Uniform Parentage Act, and all procedural requirements of Fam. Code, § 7630, may not have been followed, that judgment was still binding in this proceeding, since the issue adjudicated was identical to the issue that would have been presented in an action brought pursuant to the Uniform Parentage Act.

(6) Judgments § 86--Res Judicata--Collateral Estoppel--Nature of Prior Proceeding--Criminal Conviction on Guilty Plea.

A trial *907 court in a civil proceeding may not give collateral estoppel effect to a criminal conviction involving the same issues if the conviction resulted from a guilty plea. The issue of the defendant's guilt was not fully litigated in the prior criminal proceeding; rather, the plea bargain may reflect nothing more than a compromise instead of an ultimate determination of his or her guilt. The defendant's due process right to a civil hearing thus outweighs any countervailing need to limit litigation or conserve judicial resources.

(7) Descent and Distribution § 1--Judicial Function.

Succession of estates is purely a matter of statutory regulation, which cannot be changed by the courts.

COUNSEL

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Mullen & Henzell and Lawrence T. Sorensen for Petitioner and Respondent.

BAXTER, J.

Section 6452 of the Probate Code (all statutory references are to this code unless otherwise indicated) bars a "natural parent" or a relative of that parent from inheriting through a child born out of wedlock on the basis of the parent and child relationship unless the parent or relative "acknowledged the child" and "contributed to the support or the care of the child." In this case, we must determine whether section 6452 precludes the half siblings of a child born out of wedlock from sharing in the child's intestate estate where the record is undisputed that their father appeared in an Ohio court, admitted paternity of the child, and paid court-ordered child support until the child was 18 years old. Although the father and the out-of-wedlock child apparently never met or communicated, and the half siblings did not learn of the child's existence until after both the child and the father died, there is no indication that the father ever denied paternity or knowledge of the out-of-wedlock child to persons who were aware of the circumstances.

Since succession to estates is purely a matter of statutory regulation, our resolution of this issue requires that we ascertain the intent of the lawmakers who enacted section 6452. Application of settled principles of statutory *908 construction compels us to conclude, on this uncontroverted record, that section 6452 does not bar the half siblings from sharing in the decedent's estate.

Factual and Procedural Background

Denis H. Griswold died intestate in 1996, survived by his wife, Norma B. Doner-Griswold. Doner-Griswold petitioned for and received letters of administration and authority to administer Griswold's modest estate, consisting entirely of separate property.

In 1998, Doner-Griswold filed a petition for final distribution, proposing a distribution of estate property, after payment of attorney's fees and costs, to herself as the surviving spouse and sole heir. Francis V. See, a self-described "forensic genealogist" (heir hunter) who had obtained an assignment of partial interest in the Griswold estate from Margaret Loera and Daniel Draves, [FN1] objected to the petition for final distribution and

filed a petition to determine entitlement to distribution.

FN1 California permits heirs to assign their interests in an estate, but such assignments are subject to court scrutiny. (See § 11604.)

See and Doner-Griswold stipulated to the following background facts pertinent to See's entitlement petition.

Griswold was born out of wedlock to Betty Jane Morris on July 12, 1941 in Ashland, Ohio. The birth certificate listed his name as Denis Howard Morris and identified John Edward Draves of New London, Ohio as the father. A week after the birth, Morris filed a "bastardy complaint" [FN2] in the juvenile court in Huron County, Ohio and swore under oath that Draves was the child's father. In September of 1941, Draves appeared in the bastardy proceeding and "confessed in Court that the charge of the plaintiff herein is true." The court adjudged Draves to be the "reputed father" of the child, and ordered Draves to pay medical expenses related to Morris's pregnancy as well as \$5 per week for child support and maintenance. Draves complied, and for 18 years paid the court-ordered support to the clerk of the Huron County court.

FN2 A "bastardy proceeding" is an archaic term for a paternity suit. (Black's Law Dict. (7th ed. 1999) pp. 146, 1148.)

Morris married Fred Griswold in 1942 and moved to California. She began to refer to her son as "Denis Howard Griswold," a name he used for the rest of his life. For many years, Griswold believed Fred Griswold was his father. At some point in time, either after his mother and Fred Griswold *909 divorced in 1978 or after his mother died in 1983, Griswold learned that Draves was listed as his father on his birth certificate. So far as is known, Griswold made no attempt to contact Draves or other members of the Draves family.

Meanwhile, at some point after Griswold's birth, Draves married in Ohio and had two children,

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Margaret and Daniel. Neither Draves nor these two children had any communication with Griswold, and the children did not know of Griswold's existence until after Griswold's death in 1996. Draves died in 1993. His last will and testament, dated July 22, 1991, made no mention of Griswold by name or other reference. Huron County probate documents identified Draves's surviving spouse and two children—Margaret and Daniel—as the only heirs.

Based upon the foregoing facts, the probate court denied See's petition to determine entitlement. In the court's view, See had not demonstrated that Draves was Griswold's "natural parent" or that Draves "acknowledged" Griswold as his child as required by section 6452.

The Court of Appeal disagreed on both points and reversed the order of the probate court. We granted Doner-Griswold's petition for review.

Discussion

(1a) Denis H. Griswold died without a will, and his estate consists solely of separate property. Consequently, the intestacy rules codified at sections 6401 and 6402 are implicated. Section 6401, subdivision (c) provides that a surviving spouse's share of intestate separate property is one-half "[w]here the decedent leaves no issue but leaves a parent or parents or their issue or the issue of either of them." (§ 6401, subd. (c)(2)(B).) Section 6402, subdivision (c) provides that the portion of the intestate estate not passing to the surviving spouse under section 6401 passes as follows: "If there is no surviving issue or parent, to the issue of the parents or either of them, the issue taking equally if they are all of the same degree of kinship to the decedent"

As noted, Griswold's mother (Betty Jane Morris) and father (John Draves) both predeceased him. Morris had no issue other than Griswold and Griswold himself left no issue. Based on these facts, See contends that Doner-Griswold is entitled to one-half of Griswold's estate and that Draves's issue (See's assignors, Margaret and Daniel) are entitled to the other half pursuant to sections 6401 and 6402.

Because Griswold was born out of wedlock, three additional Probate Code provisions—section 6450, section 6452, and section 6453—must be considered. *910

As relevant here, section 6450 provides that "a relationship of parent and child exists for the purpose of determining intestate succession" by, through, or from a person "where: "[t]he relationship of parent and child exists between a person and the person's natural parents, regardless of the marital status of the natural parents." (*Id.*, subd. (a).)

Notwithstanding section 6450's general recognition of a parent and child relationship in cases of unmarried natural parents, section 6452 restricts the ability of such parents and their relatives to inherit from a child as follows: "If a child is born out of wedlock, neither a *natural parent* nor a relative of that parent inherits from or through the child on the basis of the parent and child relationship between that parent and the child unless both of the following requirements are satisfied: [¶] (a) The parent or a relative of the parent *acknowledged the child.* [¶] (b) The parent or a relative of the parent contributed to the support or the care of the child." (Italics added.)

Section 6453, in turn, articulates the criteria for determining whether a person is a "natural parent" within the meaning of sections 6450 and 6452. A more detailed discussion of section 6453 appears *post*, at part B.

It is undisputed here that section 6452 governs the determination whether Margaret, Daniel, and See (by assignment) are entitled to inherit from Griswold. It is also uncontroverted that Draves contributed court-ordered child support for 18 years, thus satisfying subdivision (b) of section 6452. At issue, however, is whether the record establishes all the remaining requirements of section 6452 as a matter of law. First, did Draves acknowledge Griswold within the meaning of section 6452, subdivision (a)? Second, did the Ohio judgment of reputed paternity establish Draves as the natural parent of Griswold within the contemplation of sections 6452 and 6453? We address these issues in order.

A. Acknowledgement

As indicated, section 6452 precludes a natural parent or a relative of that parent from inheriting through a child born out of wedlock unless the parent or relative "acknowledged the child." (*Id.*, subd. (a).) On review, we must determine whether

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Draves acknowledged Griswold within the contemplation of the statute by confessing to paternity in court, where the record reflects no other acts of acknowledgement, but no disavowals either.

(2) In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272 [*911105 Cal.Rptr.2d 457, 19 P.3d 1196].) "We begin by examining the statutory language, giving the words their usual and ordinary meaning." (*Ibid.*; *People v. Lawrence* (2000) 24 Cal.4th 219, 230 [99 Cal.Rptr.2d 570, 6 P.3d 228].) If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. (*Day v. City of Fontana, supra*, 25 Cal.4th at p. 272; *People v. Lawrence, supra*, 24 Cal.4th at pp. 230-231.) If there is ambiguity, however, we may then look to extrinsic sources, including the ostensible objects to be achieved and the legislative history. (*Day v. City of Fontana, supra*, 25 Cal.4th at p. 272.) In such cases, we "select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." (*Ibid.*)

(1b) Section 6452 does not define the word "acknowledged." Nor does any other provision of the Probate Code. At the outset, however, we may logically infer that the word refers to conduct other than that described in subdivision (b) of section 6452, i.e., contributing to the child's support or care; otherwise, subdivision (a) of the statute would be surplusage and unnecessary.

Although no statutory definition appears, the common meaning of "acknowledge" is "to admit to be true or as stated; confess." (Webster's New World Dict. (2d ed. 1982) p. 12; see Webster's 3d New Internat. Dict. (1981) p. 17 ["to show by word or act that one has knowledge of and agrees to (a fact or truth) ... [or] concede to be real or true ... [or] admit".]) Were we to ascribe this common meaning to the statutory language, there could be no doubt that section 6452's acknowledgement requirement is met here. As the stipulated record reflects, Griswold's natural mother initiated a bastardy proceeding in the Ohio juvenile court in 1941, in which she alleged that Draves was the

child's father. Draves appeared in that proceeding and publicly "confessed" that the allegation was true. There is no evidence indicating that Draves did not confess knowingly and voluntarily, or that he later denied paternity or knowledge of Griswold to those who were aware of the circumstances. [FN3] Although the record establishes that Draves did not speak of Griswold to Margaret and Daniel, there is no evidence suggesting he sought to actively conceal the facts from them or anyone else. Under the plain terms of section 6452, the only sustainable conclusion on this record is that Draves acknowledged Griswold.

FN3 Huron County court documents indicate that at least two people other than Morris, one of whom appears to have been a relative of Draves, had knowledge of the bastardy proceeding.

Although the facts here do not appear to raise any ambiguity or uncertainty as to the statute's application, we shall, in an abundance of caution, *912 test our conclusion against the general purpose and legislative history of the statute. (See *Day v. City of Fontana, supra*, 25 Cal.4th at p. 274; *Powers v. City of Richmond* (1995) 10 Cal.4th 85, 93 [40 Cal.Rptr.2d 839, 893 P.2d 1160].)

The legislative bill proposing enactment of former section 6408.5 of the Probate Code (Stats. 1983, ch. 842, § 55, p. 3084; Stats. 1984, ch. 892, § 42, p. 3001), the first modern statutory forerunner to section 6452, was introduced to effectuate the Tentative Recommendation Relating to Wills and Intestate Succession of the California Law Revision Commission (the Commission). (See 17 Cal. Law Revision Com. Rep. (1984) p. 867, referring to 16 Cal. Law Revision Com. Rep. (1982) p. 2301.) According to the Commission, which had been solicited by the Legislature to study and recommend changes to the then existing Probate Code, the proposed comprehensive legislative package to govern wills, intestate succession, and related matters would "provide rules that are more likely to carry out the intent of the testator or, if a person dies without a will, the intent a decedent without a will is most likely to have had." (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319.) The Commission also advised that the purpose of the

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legislation was to "make probate more efficient and expeditious." (*Ibid.*) From all that appears, the Legislature shared the Commission's views in enacting the legislative bill of which former section 6408.5 was a part. (See 17 Cal. Law Revision Com. Rep., *supra*, at p. 867.)

Typically, disputes regarding parental acknowledgement of a child born out of wedlock involve factual assertions that are made by persons who are likely to have direct financial interests in the child's estate and that relate to events occurring long before the child's death. Questions of credibility must be resolved without the child in court to corroborate or rebut the claims of those purporting to have witnessed the parent's statements or conduct concerning the child. Recognition that an in-court admission of the parent and child relationship constitutes powerful evidence of an acknowledgement under section 6452 would tend to reduce litigation over such matters and thereby effectuate the legislative objective to "make probate more efficient and expeditious." (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319.)

Additionally, construing the acknowledgement requirement to be met in circumstances such as these is neither illogical nor absurd with respect to the intent of an intestate decedent. Put another way, where a parent willingly acknowledged paternity in an action initiated to establish the parent-child relationship and thereafter was never heard to deny such relationship (§ 6452, subd. (a)), and where that parent paid all court-ordered support for that child for 18 years (*id.*, subd. (b)), it cannot be said that the participation *913 of that parent or his relative in the estate of the deceased child is either (1) so illogical that it cannot represent the intent that one without a will is most likely to have had (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319) or (2) "so absurd as to make it manifest that it could not have been intended" by the Legislature (*Estáte of De Cigaran* (1907) 150 Cal. 682, 688 [89 P. 833] [construing Civ. Code, former § 1388 as entitling the illegitimate half sister of an illegitimate decedent to inherit her entire intestate separate property to the exclusion of the decedent's surviving husband]).

There is a dearth of case law pertaining to section 6452 or its predecessor statutes, but what little there is supports the foregoing construction. Notably,

Lozano v. Scalier (1996) 51 Cal.App.4th 843 [59 Cal.Rptr.2d 346] (*Lozano*), the only prior decision directly addressing section 6452's acknowledgement requirement, declined to read the statute as necessitating more than what its plain terms call for.

In *Lozano*, the issue was whether the trial court erred in allowing the plaintiff, who was the natural father of a 10-month-old child, to pursue a wrongful death action arising out of the child's accidental death. The wrongful death statute provided that where the decedent left no spouse or child, such an action may be brought by the persons "who would be entitled to the property of the decedent by intestate succession." (Code Civ. Proc., § 377.60, subd. (a).) Because the child had been born out of wedlock, the plaintiff had no right to succeed to the estate unless he had both "acknowledged the child" and "contributed to the support or the care of the child" as required by section 6452. *Lozano* upheld the trial court's finding of acknowledgement in light of evidence in the record that the plaintiff had signed as "Father" on a medical form five months before the child's birth and had repeatedly told family members and others that he was the child's father. (*Lozano, supra*, 51 Cal.App.4th at pp. 845, 848.)

Significantly, *Lozano* rejected arguments that an acknowledgement under Probate Code section 6452 must be (1) a witnessed writing and (2) made after the child was born so that the child is identified. In doing so, *Lozano* initially noted there were no such requirements on the face of the statute. (*Lozano, supra*, 51 Cal.App.4th at p. 848.) *Lozano* next looked to the history of the statute and made two observations in declining to read such terms into the statutory language. First, even though the Legislature had previously required a witnessed writing in cases where an illegitimate child sought to inherit from the father's estate, it repealed such requirement in 1975 in an apparent effort to ease the evidentiary proof of the parent-child relationship. (*Ibid.*) Second, other statutes that required a parent-child relationship expressly contained more formal acknowledgement requirements for the assertion of certain other rights or privileges. (See *id.* at p. 849, citing *914 Code Civ. Proc., § 376, subd. (c); Health & Saf. Code, § 102750, & Fam. Code, § 7574.) Had the Legislature wanted to impose more stringent requirements for an acknowledgement under section 6452, *Lozano*

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reasoned, it certainly had precedent for doing so. (*Lozano, supra*, 51 Cal.App.4th at p. 849.)

Apart from Probate Code section 6452, the Legislature had previously imposed an acknowledgement requirement in the context of a statute providing that a father could legitimate a child born out of wedlock for all purposes "by publicly acknowledging it as his own." (See Civ. Code, former § 230.) [FN4]. Since that statute dealt with an analogous subject and employed a substantially similar phrase, we address the case law construing that legislation below.

FN4 Former section 230 of the Civil Code provided: "The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this Chapter do not apply to such an adoption." (Enacted 1 Cal. Civ. Code (1872) § 230, p. 68, repealed by Stats. 1975, ch. 1244, § 8, p. 3196.)

In 1975, the Legislature enacted California's Uniform Parentage Act, which abolished the concept of legitimacy and replaced it with the concept of parentage. (See *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 828-829 [4 Cal.Rptr.2d 615, 823 P.2d 1216].)

In *Blythe v. Ayres* (1892) 96 Cal. 532 [31 P. 915], decided over a century ago, this court determined that the word "acknowledge," as it appeared in former section 230 of the Civil Code, had no technical meaning. (*Blythe v. Ayers, supra*, 96 Cal. at p. 577.) We therefore employed the word's common meaning, which was "to own or admit the knowledge of." (*Ibid.* [relying upon Webster's definition]; see also *Estate of Gird* (1910) 157 Cal. 534, 542 [108 P. 499].) Not only did that definition endure in case law addressing legitimation. (*Estate of Wilson* (1958) 164 Cal.App.2d 385, 388-389 [330 P.2d 452]; see *Estate of Gird, supra*, 157 Cal. at pp. 542-543), but, as discussed, the word retains

virtually the same meaning in general usage today: "to admit to be true or as stated; confess." (Webster's New World Dict., *supra*, at p. 12; see Webster's 3d New Internat. Dict., *supra*, at p. 17.)

Notably, the decisions construing former section 230 of the Civil Code indicate that its public acknowledgement requirement would have been met where a father made a single confession in court to the paternity of a child.

In *Estate of McNamara* (1919) 181 Cal. 82 [183 P. 552, 7 A.L.R. 313], for example, we were emphatic in recognizing that a single unequivocal act could satisfy the acknowledgement requirement for purposes of statutory legitimation. Although the record in that case had contained additional evidence of the father's acknowledgement, we focused our attention on his "one act of signing the birth certificate and proclaimed: 'A more public acknowledgement than the act of [the decedent] in signing the child's birth certificate describing himself as the father, it would be difficult to imagine.'" (*Id.* at pp. 97-98.)

Similarly, in *Estate of Gird, supra*, 157 Cal. 534, we indicated in dictum that "a public avowal, made in the courts" would constitute a public acknowledgement under former section 230 of the Civil Code. (*Estate of Gird, supra*, 157 Cal. at pp. 542-543.)

Finally, in *Wong v. Young* (1947) 80 Cal.App.2d 391 [181 P.2d 741], a man's admission of paternity in a verified pleading, made in an action seeking to have the man declared the father of the child and for child support, was found to have satisfied the public acknowledgement requirement of the legitimation statute. (*Id.* at pp. 393-394.) Such admission was also deemed to constitute an acknowledgement under former Probate Code section 255, which had allowed illegitimate children to inherit from their fathers under an acknowledgement requirement that was even more stringent than that contained in Probate Code section 6452. [FN5] (*Wong v. Young, supra*, 80 Cal.App.2d at p. 394; see also *Estate of De Laveaga* (1904) 142 Cal. 158, 168 [75 P. 790] [indicating in dictum that, under a predecessor to Probate Code section 255, father sufficiently acknowledged an illegitimate child in a single witnessed writing declaring the child as his son].) Ultimately, however, legitimation of the child under

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former section 230 of the Civil Code was not found because two other of the statute's express requirements, i.e., receipt of the child into the father's family and the father's otherwise treating the child as his legitimate child (see *ante*, fn. 4), had not been established. (*Wong v. Young*, *supra*, 80 Cal.App.2d at p. 394.)

FN5 Section 255 of the former Probate Code provided in pertinent part: " Every illegitimate child, whether born or conceived but unborn, in the event of his subsequent birth, is an heir of his mother, and also of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father, and inherits his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock" (*Estate of Ginocchio* (1974) 43 Cal.App.3d 412, 416 [117 Cal.Rptr. 565], italics omitted.)

Although the foregoing authorities did not involve section 6452, their views on parental acknowledgement of out-of-wedlock children were part of the legal landscape when the first modern statutory forerunner to that provision was enacted in 1985. (See former § 6408.5, added by Stats. 1983, ch. 842, § 55, p. 3084, and amended by Stats. 1984, ch. 892, § 42, p. 3001.) (3) Where, as here, legislation has been judicially construed and a subsequent statute on the same or an analogous subject uses identical or substantially similar language, we may presume that the Legislature intended the *916 same construction, unless a contrary intent clearly appears. (*In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1437 [35 Cal.Rptr.2d 155]; see also *People v. Masbruch* (1996) 13 Cal.4th 1001, 1007 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *Belridge Farms v. Agricultural Labor Relations Bd.* (1978) 21 Cal.3d 551, 557 [147 Cal.Rptr. 165, 580 P.2d 665].) (1c) Since no evidence of a contrary intent clearly appears, we may reasonably infer that the types of acknowledgement formerly deemed sufficient for the legitimation statute (and former § 255, as well) suffice for purposes of intestate succession under section 6452. [FN6]

FN6 Probate Code section 6452's acknowledgement requirement differs from that found in former section 230 of the Civil Code, in that section 6452 does not require a parent to "publicly" acknowledge a child born out of wedlock. That difference, however, fails to accrue to Doner-Griswold's benefit. If anything, it suggests that the acknowledgement contemplated in section 6452 encompasses a broader spectrum of conduct than that associated with the legitimation statute.

Doner-Griswold disputes whether the acknowledgement required by Probate Code section 6452 may be met by a father's single act of acknowledging a child in court. In her view, the requirement contemplates a situation where the father establishes an ongoing parental relationship with the child or otherwise acknowledges the child's existence to his subsequent wife and children. To support this contention, she relies on three other authorities addressing acknowledgement under former section 230 of the Civil Code: *Blythe v. Ayres*, *supra*, 96 Cal. 532, *Estate of Wilson*, *supra*, 164 Cal.App.2d 385, and *Estate of Maxey* (1967) 257 Cal.App.2d 391 [64 Cal.Rptr. 837].

In *Blythe v. Ayres*, *supra*, 96 Cal. 532, the father never saw his illegitimate child because she resided in another country with her mother. Nevertheless, he "was garrulous upon the subject" of his paternity and "it was his common topic of conversation." (*Id.* at p. 577.) Not only did the father declare the child to be his child, "to all persons, upon all occasions," but at his request the child was named and baptized with his surname. (*Ibid.*) Based on the foregoing, this court remarked that "it could almost be held that he shouted it from the house-tops." (*Ibid.*) Accordingly, we concluded that the father's public acknowledgement under former section 230 of the Civil Code could "hardly be considered debatable." (*Blythe v. Ayres*, *supra*, 96 Cal. at p. 577.)

In *Estate of Wilson*, *supra*, 164 Cal.App.2d 385, the evidence showed that the father had acknowledged to his wife that he was the father of a child born to another woman. (*Id.* at p. 389.) Moreover, he had introduced the child as his own on many occasions, including at the funeral of his mother. (*Ibid.*) In light of such evidence, the Court

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of Appeal upheld the trial court's finding that the father had publicly acknowledged the child within the contemplation of the legitimation statute. *917

In *Estate of Maxey*, *supra*, 257 Cal.App.2d 391, the Court of Appeal found ample evidence supporting the trial court's determination that the father publicly acknowledged his illegitimate son for purposes of legitimation. The father had, on several occasions, visited the house where the child lived with his mother and asked about the child's school attendance and general welfare. (*Id.* at p. 397.) The father also, in the presence of others, had asked for permission to take the child to his own home for the summer, and, when that request was refused, said that the child was his son and that he should have the child part of the time. (*Ibid.*) In addition, the father had addressed the child as his son in the presence of other persons. (*Ibid.*)

Doner-Griswold correctly points out that the foregoing decisions illustrate the principle that the existence of acknowledgement must be decided on the circumstances of each case. (*Estate of Baird* (1924) 193 Cal. 225, 277 [223 P. 974].) In those decisions, however, the respective fathers had not confessed to paternity in a legal action. Consequently, the courts looked to what other forms of public acknowledgement had been demonstrated by fathers. (See also *Lozano*, *supra*, 51 Cal.App.4th 843 [examining father's acts both before and after child's birth in ascertaining acknowledgement under § 6452].)

That those decisions recognized the validity of different forms of acknowledgement should not detract from the weightiness of a father's in-court acknowledgement of a child in an action seeking to establish the existence of a parent and child relationship. (See *Estate of Gird*, *supra*, 157 Cal. at pp. 542-543; *Wong v. Young*, *supra*, 80 Cal.App.2d at pp. 393-394.) As aptly noted by the Court of Appeal below, such an acknowledgement is a critical one that typically leads to a paternity judgment and a legally enforceable obligation of support. Accordingly, such acknowledgements carry as much, if not greater, significance than those made to certain select persons (*Estate of Maxey*, *supra*, 257 Cal.App.2d at p. 397) or "shouted ... from the house-tops" (*Blythe v. Ayres*, *supra*, 96 Cal. at p. 577).

Doner-Griswold's authorities do not persuade us that section 6452 should be read to require that a father have personal contact with his out-of-wedlock child, that he make purchases for the child, that he receive the child into his home and other family, or that he treat the child as he does his other children. First and foremost, the language of section 6452 does not support such requirements. (See *Lozano*, *supra*, 51 Cal.App.4th at p. 848.) (4) We may not, under the guise of interpretation, insert qualifying provisions not included in the statute. (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349 [45 Cal.Rptr.2d 279, 902 P.2d 297].)

(1d) Second, even though *Blythe v. Ayres*, *supra*, 96 Cal. 532, *Estate of Wilson*, *supra*, 164 Cal.App.2d 385, and *Estate of Maxey*, *supra*, *918 257 Cal.App.2d 391, variously found such factors significant for purposes of legitimation, their reasoning appeared to flow directly from the express terms of the controlling statute. In contrast to Probate Code section 6452, former section 230 of the Civil Code provided that the legitimation of a child born out of wedlock was dependent upon three distinct conditions: (1) that the father of the child "publicly acknowledg[e] it as his own"; (2) that he "receiv[e] it as such, with the consent of his wife, if he is married, into his family"; and (3) that he "otherwise treat[] it as if it were a legitimate child." (*Ante*, fn. 4; see *Estate of De Laveaga*, *supra*, 142 Cal. at pp. 168-169 [indicating that although father acknowledged his illegitimate son in a single witnessed writing, legitimation statute was not satisfied because the father never received the child into his family and did not treat the child as if he were legitimate].) That the legitimation statute contained such explicit requirements, while section 6452 requires only a natural parent's acknowledgement of the child and contribution toward the child's support or care, strongly suggests that the Legislature did not intend for the latter provision to mirror the former in all the particulars identified by Doner-Griswold. (See *Lozano*, *supra*, 51 Cal.App.4th at pp. 848-849; compare with Fam. Code, § 7611, subd. (d) [a man is "presumed" to be the natural father of a child if "[h]e receives the child into his home and openly holds out the child as his natural child"].)

In an attempt to negate the significance of Draves's in-court confession of paternity, Doner-Griswold

emphasizes the circumstance that Draves did not tell his two other children of Griswold's existence. The record here, however, stands in sharp contrast to the primary authority she offers on this point. *Estate of Baird, supra*, 193 Cal. 225, held there was no public acknowledgement under former section 230 of the Civil Code where the decedent admitted paternity of a child to the child's mother and their mutual acquaintances but actively concealed the child's existence and his relationship to the child's mother from his own mother and sister, with whom he had intimate and affectionate relations. In that case, the decedent not only failed to tell his relatives, family friends, and business associates of the child (193 Cal. at p. 252), but he affirmatively denied paternity to a half brother and to the family coachman (*id.* at p. 277). In addition, the decedent and the child's mother masqueraded under a fictitious name they assumed and gave to the child in order to keep the decedent's mother and siblings in ignorance of the relationship. (*Id.* at pp. 260-261.) In finding that a public acknowledgement had not been established on such facts, *Estate of Baird* stated: "A distinction will be recognized between a mere failure to disclose or publicly acknowledge paternity and a willful misrepresentation in regard to it; in such circumstances there must be no purposeful concealment of the fact of paternity." (*Id.* at p. 276.) *919

Unlike the situation in *Estate of Baird*, Draves confessed to paternity in a formal legal proceeding. There is no evidence that Draves thereafter disclaimed his relationship to Griswold to people aware of the circumstances (see *ante*, fn. 3); or that he affirmatively denied he was Griswold's father despite his confession of paternity in the Ohio court proceeding. Nor is there any suggestion that Draves engaged in contrivances to prevent the discovery of Griswold's existence. In light of the obvious dissimilarities, Doner-Griswold's reliance on *Estate of Baird* is misplaced.

Estate of Ginochio, supra, 43 Cal.App.3d 412, likewise, is inapposite. That case held that a judicial determination of paternity following a vigorously contested hearing did not establish an acknowledgement sufficient to allow an illegitimate child to inherit under section 255 of the former Probate Code. (See *ante*, fn. 5.) Although the court noted that the decedent ultimately paid the child

support ordered by the court, it emphasized the circumstance that the decedent was declared the child's father *against his will* and at no time did he admit he was the father, or sign any writing acknowledging publicly or privately such fact, or otherwise have contact with the child. (*Estate of Ginochio, supra*, 43 Cal.App.3d at pp. 416-417.) Here, by contrast, Draves did not contest paternity, vigorously or otherwise. Instead, Draves stood before the court and openly admitted the parent and child relationship, and the record discloses no evidence that he subsequently disavowed such admission to anyone with knowledge of the circumstances. On this record, section 6452's acknowledgement requirement has been satisfied by a showing of what Draves did and did not do, not by the mere fact that paternity had been judicially declared.

Finally, Doner-Griswold contends that a 1996 amendment of section 6452 evinces the Legislature's unmistakable intent that a decedent's estate may not pass to siblings who had no contact with, or were totally unknown to, the decedent. As we shall explain, that contention proves too much.

Prior to 1996, section 6452 and a predecessor statute, former section 6408, expressly provided that their terms did not apply to "a natural brother or a sister of the child" born out of wedlock. [FN7] In construing former section 6408, *Estate of Corcoran* (1992) 7 Cal.App.4th 1099 [9 Cal.Rptr.2d 475] held that a half sibling was a "natural brother or sister" within the meaning of such *920 exception. That holding effectively allowed a half sibling and the issue of another half sibling to inherit from a decedent's estate where there had been no parental acknowledgement or support of the decedent as ordinarily required. In direct response to *Estate of Corcoran*, the Legislature amended section 6452 by eliminating the exception for natural siblings and their issue. (Stats. 1996, ch. 862, § 15; see Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751 (1995-1996 Reg. Sess.) as amended June 3, 1996, pp. 17-18 (Assembly Bill No. 2751).) According to legislative documents, the Commission had recommended deletion of the statutory exception because it "creates an undesirable risk that the estate of the deceased out-of-wedlock child will be claimed by siblings with whom the decedent had no contact during lifetime, and of whose existence the

decedent was unaware." (Assem. Com. on Judiciary, Analysis of Assem. Bill No. 2751 (1995-1996, Reg. Sess.) as introduced Feb. 22, 1996, p. 6; see also Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra*, at pp. 17-18.)

FN7 Former section 6408, subdivision (d) provided: "If a child is born out of wedlock, neither a parent nor a relative of a parent (except for the issue of the child or a natural brother or sister of the child or the issue of that brother or sister) inherits from or through the child on the basis of the relationship of parent and child between that parent and child unless both of the following requirements are satisfied: [¶] (1) The parent or a relative of the parent acknowledged the child. [¶] (2) The parent or a relative of the parent contributed to the support or the care of the child." (Stats. 1990, ch. 79, § 14, p. 722, italics added.)

This legislative history does not compel Doner-Griswold's construction of section 6452. Reasonably read, the comments of the Commission merely indicate its concern over the "undesirable risk" that unknown siblings could rely on the statutory exception to make claims against estates. Neither the language nor the history of the statute, however, evinces a clear intent to make inheritance contingent upon the decedent's awareness of or contact with such relatives. (See Assem. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra*, at p. 6; see also Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra*, at pp. 17-18.) Indeed, had the Legislature intended to categorically preclude intestate succession by a natural parent or a relative of that parent who had no contact with or was unknown to the deceased child, it could easily have so stated. Instead, by deleting the statutory exception for natural siblings, thereby subjecting siblings to section 6452's dual requirements of acknowledgement and support, the Legislature acted to prevent sibling inheritance under the type of circumstances presented in *Estate of Corcoran*, *supra*, 7 Cal.App.4th 1099, and to substantially reduce the risk noted by the Commission. [FN8] *921

FN8 We observe that, under certain former versions of Ohio law, a father's confession of paternity in an Ohio juvenile court proceeding was not the equivalent of a formal probate court "acknowledgement" that would have allowed an illegitimate child to inherit from the father in that state. (See *Estate of Vaughan* (2001) 90 Ohio St.3d 544 [740 N.E.2d 259, 262-263].) Here, however, Doner-Griswold does not dispute that the right of the succession claimants to succeed to Griswold's property is governed by the law of Griswold's domicile, i.e., California law, not the law of the claimants' domicile or the law of the place where Draves's acknowledgement occurred. (Civ. Code, §§ 755, 946; see *Estate of Lund* (1945) 26 Cal.2d 472, 493-496 [159 P.2d 643, 162 A.L.R. 606] [where father died domiciled in California, his out-of-wedlock son could inherit where all the legitimation requirements of former § 230 of the Civ. Code were met, even though the acts of legitimation occurred while the father and son were domiciled in two other states wherein such acts were not legally sufficient].)

B. Requirement of a Natural Parent and Child Relationship

(5a) Section 6452 limits the ability of a "natural parent" or "a relative of that parent" to inherit from or through the child "on the basis of the parent and child relationship between that parent and the child."

Probate Code section 6453 restricts the means by which a relationship of a natural parent to a child may be established for purposes of intestate succession. [FN9] (See *Estate of Sanders* (1992) 2 Cal.App.4th 462, 474-475 [3 Cal.Rptr.2d 536].) Under section 6453, subdivision (a), a natural parent and child relationship is established where the relationship is presumed under the Uniform Parentage Act and not rebutted. (Fam. Code, § 7600 et seq.) It is undisputed, however, that none of those presumptions applies in this case.

FN9 Section 6453 provides in full: "For

the purpose of determining whether a person is a 'natural parent' as that term is used is this chapter: [¶] (a) A natural parent and child relationship is established where that relationship is presumed and not rebutted pursuant to the Uniform Parentage Act, Part 3 (commencing with Section 7600) of Division 12 of the Family Code. [¶] (b) A natural parent and child relationship may be established pursuant to any other provisions of the Uniform Parentage Act, except that the relationship may not be established by an action under subdivision (c) of Section 7630 of the Family Code unless any of the following conditions exist: [¶] (1) A court order was entered during the father's lifetime declaring paternity. [¶] (2) Paternity is established by clear and convincing evidence that the father has openly held out the child as his own. [¶] (3) It was impossible for the father to hold out the child as his own and paternity is established by clear and convincing evidence."

Alternatively, and as relevant here, under Probate Code section 6453, subdivision (b), a natural parent and child relationship may be established pursuant to section 7630, subdivision (c) of the Family Code, [FN10] if a court order was entered during the father's lifetime declaring paternity. [FN11] (§ 6453, subd. (b)(1).)

FN10 Family Code section 7630, subdivision (c) provides in pertinent part: "An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 7611 ... may be brought by the child or personal representative of the child, the Department of Child Support Services, the mother or the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor. An action under this subdivision shall be

consolidated with a proceeding pursuant to Section 7662 if a proceeding has been filed under Chapter 5 (commencing with Section 7660). The parental rights of the alleged natural father shall be determined as set forth in Section 7664."

FN11 See makes no attempt to establish Draves's natural parent status under other provisions of section 6453; subdivision (b).

See contends the question of Draves's paternity was fully and finally adjudicated in the 1941 bastardy proceeding in Ohio. That proceeding, he *922 argues, satisfies both the Uniform Parentage Act and the Probate Code, and should be binding on the parties here.

If a valid judgment of paternity is rendered in Ohio, it generally is binding on California courts if Ohio had jurisdiction over the parties and the subject matter, and the parties were given reasonable notice and an opportunity to be heard. (*Ruddock v. Ohls* (1979) 91 Cal.App.3d 271, 276 [154 Cal.Rptr. 87].) California courts generally recognize the importance of a final determination of paternity. (E.g., *Weir v. Ferreira* (1997) 59 Cal.App.4th 1509, 1520 [70 Cal.Rptr.2d 33] (*Weir*); *Guardianship of Claralyn S.* (1983) 148 Cal.App.3d 81, 85 [195 Cal.Rptr. 646]; cf. *Estate of Camp* (1901) 131 Cal. 469, 471 [63 P. 736] [same for adoption determinations].)

Doner-Griswold does not dispute that the parties here are in privity with, or claim inheritance through, those who are bound by the bastardy judgment or are estopped from attacking it. (See *Weir, supra*, 59 Cal.App.4th at pp. 1516-1517, 1521.) Instead, she contends See has not shown that the issue adjudicated in the Ohio bastardy proceeding is identical to the issue presented here, that is, whether Draves was the natural parent of Griswold.

Although we have found no California case directly on point, one Ohio decision has recognized that a bastardy judgment rendered in Ohio in 1950 was res judicata of any proceeding that might have been brought under the Uniform Parentage Act. (*Birman v. Sproat* (1988) 47 Ohio App.3d 65 [546 N.E.2d

1354, 1357] [child born out of wedlock had standing to bring will contest based upon a paternity determination in a bastardy proceeding brought during testator's life]; see also Black's Law Dict., *supra*, at pp. 146, 1148 [equating a bastardy proceeding with a paternity suit].) Yet another Ohio decision found that parentage proceedings, which had found a decedent to be the "reputed father" of a child, [FN12] satisfied an Ohio legitimation statute and conferred standing upon the illegitimate child to contest the decedent's will where the father-child relationship was established prior to the decedent's death. (*Beck v. Jolliff* (1984) 22 Ohio App.3d 84 [489 N.E.2d 825, 829]; see also *Estate of Hicks* (1993) 90 Ohio App.3d 483 [629 N.E.2d 1086, 1088-1089] [parentage issue must be determined prior to the father's death to the extent the parent-child relationship is being established under the chapter governing descent and distribution].) While we are not bound to follow these Ohio authorities, they persuade us that the 1941 bastardy proceeding decided the identical issue presented here.

[FN12] The term "reputed father" appears to have reflected the language of the relevant Ohio statute at or about the time of the 1941 bastardy proceeding. (See *State ex rel. Discus v. Van Dorn* (1937) 56 Ohio App. 82 [8 Ohio Op. 393, 10 N.E.2d 14, 16].)

Next, Doner-Griswold argues the Ohio judgment should not be given res judicata effect because the bastardy proceeding was quasi-criminal in nature. *923 It is her position that Draves's confession may have reflected only a decision to avoid a jury trial instead of an adjudication of the paternity issue on the merits.

To support this argument, Doner-Griswold relies upon *Pease v. Pease* (1988) 201 Cal.App.3d 29 [246 Cal.Rptr. 762] (*Pease*). In that case, a grandfather was sued by his grandchildren and others in a civil action alleging the grandfather's molestation of the grandchildren. When the grandfather cross-complained against his former wife for apportionment of fault, she filed a demurrer contending that the grandfather was collaterally estopped from asserting the negligent character of

his acts by virtue of his guilty plea in a criminal proceeding involving the same issues. On appeal, the judgment dismissing the cross-complaint was reversed. (6) The appellate court reasoned that a trial court in a civil proceeding may not give collateral estoppel effect to a criminal conviction involving the same issues if the conviction resulted from a guilty plea. "The issue of appellant's guilt was not fully litigated in the prior criminal proceeding; rather, appellant's plea bargain may reflect nothing more than a compromise instead of an ultimate determination of his guilt. Appellant's due process right to a hearing thus outweighs any countervailing need to limit litigation or conserve judicial resources." (*Id.* at p. 34, fn. omitted.)

(5b) Even assuming, for purposes of argument only, that *Pease's* reasoning may properly be invoked where the father's admission of paternity occurred in a bastardy proceeding (see *Reams v. State ex rel. Favors* (1936) 53 Ohio App. 19 [6 Ohio Op. 501, 4 N.E.2d 151, 152] [indicating that a bastardy proceeding is more civil than criminal in character]), the circumstances here do not call for its application. Unlike the situation in *Pease*, neither the in-court admission nor the resulting paternity judgment at issue is being challenged by the father (Draves). Moreover, neither the father, nor those claiming a right to inherit through him, seek to litigate the paternity issue. Accordingly, the father's due process rights are not at issue and there is no need to determine whether such rights might outweigh any countervailing need to limit litigation or conserve judicial resources. (See *Pease, supra*, 201 Cal.App.3d at p. 34.)

Additionally, the record fails to support any claim that Draves's confession merely reflected a compromise. Draves, of course, is no longer living and can offer no explanation as to why he admitted paternity in the bastardy proceeding. Although Doner-Griswold suggests that Draves confessed to avoid the publicity of a jury trial, and not because the paternity charge had merit, that suggestion is purely speculative and finds no evidentiary support in the record. *924

Finally, Doner-Griswold argues that See and Griswold's half siblings do not have standing to seek the requisite paternity determination pursuant to the Uniform Parentage Act under section 7630, subdivision (c) of the Family Code. The question

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here, however, is whether the judgment in the bastardy proceeding initiated by Griswold's mother forecloses Doner-Griswold's relitigation of the parentage issue.

Although Griswold's mother was not acting pursuant to the Uniform Parentage Act when she filed the bastardy complaint in 1941, neither that legislation nor the Probate Code provision should be construed to ignore the force and effect of the judgment she obtained. That Griswold's mother brought her action to determine paternity long before the adoption of the Uniform Parentage Act, and that all procedural requirements of an action under Family Code section 7630 may not have been followed, should not detract from its binding effect in this probate proceeding where the issue adjudicated was identical with the issue that would have been presented in a Uniform Parentage Act action. (See *Weir, supra*, 59 Cal.App.4th at p. 1521.) Moreover, a prior adjudication of paternity does not compromise a state's interests in the accurate and efficient disposition of property at death. (See *Trimble v. Gordon* (1977) 430 U.S. 762, 772 & fn. 14 [97 S.Ct. 1459; 1466, 52 L.Ed.2d 31] [striking down a provision of a state probate act that precluded a category of illegitimate children from participating in their intestate fathers' estates where the parent-child relationship had been established in state court paternity actions prior to the fathers' deaths].)

In sum, we find that the 1941 Ohio judgment was a court order "entered during the father's lifetime declaring paternity" (§ 6453, subd. (b)(1)), and that it establishes Draves as the natural parent of Griswold for purposes of intestate succession under section 6452.

Disposition

(7) "Succession to estates is purely a matter of statutory regulation, which cannot be changed by the courts." (*Estate of De Cigarán, supra*, 150 Cal. at p. 688.) We do not disagree that a natural parent who does no more than openly acknowledge a child in court and pay court-ordered child support may not reflect a particularly worthy predicate for inheritance by that parent's issue, but section 6452 provides in unmistakable language that it shall be so. While the Legislature remains free to reconsider the matter and may choose to change the rules of succession at any time, this court will not do so

under the pretense of interpretation.

The judgment of the Court of Appeal is affirmed.

George, C. J., Kennard, J., Werdegar, J., and Chin, J., concurred. *925

BROWN, J.

I reluctantly concur. The relevant case law strongly suggests that a father who admits paternity in court with no subsequent disclaimers "acknowledge[s] the child" within the meaning of subdivision (a) of Probate Code section 6452. Moreover, neither the statutory language nor the legislative history supports an alternative interpretation. Accordingly, we must affirm the judgment of the Court of Appeal.

Nonetheless, I believe our holding today contravenes the overarching purpose behind our laws of intestate succession—to carry out "the intent a decedent without a will is most likely to have had." (16 Cal. Law Revision Com. Rep. (1982) p. 2319.) I doubt most children born out of wedlock would have wanted to bequeath a share of their estate to a "father" who never contacted them, never mentioned their existence to his family and friends, and only paid court-ordered child support. I doubt even more that these children would have wanted to bequeath a share of their estate to that father's other offspring. Finally, I have *no* doubt that most, if not all, children born out of wedlock would have balked at bequeathing a share of their estate to a "forensic genealogist."

To avoid such a dubious outcome in the future, I believe our laws of intestate succession should allow a parent to inherit from a child born out of wedlock only if the parent has some sort of parental connection to that child. For example, requiring a parent to treat a child born out of wedlock as the parent's own before the parent may inherit from that child would prevent today's outcome. (See, e.g., *Bullock v. Thomas* (Miss. 1995) 659 So.2d 574, 577 [a father must "openly treat" a child born out of wedlock "as his own" in order to inherit from that child].) More importantly, such a requirement would comport with the stated purpose behind our laws of succession because that child likely would have wanted to give a share of his estate to a parent

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that treated him as the parent's own.

Of course, this court may not remedy this apparent defect in our intestate succession statutes. Only the Legislature may make the appropriate revisions. I urge it to do so here. *926

Cal. 2001.

Estate of DENIS H. GRISWOLD, Deceased.
NORMA B. DONER-GRISWOLD, Petitioner and
Respondent, v. FRANCIS V. SEE, Objector and
Appellant.

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AB 705
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Date of Hearing: April 21, 1997

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Debra Bowen, Chair

AB 705 (Strom-Martin) - As Amended: April 2, 1997

SUMMARY : Applies existing local agency waste reduction mandates to state agencies and extends and expands the state purchasing preference program for recycled products.

KEY ISSUES :

- 1) Should the state be obligated to conform to the same standards for waste reduction currently imposed on local governments?
- 2) Should the state extend and expand its purchasing preference program for recycled products?

EXISTING LAW :

- 1) Requires all cities and counties to demonstrate a 25% reduction in solid waste going to landfills by 1995, and a 50% reduction by the year 2000.
- 2) Establishes various state purchasing preference programs for the procurement of recycled content products.
- 3) Sunsets the state purchasing preference program for recycled automotive products, paint, and solvent on January 1, 1997.

THIS BILL :

- 1) Requires each state agency to conduct, prior to April 1, 1998, a waste audit to determine the amount of solid waste generated and the amount that can be reduced, recycled, composted, or reused;
- 2) Requires each state agency to develop, prior to June 1, 1998, an integrated waste management program for reducing solid waste, reusing and recycling materials, and purchasing recycled materials and to designate at least one waste coordinator who shall be responsible for implementing that agency's waste management program.
- 3) Requires the California Integrated Waste Management Board (CIWMB) to provide technical assistance to state agencies for development of the audits and implementation of their programs;
- 4) Requires each state agency to divert at least 25% of its solid waste from landfill or transformation facilities through source reduction, recycling, and composting activities by January 1, 1999. Diversions are to be increased to 50% by January 1,

2002.

5) Expands the definition of recycled products for purposes of

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recycled product procurement to include building and construction materials, outdoor furniture, and landscape materials;

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- 6) Renews the state's purchase preference program of recycled content automotive products and paints, which expired on January 1, 1997, and extends it until January 1, 2001;
- 7) Authorizes each state agency to utilize previously initiated diversions to meet the bill's diversion requirements, and mandates procedures to ensure that adequate space is made available for on-site waste reduction activities.
- 8) Specifies that the program is to be implemented within existing resources at each state agency, and that any cost savings realized as a result of the program be redirected back into the program.

FISCAL EFFECT : Unknown

COMMENTS :

Question for the Committee to Consider

Are state agencies burdening cities and counties with significant amounts of solid waste while failing to share the burden of reducing the amount of waste sent to landfills?

Talking Trash

The Integrated Waste Management Act requires all cities and counties in California to reduce the amount of solid waste going to landfills by 25% by 1995, and to increase that number to 50% by the year 2000. This reduction is to be achieved by source reduction, recycling, composting, and reuse. According to the CIWMB, local waste management agencies are meeting the 25% reduction mandate when seen on a statewide aggregate basis.

However, meeting the 50% reduction mandate by 2000 could be considerably more difficult, for reasons that include state facilities. According to this bill's sponsor, Californians Against Waste, state facilities contribute significant amounts of solid waste to the local waste stream in nearly every city. This waste comes not only from state office buildings, but universities, community colleges, prisons, and school districts.

In recent court cases, state agencies have argued that they cannot be required to implement recycling programs for the purposes of fulfilling local waste reduction requirements. In a recent case involving Pelican Bay State Prison, the court held that because state agencies were not specifically referenced in the Integrated Waste Management Act, they cannot be compelled to conform to its mandates or to local waste management and recycling ordinances.

Governor Wilson signed an Executive Order in 1991 directing state agencies to develop recycling programs, but the response has been erratic. Some agencies have created extensive programs, while others have not.

In the case of federal facilities, which also contribute to local

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waste streams, a federal executive order now requires all such facilities to cooperate with local recycling efforts.

This bill would require state agencies to not only reduce their solid waste streams by 25% by January 1, 1999 and by 50% by January 1, 2002, thereby paralleling the existing requirements for cities and counties, but would require state agencies to establish integrated waste management programs after conducting a waste audit. These programs are to be funded out of existing resources at each agency, and any cost savings realized by implementation of the program are to be redirected into the program.

This bill lacks a definition of "state agency." If it is the author's intention for the bill to have broad effect, it seems prudent to amend it to make it clear that "state agency" also includes school districts, prisons, community colleges, the University of California, the state university system, and the State Lottery Commission clearly be made subject to the bill's provisions.

Buying Green

In 1989 the State Assistance for Recycling (STAR) Markets Act was passed and added to the Public Contracts Code. That act mandates that the state, whenever feasible and as markets allow, utilize recycled resources in the daily operations of the state. Section 12157 enumerates the types of recycled products the state was to procure or purchase.

This bill adds three new product categories to that list: building and construction materials, outdoor furniture, and landscaping materials. The bill's sponsor hopes that these additions will further encourage the state in its recycling procurements and purchases. Currently, the Parks and Recreation Department uses

wood almost entirely for its outdoor furnishings, while the National Park Service has apparently launched an aggressive program to use recycled plastic lumber for the same purposes.

Paint By Numbers

As originally codified, the STAR Act contained Article 2.1 - Recycled Fluids, Paints, and Solvents. That article required the state to purchase whenever available recycled automotive lubricants and antifreeze, recycled solvents, and recycled paint, so long as those products cost no more than 5% more than the lowest quoted price for non-recycled equivalents. This provision was mandated to sunset on January 1, 1997, and is now repealed. This bill reenacts Article 2.1 almost exactly as it appeared prior to its sunset date, except that it is now extended to January 1, 2001.

SOURCE : Californians Against Waste

SUPPORT

□

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City of San Rafael
E-Coat Recycled Paint Products
Norcal Waste Systems, Inc.
Planning and Conservation League
Sierra Club California
Solid Waste Association of North America

OPPOSITION

None on file

Analysis prepared by : J. Stacey Sullivan / anates / (916)
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October 28, 2003

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OCT 31 2003

COMMISSION ON
 STATE MANDATES

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

Re: CSM No. 00-TC-07
 Test Claim of Santa Monica and Lake Tahoe Community College Districts
Integrated Waste Management

Dear Ms. Higashi:

I have received the draft staff analysis to the above referenced test claim and respond on behalf of Santa Monica Community College District and Lake Tahoe Community College District, test claimants.

1. Developing and Adopting a Plan is Reimbursable

Staff, at page 15, correctly cites the mandatory requirement that districts develop and adopt, and submit for review and approval, an integrated waste management plan as required by Public Resources Code Section 42920, subdivisions (b)(1) and (b)(2), and comments that "[R]ead in isolation, these statutes appear to be mandates by including the word 'shall'."

Staff then notes that subdivision (b)(3) requires a district that has not submitted a plan, or if a district's submitted plan is disapproved, to comply with the model plan developed by the Board pursuant to subdivision (a). Staff then concludes that "[S]ince the community college can be automatically governed by the model...a community college that chooses to develop its own plan is exercising its discretion in doing so."

This strained conclusion is splitting hairs to the infinitive. The clear meaning of the statute is that subdivisions (b)(1) and (b)(2) compel the mandated duty, and the fall-back

provision of subdivision (b)(3) is merely a provision that assures that all districts will comply with the mandate, either by developing and implementing its own plan or by implementing the Board's plan. Either way, the legislation requires all districts to implement a plan. The cost of this compliance should be reimbursable whether the district incurs the expense of coming in the front door or the expense of entering through the back door.

Staff's strained conclusion also punishes districts with unique waste management problems.¹ Those districts may find that the model plan is not appropriate or effective for their unparalleled situation and are compelled to develop and adopt a plan which will be appropriate or effective for their unique situations. Because these districts are, by the facts applied to them, compelled to develop their own plans, the staff analysis would prohibit them from seeking reimbursement.

Staff, at page 16, also comes to the conclusion that an activity is not mandated when there is no "penalty" for noncompliance: "Neither Public Resources Code section 42920, subdivision (b), nor any other provision in the test claim legislation, contain a legal compulsion or penalty for nonparticipation, i.e., not submitting a plan, other than being governed by the Board's model plan..." Staff cites no statute, law, regulation or court decision which holds, *as a matter of law*, that a law is not compulsory unless there is a specific statutory penalty for noncompliance.

Therefore, the Staff's conclusion, at page 32, that only the activities related to complying with the Board's model integrated waste management plan pursuant to subdivision (b)(3) shall be reimbursed should be corrected to also include reimbursement for the development, adoption, submission and compliance with a program under subdivisions (b)(1) and (b)(2).

2. The Board Publications Cited Are Executive Orders

At pages 12 through 14, staff explains its conclusion that three board publications² are

¹ Staff, at page 19, notes that a district's inability to comply with the requirements of the chapter could be outside the control of the community college due to "lack of markets for recycled materials, local efforts to implement source reduction, recycling, and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed of by the agency." Each district could be unique.

² "Conducting a Diversion Study - a Guide For California Jurisdictions (September 1999); Solid Waste Generation, Disposal, and Diversion Measurement Guide (March

not Government Code section 17516 "executive orders" because, in themselves, they do not contain mandatory language. This is an error in logic.

For example, in the Introduction to *"Solid Waste Generation, Disposal, and Diversion Measurement Guide"* it states:

"...the law requires each State agency and large State facility to submit an integrated waste management plan (IWMP)...In preparing these plans, State agencies and large State facility administrators will need to identify waste diversion programs and calculate each program's impact on reducing disposal...¶...This guide provides State agencies and large facility administrators with information and tools to help calculate annual waste generation, disposal, and diversion tonnage to complete their IWMPs." (Emphasis supplied)

In other words, according to Staff, when a district activity is mandated, and a publication is issued which provides those districts with the information and tools to comply with the mandated activities, the activity is reimbursable but the contents of the "how to do it manual" is not, because the "how to do it manual" didn't use magic words or phrases such as "shall" or "is required to". This is an error in logic.

This publication continues, in the Introduction that "[T]he Guide should be used in conjunction with the Board's publication *Conducting a Diversion Study - A Guide for California Jurisdictions*." Again, in the Introduction to this latter publication, it states:

"...In order for jurisdictions to establish their base-year generation amounts, it was necessary to quantify a base-year diversion amount....¶...This guide has been developed to provide jurisdictions with information and tools to help you calculate a new base year in a cost-effective manner..." (Emphasis supplied).

Therefore, according to Staff, although it is necessary to calculate a base-year diversion amount, using the information and tools to help calculate that base-year diversion amount in a cost-effective manner is not a mandated activity.

The third publication, *"Waste Reduction Policies and Procedures for State Agencies - August 1999"* is described on its title page as "How to Reduce, Reuse, Recycle, and Buy Recycled in California State Government". Therefore, according to Staff, although it is

2000); and *Waste Reduction Policies and Procedures for State Agencies (August 1999)*.

necessary (and reimbursable) to reduce, reuse, recycle and buy recycled materials, to follow the instructions on "how to do it", is not.

These publications instructing districts "how to" perform mandated activities should be classified as executive orders.

3. Multiple Alternatives Were Contemplated

Staff interprets Public Resources Code Section 42927 to mean that "[B]ecause the statute requires only one request for a community college unable to comply, staff finds that requesting both a time extension and an alternative goal would be discretionary" (staff analysis, at page 22). Staff therefore concludes, at page 32, that "[A] community college unable to comply with this diversion requirement may instead seek either an alternative requirement or time extension (but not both) as specified..." This interpretation is too narrow.

Section 42927 refers to the entire chapter:

"(a) If a state agency is unable to comply with the requirements of this chapter..."

Section 42922 provides for a district to request an alternative to the 50% diversion requirements mandated by subdivision (b) of Section 42921. Subdivision (d) of Section 42922 allows the district to request another alternative source reduction, recycling and composting requirement.

Section 42923 provides that the board may grant one or more single or multiyear time extensions to comply with the 25% diversion requirement.

Therefore, it is quite clear that the legislature foresaw the need to make one, two, or more adjustments to fit the needs of each new program and changing times. The intent of the legislature was to provide flexibility to encourage districts to request extensions of time or alternatives to achieving the desired goal of reducing solid waste, reuse materials and recycle recyclable materials.

Therefore, when Section 42927 goes on to say:

"...the agency shall notify the board in writing...and shall request an alternative pursuant to Section 42922 or an extension pursuant to Section 42923....",

it intended to mean when a state agency is unable to comply either with the 25%

requirement of Section 42923, or the 50% requirement of Section 42924 (i.e., "if a state agency is unable to comply with the requirements of this chapter"), the agency shall request either an alternative or an extension. This "either" - "or" interpretation is more in consonance with the provisions for multiple requests in both section 42921 and in section 42923. This interpretation also clarifies the legislature's intent to say "you request an alternative when you need a change in the 50% requirement or you request an extension when you need a change in the 25% requirement". It did not mean that you could only have one. Staff's "but only one interpretation" is not consistent with the legislature's clear anticipation of multiple changes to meet varying needs and changing circumstances.

4. New Leases or Renewed Leases Trigger Reimbursable Activities

Public Resources Code Section 42924, subdivision (b) requires:

"(b) Each state agency or large state facility, when entering into a new lease, or renewing an existing lease, shall ensure that adequate areas are provided for, and adequate personnel are available to oversee, the collection, storage, and loading of recyclable materials in compliance with the requirements established pursuant to subdivision (a)"³.

Staff concludes that this section does not require a community college to enter into or renew a lease, therefore, doing so would be at the college's discretion and would not result in state-mandated costs, citing *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727.

The legislative history in California shows a continuous uninterrupted pattern of the State assisting school districts and community college districts in the financing of new facilities. This legislative history demonstrates a legislative conclusion that these districts cannot do it alone. Leases are part of that history. The authority for those community college leases are found in Education Code Section 81330⁴. Section 81331⁵

³ Subdivision (a) requires the board to develop and adopt requirements relating to adequate areas for collecting, storing, and loading recyclable materials in state buildings.

⁴ Education Code Section 81330:

"Any community college district may enter into leases and agreements relating to real property and buildings to be used by the district pursuant to this article. As used in this

makes it clear that the terminology includes a lease purchase agreement. The use of leases and lease purchase agreements (and other financing arrangements) to finance school construction is not an option, they are necessary if those school facilities are to be built.

Secondly, the decision in *Department of Finance* was limited to the facts before the court. The court there specifically held that "...we find it unnecessary in this case to decide whether a finding of legal compulsion is *necessary* in order to establish a right to reimbursement...(opinion, at page 736) and "...a claimant that elects to discontinue participation in one of the programs *here at issue* does not face 'certain and severe...penalties' such as 'double...taxation' or other 'draconian' consequences..." (Opinion, at page 754, emphasis supplied to illustrate holding is limited to facts presented)

Finally, the reliance on *Department of Finance*, as interpreted by staff, would preclude almost all educational activity from reimbursement, since almost all activities are a "down stream" result of an initial discretionary decision.

Here, test claimants do not argue that entering into a new lease, or renewing an existing lease, are mandated activities. But once done, subdivision (b) requires districts to "ensure that adequate areas are provided for and adequate personnel are available to oversee" compliance with the test claim litigation. These latter activities are clearly mandated and should be subject to reimbursement.

5. The Staff Analysis is Incomplete

On August 10, 2001, test claimants responded to the comments of the Department of Finance dated June 18, 2001. Part of that response objected to the DOF comments as

article, "building" includes (a) one or more buildings located or to be located on one or more sites; (b) the remodeling of any building located on a site to be leased pursuant to this article; (c) onsite and offsite facilities, utilities or improvements which the governing board determines are necessary for the proper operation or function of the school facilities to be leased. It also includes the permanent improvement of school grounds. As used in this article, "site" includes one or more sites, and also may include any building or buildings located or to be located on a site."

⁵ Education Code Section 81331:

"As used in this article "lease or agreement" shall include a lease purchase agreement."

being incompetent and requested that they be stricken from the record. The objection and request was based on the Department's failure to comply with Title 2, California Code of Regulations, Section 1183.02, subdivisions (c)(1) and (d).

The Staff Analysis acknowledges this objection and request at page 6. No ruling on the objection or request is recommended or mentioned thereafter. However, Staff refers extensively to, and quotes numerous portions of, the DOF response throughout its analysis.

Test claimant requests staff to make a recommendation to the Commission on this objection and request, as test claimants will request the Commission to make a ruling at the public hearing on December 2, 2003.

Conclusion

For the reasons cited above, the Commission should determine that

1. Developing and adopting, and submitting for review and approval, an integrated waste management plan as required by Public Resources Code Section 42920, subdivisions (b)(1) and (b)(2) are reimbursable activities.
2. All of the publications (and included activities) attached to the test claim and incorporated therein are executive orders
3. Requesting one or more alternatives to the diversion requirements of subdivision (b) of Section 42921 and/or requesting one or more extensions to the time requirements of subdivision (a) of Section 42921, pursuant to Public Resources Code Section 42927, subdivision (a), are reimbursable activities.
4. The provision of adequate areas and adequate personnel to oversee collection, storage and loading of recyclable materials when entering into or renewing a lease are reimbursable activities, pursuant to Public Resources Code Section 42924, subdivision (b).

For the reasons cited above, Commission Staff should:

5. Recommend a ruling on test claimants objection to the comments of the Department of Finance and request that they be stricken from the record. If the recommendation is that the objection and request be sustained, to then rewrite the analysis to delete all references to the comments of the Department of Finance.

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete of my own knowledge or information or belief.

Sincerely,



Keith B. Petersen

C: Mailing List Attached

DECLARATION OF SERVICE

RE: Integrated Waste Management
CLAIMANT: Santa Monica and Lake Tahoe Community College Districts

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of October 28, 2003 addressed as follows:

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Sacramento, CA 95814
FAX: (916) 445-0278

AND per mailing list attached

U.S. MAIL: I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

FACSIMILE TRANSMISSION: On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

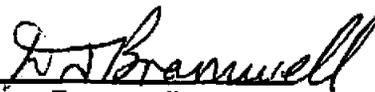
OTHER SERVICE: I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

 (Describe)

PERSONAL SERVICE: By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 10/29/03, at San Diego, California.


Diane Bramwell

Commission on State Mandates

Original List Date: 3/20/2001
Last Updated: 4/17/2003
List Print Date: 10/07/2003
Claim Number: 00-TC-07
Issue: Integrated Waste Management

Mailing Information: Draft Staff Analysis

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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

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Mr. Gerald Shelton California Department of Education (E-08) Fiscal and Administrative Services Division 1430 N Street, Suite 2213 Sacramento, CA 95814	Tel: (916) 445-0554 Fax: (916) 327-8306
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Terry Tamminen
Secretary for
Environmental
Protection

California Integrated Waste Management Board

Linda Moulton-Patterson, Chair
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www.ciwmb.ca.gov



Arnold Schwarzenegger
Governor

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JAN 26 2004

**COMMISSION ON
STATE MANDATES**

VIA FACSIMILE: (916) 445-0278

January 21, 2004

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

RE: Request for Postponement of January 29, 2004 Hearing Regarding Final Staff Analysis and Proposed Statement of Decision
Integrated Waste Management, 00-TC-07
Santa Monica and South Lake Tahoe Community College Districts, Co-Claimants

Dear Ms. Higashi:

This will serve as a formal request to postpone the January 29, 2004 hearing regarding Test Claim #00-TC-07, pursuant to Title 2, California Code of Regulations, section 1183.01, because the California Integrated Waste Management Board (CIWMB) was not included on the distribution for the October 7, 2003 draft staff analysis on this matter.

We just learned today that the CIWMB was somehow dropped from the mailing list for this test claim, and only accidentally learned about the scheduled hearing a few days ago. Upon my request, the staff report for the final analyses was mailed and received by our office on January 14, 2004.

We would like to have 30 days to prepare and submit written comments, the same amount of time allocated in the regulations for interested parties to comment on draft staff analyses. Further, given that we have significant legal and programmatic concerns, we request that our written comments be considered and addressed in a revised final staff analysis presented to the Commission prior to rescheduling the hearing.

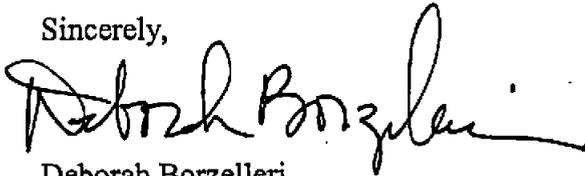
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Paula Higashi, Executive Director
January 21, 2004
Page 2

We appreciate your consideration of our request. I can be reached at (916) 341-6056 should you have any questions.

Sincerely,



Deborah Borzelleri
Staff Counsel

Cc: Mailing List
Mark Leary, Executive Director
California Integrated Waste Management Board
Patrick Schiavo, Deputy Director
Diversion, Planning, and Local Assistance Division
California Integrated Waste Management Board
Elliot Block, Acting Chief Counsel
California Integrated Waste Management Board

Commission on State Mandates

Original List Date: 3/20/2001 Mailing Information: Other
Last Updated: 4/17/2003
List Print Date: 01/09/2004 **Mailing List**
Claim Number: 00-TC-07
Issue: Integrated Waste Management

TO ALL PARTIES AND INTERESTED PARTIES:

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

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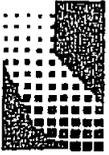
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Arnold Schwarzenegger
Governor

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**COMMISSION ON
STATE MANDATES**

February 13, 2004

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

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

Dear Ms. Higashi:

Thank you for granting our request for postponement of the January 29 hearing to afford the California Integrated Waste Management Board (CIWMB) an opportunity to comment on the staff analysis for this test claim, and for placing the CIWMB on the mailing list. I received the staff analysis, and have the following comments to submit on behalf of the CIWMB.

Issue 3: Fee Authority

The staff analysis concludes that no statutory exemptions as listed in Government Code section 17556 apply to this test claim. In particular, it was determined that the community college districts do not have fee authority, pursuant to section 17556(d), to recover costs of implementing the test claim statute, because there is no statute that requires or authorizes a waste management or recycling fee.

The CIWMB disagrees with this analysis.

First, under the "permissive code" - Education Code section 70902 - the district may charge a fee which is optional in nature. According to the California Community Colleges Chancellor's Office, Legal Opinion M 00-41, December 19, 2000, "[u]nder the authority of the permissive code, ... a district may charge a fee which is optional in nature, provided that the fee is not in conflict or inconsistent with existing law, and is not inconsistent with the purposes for which community college districts are established."

Claimants' argument that charging students for an integrated waste management plan "is directly in conflict with the purposes for which community college districts are established" is groundless. Claimant provided no basis for this argument. Also, the costs allowed for in the staff analysis are

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Paula Higashi, Executive Director

February 13, 2004

Page 2 of 2

operational in nature, rather than for the integrated waste management plan. It is the CIWMB's view that an increased fee to cover operational costs for appropriately managing solid waste does not in any way conflict with the purposes for which the districts are established.

Claimants' assertion that "none of the students would 'opt' to pay for this costly program" is not only groundless but also irrelevant. In *Kathleen Connell v. Superior Court* (1997) 59 Cal.App. 4th 382 at 401, 69 Cal.Rptr.2d 231, regarding Government Code section 17556(d), the court stated that "... the plain language of the statute precludes reimbursement where the local agency has the authority, i.e., the right or the power, to levy fees sufficient to cover the costs of the state-mandated program." The court noted that the issue was a question of law, and that economic evidence presented as to whether it was practical or feasible to collect the fee "was irrelevant and injected improper factual questions into the inquiry." (*Ibid.*)

Additionally, the staff analysis cites as "more on point" the "Prohibited Practices" portion (section IV) of the Chancellor's Office's Legal Opinion which states, "[i]t is the opinion of the Chancellor's Office that community college districts may not charge students a fee for the use of a service that the district is required to provide by state law or that the district is already funded to provide." The examples cited on page 15 are fees for "counseling services" and "health services," to which an individual student is entitled. The CIWMB believes this provision is not on point. Fees for waste management and recycling would more likely be considered part of overall operational costs, which are not the type of fees that appear to be contemplated in this prohibition.

Finally, the Chancellor's Office's Legal Opinion at page 10 discusses the specific statutory authority of districts, under Education Code section 76375, to establish an annual building and operating fee "for the purpose of financing, constructing, enlarging, remodeling, refurbishing, and operating a student body center." Although any such fee is subject to an election by the student body, it is nevertheless authorized and required. It is reasonable to expect that the portion of the fee for operating the student center could and should include some provision for waste management, recycling and diversion programs.

Conclusion

The Commission on State Mandates should find that the statutory exemption in Government Code section 17556(d) regarding fee authority is applicable and therefore no reimbursable mandate is allowed.

Thank you for your consideration of these comments. If you have any questions, please contact me at (916) 341-6056.

Sincerely,


Deborah Borzelleri
Staff Counsel

cc: Mailing List

SixTen and Associates

Mandate Reimbursement Services

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February 23, 2004

RECEIVED

FEB 23 2004

COMMISSION ON
STATE MANDATES

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

Re: CSM No. 00-TC-07
Test Claim of Santa Monica and Lake Tahoe Community College Districts
Integrated Waste Management

Dear Ms. Higashi:

I have received the comments of the California Integrated Waste Management Board (CIWMB) dated February 13, 2004 to the staff analysis of the above referenced test claim and respond on behalf of Santa Monica Community College District and Lake Tahoe Community College District, test claimants.

CIWMB raises only one new issue that has not been fully briefed. CIWMB cites Kathleen Connell v. Superior Court¹ for the proposition that community college districts have the "authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." Kathleen Connell is factually distinguishable.

In Kathleen Connell, Water Code section 35470 provided:

"Any district formed on or after July 30, 1917, may, in lieu in whole or in part of raising money for district purposes by assessment, make water available to the holders of title to land or the occupants thereon, and may

¹ Kathleen Connell v. Superior Court (1997) 59 Cal.App.4th 382

fix and collect charges therefor. The charges may include standby charges to holders of title to land to which water may be made available, whether the water is actually used or not. The charges may vary in different months and in different localities of the district to correspond to the cost and value of the service, and the district may use so much of the proceeds of the charges as may be necessary to defray the ordinary operation or maintenance expenses of the district and for any other lawful district purpose." (Opinion, at 398)

The court found that this statute authorized the water districts to levy fees sufficient to pay the costs involved when complying with a regulation of the Department of Health Services which increased the level of purity required before reclaimed wastewater could be used.

In the case now before the Commission, there is no statute which authorizes the levy of service charges, fees, or assessments against students sufficient to pay for an integrated waste management program.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the state of California, that the statements made in this document are true and complete of my own knowledge or information or belief.

Sincerely,



Keith B. Petersen

C: Cheryl Miller, Associate Vice President, Santa Monica CCD
Jon Stephens, Vice President, South Lake Tahoe CCD
California Integrated Waste Management Board

Mailing List attached

DECLARATION OF SERVICE

RE: Integrated Waste Management 00-TC-07
CLAIMANT: Santa Monica and Lake Tahoe Community College Districts

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of February 23, 2004, addressed as follows:

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

AND per mailing list attached

FAX: (916) 445-0278

U.S. MAIL: I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

FACSIMILE TRANSMISSION: On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

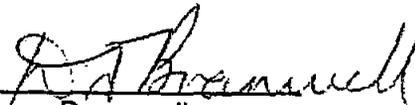
OTHER SERVICE: I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

(Describe)

PERSONAL SERVICE: By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 2/23/04, at San Diego, California.


Diane Bramwell

Commission on State Mandates

Original List Date: 3/20/2001
Last Updated: 4/17/2003
List Print Date: 10/07/2003
Claim Number: 00-TC-07
Issue: Integrated Waste Management

Mailing Information: Draft Staff Analysis

Mailing List

ALL PARTIES AND INTERESTED PARTIES:

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

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19 Cal.4th 1
 960 P.2d 1031, 78 Cal.Rptr.2d 1, 98 Cal. Daily Op. Serv. 6683, 98 Daily Journal D.A.R. 9211
 (Cite as: 19 Cal.4th 1)

Page 1

v

YAMAHA CORPORATION OF AMERICA,
 Plaintiff and Respondent,

v.

STATE BOARD OF EQUALIZATION, Defendant
 and Appellant.

No. S060145.

Supreme Court of California

Aug. 27, 1998.

SUMMARY

The trial court entered judgment in favor of a taxpayer, a seller of musical instruments, in the taxpayer's action against the State Board of Equalization for a refund of use taxes paid for promotional gifts of instruments and informational material, previously stored in a California warehouse, then given to parties in other states. (Superior Court of Los Angeles County, No. BC079444, Daniel A. Curry, Judge.) The Court of Appeal, Second Dist., Div. Three, No. B095911, reversed, concluding that the board's published annotation interpreting the pertinent statute disposed of the issue against the taxpayer.

The Supreme Court reversed the judgment of the Court of Appeal and remanded the cause to that court for further proceedings. The court held that the Court of Appeal used the incorrect standard of review in concluding that the annotation was dispositive. In effect, the Court of Appeal found that the board's annotations were entitled to the same weight or deference as an administrative agency's quasi-legislative rules. Although an agency's interpretation of the meaning and legal effect of a statute is entitled to consideration and respect by the courts, unlike quasi-legislative regulations adopted by an agency to which the Legislature has confided the power to make law, and which, if authorized by the enabling legislation, bind courts as firmly as statutes themselves, the binding power of an agency's interpretation of a statute or regulation is contextual. Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation. Thus, the reviewing

court exercises its independent judgment in reviewing an agency's interpretation of law, giving deference to the determination of the agency appropriate to the circumstances of the agency's action. In this case, the Legislature had not conferred adjudicatory powers on the board to determine sales and use tax liability, nor had the board promulgated regulations. Although the annotations had substantial precedential value within the agency, they were not entitled to the judicial deference due quasi-legislative rules. (Opinion by Brown, J., with George, C. J., Kennard, Baxter, and Chin, JJ., concurring. Concurring opinion by Mosk, J., with George, C. J., and Werdegar, J., concurring.)*2

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c) Administrative Law § 35--Administrative Actions--Effect and Validity of Rules and Regulations--Standard of Judicial Review--Agency's Interpretation of Statutes.

In reversing a trial court's judgment awarding a taxpayer a refund of use taxes paid for certain promotional gift transactions, the Court of Appeal erred in determining that the State Board of Equalization's published annotation interpreting the pertinent statute disposed of the issue against the taxpayer. In effect, the Court of Appeal found that the board's annotations were entitled to the same weight or deference as an administrative agency's quasi-legislative rules. Although an agency's interpretation of the meaning and legal effect of a statute is entitled to consideration and respect by the courts, unlike quasi-legislative regulations adopted by an agency to which the Legislature has confided the power to make law, and which, if authorized by the enabling legislation, bind courts as firmly as statutes themselves, the binding power of an agency's interpretation of a statute or regulation is contextual. Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation. Thus, the reviewing court exercises its independent judgment in reviewing an agency's interpretation of law, giving deference to the determination of the agency appropriate to the circumstances of the agency's action. In this case,

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the Legislature had not conferred adjudicatory powers on the board to determine sales and use tax liability, nor had the board promulgated regulations. Although the annotations had substantial precedential value within the agency, they were not entitled to the judicial deference due quasi-legislative rules. (Disapproving to the extent inconsistent: *Rizzo v. Board of Trustees* (1994) 27 Cal.App.4th 853 [32 Cal.Rptr.2d 892]; *DeYoung v. City of San Diego* (1983) 147 Cal.App.3d 11 [194 Cal.Rptr. 722]; *Rivera v. City of Fresno* (1971) 6 Cal.3d 132 [98 Cal.Rptr. 281, 490 P.2d 793].)

[See 7 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 99.]

(2) Administrative Law § 35--Administrative Actions--Effect and Validity of Rules and Regulations--Judicial Review--Degree of Scrutiny.

The appropriate degree of judicial scrutiny of an administrative agency's rules and regulations in any particular case is not susceptible of precise formulation, but lies somewhere along a continuum, with *3 nonreviewability at one end and the exercise of independent judgment at the other. Quasi-legislative administrative decisions are properly placed at that point on the continuum at which judicial review is more deferential; ministerial and informal actions do not merit such deference, and therefore lie toward the opposite end of the continuum. An administrative interpretation will be accorded great respect by the courts and will be followed if not clearly erroneous. But a tentative interpretation makes no pretense at finality, and it is the court's duty to finally and conclusively state the statute's true meaning, even though this requires the overthrow of an earlier erroneous administrative construction. The ultimate interpretation of a statute is an exercise of the judicial power conferred upon the courts by the Constitution and, in the absence of a constitutional provision, cannot be exercised by any other body.

(3) Administrative Law § 35--Administrative Actions--Effect and Validity of Rules and Regulations--Categories of Administrative Rules.

There are two categories of administrative rules, and the distinction between them derives from their different sources and ultimately from the constitutional doctrine of the separation of powers. One kind-quasi-legislative rules-represents an authentic form of substantive lawmaking. Within its

jurisdiction, the agency has been delegated the Legislature's lawmaking power. Because agencies granted this power are truly making law, their quasi-legislative rules have the dignity of statutes. When a court assesses the validity of such rules, the scope of its review is narrow. If satisfied that the rule in question lay within the lawmaking authority delegated by the Legislature, and that it is reasonably necessary to implement the purpose of the statute, judicial review is at an end. The other category of administrative rules are those interpreting a statute. Unlike quasi-legislative rules, an agency's interpretation does not implicate the exercise of a delegated lawmaking power; instead, it represents the agency's view of a statute's legal meaning and effect, which are questions lying within the constitutional domain of the courts. Because the agency will often be interpreting a statute within its administrative jurisdiction, it may possess special familiarity with legal and regulatory issues. However, because the interpretation is an agency's legal opinion, rather than the exercise of a delegated legislative power to make law, it commands a commensurably lesser degree of judicial deference.

(4) Administrative Law § 35--Administrative Actions--Effect and Validity of Rules and Regulations--Judicial Review--Rules Interpreting Statute--Factors Considered.

Whether judicial deference to an *4 agency's interpretation of a statute is appropriate and, if so, its extent is fundamentally situational. A court assessing the value of an interpretation must consider complex factors material to the substantive legal issue before it, the particular agency offering the interpretation, and the comparative weight the factors ought to command. There are two broad categories of factors relevant to a court's assessment of the weight due an agency's interpretation: those indicating that the agency has a comparative interpretive advantage over the courts, and those indicating that the interpretation in question is probably correct. In the first category are factors that assume the agency has expertise and technical knowledge, especially where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion. The second group of factors includes those suggesting the agency's interpretation is likely to be correct: indications of careful consideration by senior agency officials, evidence

that the agency has consistently maintained the interpretation in question, especially if it is long-standing, and indications that the agency's interpretation was contemporaneous with legislative enactment of the statute being interpreted.

COUNSEL

Daniel E. Lungren, Attorney General, Carol H. Rehm, Jr., David S. Chaney and Philip C. Griffin, Deputy Attorneys General, for Defendant and Appellant.

Bewley, Lassleben & Miller, Jeffrey S. Baird, Joseph A. Vinatieri and Kevin P. Duthoy for Plaintiff and Respondent.

Daniel Kostenbauder, Lawrence V. Brookes, Wm. Gregory Turner and Dean F. Andal as Amici Curiae on behalf of Plaintiff and Respondent.

BROWN, J.

For more than 40 years, the State Board of Equalization (Board) has made available for publication as the Business Taxes Law Guide summaries of opinions by its attorneys of the business tax effects of a wide range of transactions. Known as "annotations," the summaries are prompted by actual requests for legal opinions by the Board, its field auditors, and businesses subject to statutes within its jurisdiction. The annotations are *5 brief statements—often only a sentence or two—purporting to state definitively the tax consequences of specific hypothetical business transactions. [FN1] More extensive analyses, called "back-ups," are available to those who request them.

FN1 Two examples, drawn at random, illustrate the annotation form: "Beer Can Openers, furnished by breweries to retailers with beer, are not regarded as 'self consumed' by the breweries. 10/2/50." (2A State Bd. of Equalization, Bus. Taxes Law Guide, Sales & Use Tax Annots. (1998) Annot. No. 280.0160, p. 3731.) "Bookmarks Sold For \$2.00 'Postage And Handling'. A taxpayer located in California offers a bookmark to customers for a \$2.00

charge, designated as postage and handling. Most of the orders received for the bookmark are from out of state. [¶] Assuming that the charge for the bookmark is 50 percent or more of its cost, the taxpayer is considered to be selling the bookmarks rather than consuming them (Regulation 1670 (b)). Accordingly, when a bookmark is sent to a California customer through the U.S. Mail, the amount of postage shown on the package is considered to be a nontaxable transportation charge. For example, when a bookmark is sent to a California customer, if the postage on the envelope is shown as 25 cents, then the taxable gross receipts from the transfer is \$1.75. If the bookmark is mailed to a customer located outside California, the tax does not apply to any of the \$2.00 charge. 12/5/88." (*Id.*, Annot. No. 280.0185, pp. 3731-3732.)

Facts

The taxpayer here, Yamaha Corporation of America (Yamaha), sells musical instruments nationwide. It purchased a quantity of these outside California without paying tax ("extax"), stored them in its resale inventory in a California warehouse, and eventually gave them away to artists, musical equipment dealers and media representatives as promotional gifts. Delivery was made by shipping the instruments via common carrier, either inside or outside California. Yamaha made similar gifts of brochures and other advertising material. Following an audit, the Board determined Yamaha had used the musical instruments and promotional materials in California and was thus subject to the state's use tax, an impost levied as a percentage of the property's purchase price. (See Rev. & Tax. Code, § 6008 et seq.) Yamaha paid the taxes determined by the Board to be due (about \$700,000) under protest and then brought this refund suit. Although it did not contest the tax assessed on property given to California residents, Yamaha contended no tax was due on the gifts to *out-of-state* recipients.

The superior court decided Yamaha's out-of-state gifts were excluded from California's use tax, and ordered a refund. That disposition, however, was overturned by the Court of Appeal. Casting the

issue as whether Yamaha's promotional gifts had occurred in California or in the state of the donee, the Court of Appeal looked to an annotation in the Business Taxes Law Guide. According to the guide, gifts are subject to California's use tax *6 "[w]hen the donor divests itself of control over the property in this state." [FN2] (2A State Bd. of Equalization, Bus. Taxes Law Guide, Sales & Use Tax Annots., *supra*, Annot. No. 280.0040, p. 3731). Adopting that annotation as dispositive, the Court of Appeal reversed the judgment of the superior court and reinstated the Board's tax assessment. We granted Yamaha's petition for review and now reverse the Court of Appeal's judgment and order the matter returned to that court for further proceedings consistent with our opinion.

FN2 The annotation on which the Board relied—Annotation No. 280.0040—purports to interpret section 6009.1 of the Revenue and Taxation Code, excluding from the definition of storage and use "keeping, retaining or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state." Captioned "Advertising Material-Gifts," the annotation provides that "Advertising or promotional material shipped or brought into the state and temporarily stored here prior to shipment outside state is subject to use tax when a gift of the material [is] made and title passes to the donee in this state. When the donor divests itself of control over the property in this state the gift is regarded as being a taxable use of the property. 10/11/63." (2A State Bd. of Equalization, Bus. Taxes Law Guide, Sales & Use Tax Annots., *supra*, Annot. No. 280.0040, p. 3731.)

Discussion

I

(1a) The question is what legal effect courts must give to the Board's annotations when they are relied on as supporting its position in taxpayer litigation. In the broader context of administrative law generally, the question is what standard courts apply when reviewing an agency's *interpretation* of a

statute. In effect, the Court of Appeal held the annotations were entitled to the same "weight" or "deference" as "quasi-legislative" rules. [FN3] The Court of Appeal adopted the following formulation: "[A] long-standing and consistent administrative construction of a statute by an administrative agency charged with its enforcement and interpretation is entitled to great weight unless it is either 'arbitrary, capricious or without rational basis' [citations], *7 or is 'clearly erroneous or unauthorized.' [Citation.] Opinions of the administrative agency's counsel construing the statute," the court went on to say, "are likewise entitled to consideration. [Citations.] Especially where there has been acquiescence by persons having an interest in the matter," the court added, "courts will generally not depart from such an interpretation unless it is unreasonable or clearly erroneous." As this extract from the Court of Appeal opinion indicates, the court relied on a skein of cases as supporting these several, somewhat inconsistent, propositions of administrative law.

FN3 Throughout, we use the terms "quasi-legislative" and "interpretive" in their traditional administrative law senses; i.e., as indicating both the constitutional source of a rule or regulation and the weight or judicial deference due it. (See, e.g., 1 Davis & Pierce, *Administrative Law* (3d ed. 1994) § 6.3, pp. 233-248.) Of course, administrative rules do not always fall neatly into one category or the other; the terms designate opposite ends of an administrative continuum, depending on the breadth of the authority delegated by the Legislature. (See *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 575-576 [38 Cal.Rptr.2d 139, 888 P.2d 1268]; cf. *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 574-575 [59 Cal.Rptr.2d 186, 927 P.2d 296] [comparing the two kinds of rules and suggesting that while interpretive rules are not quasi-legislative in the traditional sense, "an agency would arguably still have to adopt these regulations in accordance with [Administrative Procedure Act rulemaking requirements]." The issue is not strictly presented by this case, however:

Government Code section 11342, subdivision (g) declares that "[r]egulation" does not include "legal rulings of counsel issued by the ... State Board of Equalization.")

We reach a different conclusion. An agency interpretation of the meaning and legal effect of a statute is entitled to consideration and respect by the courts; however, unlike quasi-legislative regulations adopted by an agency to which the Legislature has confided the power to "make law," and which, if authorized by the enabling legislation, bind this and other courts as firmly as statutes themselves, the binding power of an agency's *interpretation* of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation. (2) Justice Mosk may have provided the best description when he wrote in *Western States Petroleum Assn. v. Superior Court*, *supra*, 9 Cal.4th 559, that "The appropriate degree of judicial scrutiny in any particular case is perhaps not susceptible of precise formulation, but lies somewhere along a continuum with nonreviewability at one end and independent judgment at the other." [Citation.] Quasi-legislative administrative decisions are properly placed at that point of the continuum at which judicial review is more deferential; ministerial and informal actions do not merit such deference, and therefore lie toward the opposite end of the continuum." (*Id.* at pp. 575-576; see also *Bodinson Mfg. Co. v. California E. Com.* (1941) 17 Cal.2d 321, 325-326 [109 P.2d 935] [An "administrative interpretation ... will be accorded great respect by the courts and will be followed if not clearly erroneous. [Citations.] But such a tentative ... interpretation makes no pretense at finality and it is the duty of this court ... to state the true meaning of the statute finally and conclusively, even though this requires the overthrow of an earlier erroneous administrative construction. [Citations.] The ultimate interpretation of a statute is an exercise of the judicial power ... conferred upon the courts by the Constitution and, in the absence of a constitutional provision, cannot be exercised by any other body."].)

(1b) Courts must, in short, independently judge the text of the statute, taking into account and respecting the agency's interpretation of its

meaning, of course, whether embodied in a formal rule or less formal representation. Where the meaning and legal effect of a statute is the issue, an agency's interpretation is one among several tools available to the court. Depending *8 on the context, it may be helpful, enlightening, even convincing. It may sometimes be of little worth. (See *Traverso v. People ex rel. Dept. of Transportation* (1996) 46 Cal.App.4th 1197, 1206 [54 Cal.Rptr.2d 434].) Considered alone and apart from the context and circumstances that produce them, agency interpretations are not binding or necessarily even authoritative. To quote the statement of the Law Revision Commission in a recent report, "The standard for judicial review of agency interpretation of law is the *independent judgment* of the court, giving *deference* to the determination of the agency *appropriate* to the circumstances of the agency action." (Judicial Review of Agency Action (Feb. 1997) 27 Cal. Law Revision Com. Rep. (1997) p. 81, italics added.)

II

Here, the Court of Appeal relied on language from its prior cases suggesting broadly that an agency interpretation of a statute carries the *same* weight—that is, is reviewed under the same standard—as a quasi-legislative regulation. Unlike the annotations here, however, quasi-legislative rules are the substantive product of a delegated *legislative* power conferred on the agency. The formulation on which the Court of Appeal relied is thus apt to lead a court (as it led here) to abdicate a quintessential judicial duty—applying its independent judgment *de novo* to the merits of the *legal* issue before it. The fact that in this case the Court of Appeal determined Yamaha's tax liability by giving the Board's annotation a weight amounting to unquestioning acceptance only compounded the error.

We derive these conclusions from long-standing administrative law decisions of this court. Although the web making up that jurisprudence is not seamless, on the whole it is both logical and coherent. In *Culligan Water Conditioning v. State Bd. of Equalization* (1976) 17 Cal.3d 86 [130 Cal.Rptr. 321, 550 P.2d 593] (*Culligan*), the taxpayer sued for a refund of sales and use taxes paid under protest on ion-exchange equipment used to condition water and leased to residential

subscribers: Because it came from a service business rather than the rental of property, the taxpayer contended, the income was not subject to the Sales and Use Tax Law. In refund litigation, the Board relied on an affidavit of its assistant chief counsel characterizing the transactions as leases taxable under the Sales and Use Tax Law. The trial court rejected the Board's position, calling it an unwarranted extension of the words of the statute, and awarded judgment to the taxpayer. (17 Cal.3d at p. 92.)

Justice Sullivan began his opinion for a unanimous court by asking what was "the appropriate standard of review applicable to the [use tax] assessment against" the taxpayer. (*Culligan, supra*, 17 Cal.3d at p. 92.) The Board *9 contended its assessment was based on an "administrative classification" and could be judicially overturned only if it was "arbitrary, capricious or without rational basis." (*Ibid.*) Our opinion pointed out, however, that the basis for the Board's tax assessment "was not embodied in any formal regulation or even interpretative ruling covering the water conditioning industry as a whole." (*Ibid.*) Instead, its basis "was nothing more than the Board auditor's interpretation of two existing regulations." (*Ibid.*) "If the Board had promulgated a formal regulation determining the proper classification of receipts derived from the rental of exchange units ... and the regulation had been challenged in the [refund] action," our *Culligan* opinion went on to say, "the proper scope of reviewing such regulation *would* be one of limited judicial review as urged by the Board. [Citations.]" (*Ibid.*, italics added.)

That was not the case in *Culligan*, however. Instead of adopting a formal regulation, the Board and its staff had considered the facts of the taxpayer's particular transactions, interpreted the statutes and regulations they deemed applicable, and "arrived at certain conclusions as to plaintiff's tax liability and assessed the tax accordingly." (17 Cal.3d at p. 92.) Far from being "the equivalent of a regulation or ruling of general application," the Board's argument was "merely its litigating position in this particular matter." (*Id.* at p. 93.) In an important footnote to its opinion, the *Culligan* court disapproved language in several Court of Appeal decisions "indicating that the proper scope of review of such litigating positions of the Board (announced either in tax bulletins or merely as the result of an individual

audit) is to determine whether the Board's assessment was arbitrary, capricious or had no reasonable or rational basis." (*Id.* at p. 93, fn. 4.)

Although the Court of Appeal in this case cited *Culligan, supra*, 17 Cal.3d 86, it regarded *American Hospital Supply Corp. v. State Bd. of Equalization* (1985) 169 Cal.App.3d 1088 [215 Cal.Rptr. 744] (*American Hospital*) as the decisive precedent. The question there was whether disposable paper menus, used for patients' meals in hospitals, were subject to the sales tax. In concluding they were, the Court of Appeal relied on a ruling of Board counsel interpreting a quasi-legislative regulation of the Board. "Interpretation of an administrative regulation," the court wrote, "like [the] interpretation of a statute, is a question of law which rests with the courts. However, the agency's own interpretation of its regulation is entitled to great weight." (*Id.* at p. 1092.) The Board's interpretation could be overturned, the opinion went on to state, only if it was " 'arbitrary, capricious or without rational basis.' " (*Ibid.*)

The *American Hospital* opinion also rejected the taxpayer's contention that because the rule at issue was only an interpretation and not a quasi-legislative rule, it was not entitled to deference. (*American Hospital, supra*, *10 169 Cal.App.3d at p. 1092.) Instead, the court read *Culligan* as standing for the *opposite* proposition. Because we had said the rule at issue there did not cover an entire industry, the Court of Appeal reasoned *Culligan* had held in effect that it was nothing more than a " 'litigating position' " and could be ignored. (169 Cal.App.3d at p. 1093.) On that basis, *American Hospital* concluded that because the Board's position on the taxability of paper menus was embodied in a "formal regulation" and covered the entire hospital industry, it was entitled to the same deference as a quasi-legislative rule: "[It] must prevail because it is neither 'arbitrary, capricious or without rational basis' (*Culligan Water Conditioning v. State Bd. of Equalization, supra*, 17 Cal.3d 86, 92) nor is it 'clearly erroneous or unauthorized' (*Rivera v. City of Fresno* [(1971)] 6 Cal.3d 132, 140 [98 Cal.Rptr. 281, 490 P.2d 793])." (*Ibid.*)

We think the Court of Appeal in *American Hospital, supra*, 169 Cal.App.3d 1088, and the

Court of Appeal in this case by relying on it, failed to distinguish between two classes of rules-quasi-legislative and interpretive- that, because of their differing legal sources, command significantly different degrees of deference by the courts. Moreover, *American Hospital* misread our opinion in *Culligan* when it identified the feature that distinguishes one kind of rule from the other. Although the Court of Appeal here did not rely on other prior cases as much as on *American Hospital*, it cited several that appear to perpetuate the same confusion. (See *Rizzo v. Board of Trustees* (1994) 27 Cal.App.4th 853, 861 [32 Cal.Rptr.2d 892]; *DeYoung v. City of San Diego* (1983) 147 Cal.App.3d 11, 18 [194 Cal.Rptr. 722]; *Rivera v. City of Fresno* (1971) 6 Cal.3d 132, 140 [98 Cal.Rptr. 281, 490 P.2d 793].)

(3) It is a "black letter" proposition that there are two categories of administrative rules and that the distinction between them derives from their different sources and ultimately from the constitutional doctrine of the separation of powers. One kind-quasi-legislative rules-represents an authentic form of substantive lawmaking: Within its jurisdiction, the agency has been delegated the Legislature's lawmaking power. (See, e.g., 1 Davis & Pierce, *Administrative Law, supra*, § 6.3, at pp. 233-248; 1 Cooper, *State Administrative Law* (1965) Rule Making: Procedures, pp. 173-176; Bonfield, *State Administrative Rulemaking* (1986) Interpretive Rules, § 6.9.1, pp. 279-283; 9 Witkin, *Cal. Procedure* (4th ed. 1997) Administrative Proceedings, § 116, p. 1160 [collecting cases].) Because agencies granted such substantive rulemaking power are truly "making law," their quasi-legislative rules have the dignity of statutes. When a court assesses the validity of such rules, the scope of its review is narrow. If satisfied that the rule in question lay within the lawmaking authority delegated by the Legislature, and that it *11 is reasonably necessary to implement the purpose of the statute, judicial review is at an end.

We summarized this characteristic of quasi-legislative rules in *Wallace Berrie & Co. v. State Bd. of Equalization* (1985) 40 Cal.3d 60, 65 [219 Cal.Rptr. 142, 707 P.2d 204] (*Wallace Berrie*): "[I]n reviewing the legality of a regulation adopted pursuant to a delegation of legislative power, the judicial function is limited to determining whether the regulation (1) is " within the scope of the

authority conferred" [citation] and (2) is "reasonably necessary to effectuate the purpose of the statute" [citation]. [Citation.] ' These issues do not present a matter for the independent judgment of an appellate tribunal; rather, both come to this court freighted with [a] strong presumption of regularity' [Citation.] Our inquiry necessarily is confined to the question whether the classification is 'arbitrary, capricious or [without] reasonable or rational basis.' (*Culligan, supra*, 17 Cal.3d at p. 93, fn. 4 [citations].)" [FN4]

FN4 In one respect, our opinion in *Wallace Berrie* may overstate the level of deference-even quasi-legislative rules are reviewed independently for consistency with controlling law. A court does not, in other words, defer to an agency's view when deciding whether a regulation lies within the scope of the authority delegated by the Legislature. The court, not the agency, has "final responsibility for the interpretation of the law" under which the regulation was issued. (*Whitcomb Hotel, Inc. v. Cal. Emp. Com.* (1944) 24 Cal.2d 753, 757 [151 P.2d 233, 155 A.L.R. 405]; see cases cited, *post*, at pp. 11-12; *Environmental Protection Information Center v. Department of Forestry & Fire Protection* (1996) 43 Cal.App.4th 1011, 1022 [50 Cal.Rptr.2d 892] [Standard of review of challenges to "fundamental legitimacy" of quasi-legislative regulation is "respectful nondeference."].)

It is the other class of administrative rules, those *interpreting* a statute, that is at issue in this case. Unlike quasi-legislative rules, an agency's interpretation does not implicate the exercise of a delegated lawmaking power; instead, it represents the agency's view of the statute's legal meaning and effect, questions lying within the constitutional domain of the courts. But because the agency will often be interpreting a statute within its administrative jurisdiction, it may possess special familiarity with satellite legal and regulatory issues. It is this "expertise," expressed as an interpretation (whether in a regulation or less formally, as in the case of the Board's tax annotations), that is the source of the presumptive value of the agency's

views. An important corollary of agency interpretations, however, is their diminished power to bind. Because an interpretation is an agency's *legal opinion*, however "expert," rather than the exercise of a delegated legislative power to make law, it commands a commensurably lesser degree of judicial deference. (*Bodinson Mfg. Co. v. California E. Com.*, *supra*, 17 Cal.2d at pp. 325-326.)

In *International Business Machines v. State Bd. of Equalization* (1980) 26 Cal.3d 923 [163 Cal.Rptr. 782, 609 P.2d 1], we contrasted the narrow *12 standard under which quasi-legislative rules are reviewed—"limited," we wrote, "to a determination whether the agency's action is arbitrary, capricious, lacking in evidentiary support, or contrary to procedures provided by law" (*id.* at p. 931, fn. 7)—with the broader standard courts apply to interpretations. The quasi-legislative standard of review "is *inapplicable* when the agency is not exercising a discretionary rule-making power, but merely *construing* a controlling statute. The appropriate mode of review in such a case is one in which the judiciary, although taking ultimate responsibility for the construction of the statute, accords great weight and respect to the administrative construction. [Citation.]" (*Ibid.*, italics added; see also *California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 11 [270 Cal.Rptr. 796, 793 P.2d 2] ["courts are the ultimate arbiters of the construction of a statute"]; *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1389 [241 Cal.Rptr. 67, 743 P.2d 1323] ["The final meaning of a statute ... rests with the courts."]; *Morris v. Williams* (1967) 67 Cal.2d 733, 748 [63 Cal.Rptr. 689, 433 P.2d 697] ["'final responsibility for the interpretation of the law rests with the courts'"].)

(4) Whether judicial deference to an agency's interpretation is appropriate and, if so, its extent—the "weight" it should be given—is thus fundamentally *situational*. A court assessing the value of an interpretation must consider a complex of factors material to the substantive legal issue before it, the particular agency offering the interpretation, and the comparative weight the factors ought in reason to command. Professor Michael Asimow, an administrative law adviser to the California Law Revision Commission, has identified two broad categories of factors relevant to a court's assessment

of the weight due an agency's interpretation: Those "indicating that the agency has a comparative interpretive advantage over the courts," and those "indicating that the interpretation in question is probably correct." (Cal. Law Revision Com., Tent. Recommendation, Judicial Review of Agency Action (Aug. 1995) p. 11 (Tentative Recommendation); see also Asimow, *The Scope of Judicial Review of Decisions of California Administrative Agencies* (1995) 42 UCLA L.Rev. 1157, 1192-1209.)

In the first category are factors that "assume the agency has expertise and technical knowledge, especially where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion. A court is more likely to defer to an agency's interpretation of its own regulation than to its interpretation of a statute, since the agency is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another." (Tentative Recommendation, *supra*, at p. 11.) The second group of *13 factors in the Asimow classification—those suggesting the agency's interpretation is likely to be correct—includes indications of careful consideration by senior agency officials ("an interpretation of a statute contained in a regulation adopted after public notice and comment is more deserving of deference than [one] contained in an advice letter prepared by a single staff member" (Tentative Recommendation, *supra*, at p. 11)), evidence that the agency "has consistently maintained the interpretation in question, especially if [it] is long-standing" (*ibid.*) ("[a] vacillating position ... is entitled to no deference" (*ibid.*)), and indications that the agency's interpretation was contemporaneous with legislative enactment of the statute being interpreted. If an agency has adopted an interpretive rule in accordance with Administrative Procedure Act provisions—which include procedures (e.g., notice to the public of the proposed rule and opportunity for public comment) that enhance the accuracy and reliability of the resulting administrative "product"—that circumstance weighs in favor of judicial deference. However, even formal interpretive rules do not command the same weight as quasi-legislative rules. Because "the ultimate resolution of ... legal questions rests with the courts" (*Culligan, supra*, 17 Cal.3d at p. 93), judges play

a greater role when reviewing the persuasive value of interpretive rules than they do in determining the validity of quasi-legislative rules.

A valuable judicial account of the process by which courts reckon the weight of agency interpretations was provided by Justice Robert Jackson's opinion in *Skidmore v. Swift & Co.* (1944) 323 U.S. 134 [65 S.Ct. 161, 89 L.Ed. 124] (*Skidmore*), a case arising under the federal Fair Labor Standards Act. The question for the court was whether private firefighters' "waiting time" was countable as "working time" under the act and thus compensable. (323 U.S. at p. 136 [65 S.Ct. at p. 163].) "Congress," the *Skidmore* opinion observed, "did not utilize the services of an administrative agency to find facts and to determine in the first instance whether particular cases fall within or without the Act." (*Id.* at p. 137 [65 S.Ct. at p. 163].) "Instead, it put this responsibility on the courts. [Citation.] But it did create the office of Administrator; impose upon him a variety of duties, endow him with powers to inform himself of conditions in industries and employments subject to the Act, and put on him the duties of bringing injunction actions to restrain violations. Pursuit of his duties has accumulated a considerable experience in the problems of ascertaining [the issue in suit] and a knowledge of the customs prevailing in reference to their solution... He has set forth his views of the application of the Act under different circumstances in an interpretative bulletin and in informal rulings. They provide a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it. [Citation.]" (*Id.* at pp. 137-138 [65 S.Ct. at p. 163].) *14

No statute prescribed the deference federal courts should give the administrator's interpretive bulletins and informal rulings, and they were "not reached as a result of ... adversary proceedings." (*Skidmore, supra*, 323 U.S. at p. 139 [65 S.Ct. at p. 164].) Given those features, Justice Jackson concluded, the administrator's rulings "do not constitute an interpretation of the Act or a standard for judging factual situations which binds a ... court's processes, as an authoritative pronouncement of a higher court might do." (*Ibid.*, italics added.) Still, the court held, the fact that "the Administrator's policies and standards are not reached by trial in adversary form does not mean that they are not entitled to respect." (

Id. at p. 140 [65 S.Ct. at p. 164].) "We consider that the rulings, interpretations and opinions of the Administrator under this Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance." (*Ibid.*)

(1c) The parallels between the statutory powers and administrative practice of the Board in interpreting the Sales and Use Tax Law, and those of the federal agency described in *Skidmore*, are extensive. As with Congress, our Legislature has not conferred adjudicatory powers on the Board as the means by which sales and use tax liabilities are determined; instead, the validity of those assessments is settled in tax refund litigation like this case. (Rev. & Tax. Code, § 6933.) Like the federal administrator in *Skidmore*, the Board has not adopted a formal regulation under its quasi-legislative rulemaking powers purporting to interpret the statute at issue here. As in *Skidmore*, however, the Board and its staff have accumulated a substantial "body of experience and informed judgment" in the administration of the business tax law "to which the courts and litigants may properly resort for guidance." (323 U.S. at p. 140 [65 S.Ct. at p. 164].) Some of that experience and informed judgment takes the form of the annotations published in the Business Taxes Law Guide.

The opinion in the *Skidmore* case and Professor Asimow's account for the Law Revision Commission-together spanning a half-century of judicial and scholarly comment on the characteristics and role of administrative interpretations- accurately describe their value and the criteria by which courts judge their weight. The deference due an agency interpretation-including the Board's annotations at issue here-turns on a legally informed, commonsense assessment of their contextual merit. "The weight of such a judgment in a particular case," to borrow again from Justice Jackson's opinion in *Skidmore*, "will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power *15 to control." (*Skidmore, supra*, 323 U.S. at p. 140 [65 S.Ct. at p. 164], italics added.)

As we read the brief filed by the Attorney General,

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the Board does not contend for any greater judicial weight for its annotations. Its brief on the merits states that "Yamaha is correct that the annotations are not regulations, and they are not binding upon taxpayers, the Board itself, or the Court. Nevertheless, the annotations are digests of opinions written by the legal staff of the Board which are evidentiary of administrative interpretations made by the Board in the normal course of its administration of the Sales and Use Tax Law [T]he annotations have substantial precedential effect within the agency. [¶] The interpretation represented in [the] annotations is certainly entitled to some consideration by the Court."

We agree.

Conclusion

In deciding this case, the Court of Appeal gave greater weight to the Board's annotation than it warranted. Although the standard used by the Court of Appeal was not the correct one and prejudiced the taxpayer, regard for the structure of appellate decisionmaking suggests - the case should be returned to the Court of Appeal. That court can then consider the merits of the use tax issue and the value of the Board's interpretation in light of the conclusions drawn here. To the extent language in *Rizzo v. Board of Trustees*, *supra*, 27 Cal.App.4th at page 861, *DeYoung v. City of San Diego*, *supra*, 147 Cal.App.3d at page 18, and *Rivera v. City of Fresno*, *supra*, 6 Cal.3d at page 140, is inconsistent with the foregoing views, it is disapproved. We express no opinion on the merits of the underlying question of Yamaha's use tax liability.

Disposition

The judgment of the Court of Appeal is reversed and the cause is remanded to that court for further proceedings consistent with this opinion.

George, C. J., Kennard, J., Baxter, J., and Chin, J., concurred.

MOSK, J.

I concur in the judgment of the majority that the

Court of Appeal's formulation of the standard of review for tax annotations, the summaries of tax opinions of the State Board of Equalization's (Board) legal counsel published in the Business Taxes Law Guide, was not quite correct. Specifically the Court of Appeal erred in suggesting that it would defer to *16 the Board's or its legal counsel's rule unless that rule is "arbitrary and capricious." The majority do not purport to change the well-established, if not always consistently articulated, body of law pertaining to judicial review of administrative rulings, but merely attempt to clarify that law. I write separately to further clarify the relevant legal principles and their application to the present case.

The appropriate starting point of a discussion of judicial review of administrative regulations is an analysis of quasi-legislative regulations, those regulations formally adopted by an agency pursuant to the California Administrative Procedures Act (APA) and binding on the agency. "The proper scope of a court's review is determined by the *task* before it." (*Woods v. Superior Court* (1981) 28 Cal.3d 668, 679 [170 Cal.Rptr. 484, 620 P.2d 1032], italics added.) In the case of quasi-legislative regulations, the court has essentially two tasks. The first duty is "to determine whether the [agency] exercised [its] quasi-legislative authority within the bounds of the statutory mandate." (*Morris v. Williams* (1967) 67 Cal.2d 733, 748 [63 Cal.Rptr. 689, 433 P.2d 697] (*Morris*)). As the *Morris* court made clear, this is a matter for the independent judgment of the court. "While the construction of a statute by officials charged with its administration, including their interpretation of the authority invested in them to implement and carry out its provisions, is entitled to *great weight*, nevertheless 'Whatever the force of administrative construction ... *final responsibility for the interpretation of the law rests with the courts.*' [Citation.] Administrative regulations that alter or amend the statute or enlarge or impair its scope are void and courts not only may, but it is their obligation to strike down such regulations. [Citations.]" (*Ibid.*, italics added.) This duty derives directly from statute. "Under Government Code [FN1] section 11373 [now § 11342.1], '[e]ach regulation adopted [by a state agency], to be effective, must be within the scope of authority conferred....' Whenever a state agency is authorized by statute 'to adopt regulations to implement, interpret, make specific or otherwise

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carry out the provisions of the statute, *no regulation adopted is valid or effective unless consistent and not in conflict with the statute....*' ... (§ 11342.2).'" (*Morris, supra*, 67 Cal.2d at p. 748, fn. omitted, italics added by *Morris* court.)

FN1 All further statutory references are to the Government Code unless otherwise stated.

The court's second task arises once it has completed the first. "If we conclude that the [agency] was empowered to adopt the regulations, we must also determine whether the regulations are 'reasonably necessary to effectuate the purpose of the statute.' (§ 11342.2). In making such a determination, the court will not 'superimpose its own policy judgment upon the *17 agency in the absence of an arbitrary and capricious decision.' [Citations.]" (*Morris, supra*, 67 Cal.2d at pp. 748-749.)

In *California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 11 [270 Cal.Rptr. 796, 793 P.2d 2] (*Rank*) we further clarified the two tasks and two distinct standards of review for courts scrutinizing agency regulations. We stated: "As we said in *Pitts v. Perluss* (1962) 58 Cal.2d 824 [833] [27 Cal.Rptr. 19, 377 P.2d 83], '[a]s to quasi-legislative acts of administrative agencies, "judicial review is limited to an examination of the proceedings before the officer to determine whether his action has been arbitrary, capricious, or entirely lacking in evidentiary support, or whether he has failed to follow the procedure and give the notices required by law." ' [Citations.] When, however, a regulation is challenged as inconsistent with the terms or intent of the authorizing statute, the standard of review is different, because the courts are the ultimate arbiters of the construction of a statute. Thus, [the *Morris* court] in finding that the challenged regulations contravened legislative intent, rejected the agency's claim that the only issue for review was whether the regulations were arbitrary and capricious." (*Ibid.*, fn. omitted.) The *Rank* court then proceeded to reiterate the *Morris* formulation that "[w]hile the construction of a statute by officials charged with its administration ... is entitled to great weight, ... final responsibility for the interpretation of the law rests with the

courts.'" (*Ibid.*) [FN2] (We will henceforth refer to this standard as the "independent judgment/great weight standard.")

FN2 Certain of our own cases have confused the standards of review in this two-pronged test. For example, in *Wallace Berrie & Co. v. State Bd. of Equalization* (1985) 40 Cal.3d 60, 65 [219 Cal.Rptr. 142, 707 P.2d 204], after stating the above two-pronged test, declared that neither prong " 'present[s] a matter for the independent judgment of an appellate tribunal; rather, both come to this court freighted with [a] strong presumption of regularity' [Citation.] Our inquiry necessarily is confined to the question whether the classification is 'arbitrary, capricious or [without] reasonable or rational basis.' [Citation.]" As the discussion of *Rank* and *Morris* above makes clear, the first prong of the inquiry-whether the regulation is "within the scope of the authority conferred"-is *not* limited to the "arbitrary and capricious" standard of review, but employs the independent judgment/great weight standard. (*Rank, supra*, 51 Cal.3d at p. 11; *Morris, supra*, 67 Cal.2d at pp. 748-749.) This confusion is in part responsible for the misstatements of the Court of Appeal in the present case.

There is an important qualification to the independent judgment/great weight standard articulated above, when a court finds that the Legislature has *delegated* the task of interpreting or elaborating on a statute to an administrative agency. A court may find that the Legislature has intended to delegate this interpretive or gap-filling power when it employs open-ended statutory language that an agency is authorized to apply or "when an issue of interpretation is heavily freighted with policy choices which the agency is empowered to make." (Asimow, *The Scope of Judicial Review of Decisions of *18 California Administrative Agencies* (1995) 42 UCLA L.Rev. 1157, 1198-1199 (Asimow).) For example, in *Moore v. California State Bd. of Accountancy* (1992) 2 Cal.4th 999 [9 Cal.Rptr.2d 358, 831 P.2d 798] (*Moore*), we

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reviewed a regulation by the Board of Accountancy, the agency statutorily chartered to regulate the accounting profession in this state. The regulation provided that those unlicensed by that board could not use the title "accountant," interpreting a statute, Business and Professions Code section 5058, that forbids use of titles "likely to be confused with" the titles of "certified public accountant" and "public accountant." (2 Cal.4th at p. 1011.) As we stated, "the Legislature delegated to the Board the authority to determine whether a title or designation not identified in the statute is likely to confuse or mislead the public." (*Id.* at pp. 1013-1014.)

Thus, the agency's interpretation of a statute may be subject to the most deferential "arbitrary and capricious" standard of review when the agency is expressly or impliedly delegated interpretive authority. Such delegation may often be implied when there are broadly worded statutes combined with an authorization of agency rulemaking power. But when the agency is called upon to enforce a detailed statutory scheme, discretion is as a rule correspondingly narrower. In other words, a court must always make an independent determination whether the agency regulation is "within the scope of the authority conferred," and that determination includes an inquiry into the extent to which the Legislature intended to delegate discretion to the agency to construe or elaborate on the authorizing statute.

The above schema applies to so-called "interpretive" regulations as well as quasi-legislative regulations. As the majority observe, "administrative rules do not always fall neatly into one category or the other" (Maj. opn., *ante*, at p. 6, fn. 3.) Indeed, regulations subject to the formal procedural requirements of the APA include those that "interpret" the law enforced or administered by a government agency, as well as those that "implement" or "make specific" such law. (§ 11342, subd. (b).) As we recently stated: "A written statement of policy that an agency intends to apply generally, that is unrelated to a specific case, and that predicts how the agency will decide future cases is essentially legislative in nature even if it merely interprets applicable law." (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 574-575 [59 Cal.Rptr.2d 186, 927 P.2d 296], italics added.) [FN3] Moreover, all regulations are "interpretive" to some extent,

because all *19 regulations implicitly or explicitly interpret "the authority invested in them to implement and carry out [statutory] provisions" (*Morris, supra*, 67 Cal.2d at p. 748.)

FN3 I note that in federal law, by contrast, the term "interpretive rule" is given a particular significance and legal status. According to statute, "substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency" are required to be published in the Federal Register. (5 U.S.C. § 552(a)(1)(D).) But such "interpretive rules," and "general statements of policy" are explicitly exempt from the notice and hearing provisions of the federal APA. (5 U.S.C. § 553(b)(3)(A).) No such distinction exists in California law.

Of course, some regulations may be properly designated "interpretive" inasmuch as they have no purpose other than to interpret statutes. (See, e.g., *International Business Machines v. State Bd. of Equalization* (1980) 26 Cal.3d 923 [163 Cal.Rptr. 782, 609 P.2d 1].) In the case of such regulations, courts will be engaged only in the first of the two tasks discussed above, i.e., ensuring that the regulation is within the scope of the statutory authority conferred, employing the independent judgment/great weight test. (See *id.* at p. 931, fn. 7.)

In sum, when reviewing a quasi-legislative regulation, courts consider whether the regulation is within the scope of the authority conferred, essentially a question of the validity of an agency's statutory interpretation, guided by the independent judgment/great weight standard. (*Rank, supra*, 51 Cal.3d at p. 11.) This is in contrast to the second aspect of the inquiry, whether a regulation is "reasonably necessary to effectuate the statutory purpose," wherein courts "will not intervene in the absence of an arbitrary or capricious decision." (*Ibid.*, citing *Morris, supra*, 67 Cal.2d at p. 749.) Courts may also employ the "arbitrary and capricious" standard in reviewing whether the agency's construction of a statute is correct if the court determines that the particular statutory scheme

in question explicitly or implicitly delegates this interpretive or "gap-filling" authority to an administrative agency. (See *Moore, supra*, 2 Cal.4th at pp. 1013-1014; Asimow, *supra*, 42 UCLA L.Rev. at p. 1198.)

What standard of review should be employed for administrative rulings that were not formally adopted under the APA? Such regulations fall generally into two categories. The first is the class of regulations that *should* have been formally adopted under the APA, but were not. In such cases, the law is clear that in order to effectuate the policies behind the APA courts are to give *no* weight to these interpretive regulations. (*Tidewater Marine Western, Inc. v. Bradshaw, supra*, 14 Cal.4th at p. 576; *Armistead v. State Personnel Board* (1978) 22 Cal.3d 198, 204-205 [149 Cal.Rptr. 1, 583 P.2d 744].) To hold otherwise would help to perpetuate the problem of avoidance by administrative agencies of "the mandatory requirements of the [APA] of public notice, opportunity to be heard by the public, filing with the Secretary of State, and publication in the [California Code of Regulations]." *20 (*Armistead, supra*, 22 Cal.3d at p. 205.) For these reasons, and quite apart from any expertise the agency may possess in interpreting and administering the statute, courts in effect ignore the agency's illegal regulation.

In the second category are those regulations that are not subject to the APA because they are expressly or implicitly exempted from or outside the scope of APA requirements. For such rulings, the standard of judicial review of agency interpretations of statutes is basically the same as for those rules adopted under the APA, i.e., the independent judgment/great weight standard. (See, e.g., *Wilkinson v. Workers' Comp. Appeals Bd.* (1977) 19 Cal.3d 491, 501 [138 Cal.Rptr. 696, 564 P.2d 848] [applying essentially this standard to a statutory interpretation arising within the context of the Workers' Compensation Appeals Board's decisional law]; see also Asimow, *supra*, 42 UCLA L.Rev. at pp. 1200-1201; *Judicial Review of Agency Action* (Feb. 1997) 27 Cal. Law Revision Com. Rep. (1997) pp. 81-82 (*Judicial Review of Agency Action*)).

The Board counsel's legal ruling at issue in this case is an example of express exemption from the APA. Section 11342, subdivision (g), specifies that

the term "regulation" for purposes of the APA does not include "legal rulings of counsel issued by the Franchise Tax Board or State Board of Equalization" It is therefore evident that our decisions pertaining to regulations that fail to be approved according to required APA procedures are inapposite. It also appears evident that these rulings, as agency interpretations of statutory law, are also to be reviewed under the independent judgment/great weight standard.

But, as the majority point out, the precise weight to be accorded an agency interpretation varies depending on a number of factors. Professor Asimow states that deference is especially appropriate not only when an administrative agency has particular expertise, but also by virtue of its specialization in administering a statute, which "gives [that agency] an intimate knowledge of the problems dealt with in the statute and the various administrative consequences arising from particular interpretations." (Asimow, *supra*, 42 UCLA L.Rev. at p. 1196.) Moreover, deference is more appropriate when, as in the present case, the agency is interpreting "the statute [it] enforces" rather than "some other statute, the common law, the [C]onstitution, or prior judicial precedents." (*Ibid.*)

Another important factor, as the majority recognize, is whether an administrative construction is consistent and of long standing. (Maj. opn., *ante*, at p. 13.) This factor is particularly important for resolution of the present case because the tax annotation with which the case is principally concerned, *21 Business Taxes Law Guide Annotation No. 280.0040, was first published in 1963, and Yamaha Corporation of America does not contest that it has represented the Board's position on the tax question at issue at least since that time. (See now 2A State Bd. of Equalization, Bus. Taxes Law Guide, Sales & Use Tax Annots. (1998) Annot. No. 280.0040, p. 3731 (hereafter Annotation No. 280.0040).)

As the Court of Appeal has stated: "Long-standing, consistent administrative construction of a statute by those charged with its administration, particularly where interested parties have acquiesced in the interpretation, is entitled to great weight and should not be disturbed unless clearly erroneous." (*Rizzo v. Board of Trustees* (1994) 27 Cal.App.4th 853, 861 [32 Cal.Rptr.2d 892]. This

principle has been affirmed on numerous occasions by this court and the Courts of Appeal. (See, e.g., *DeYoung v. City of San Diego* (1983) 147 Cal.App.3d 11, 18 [194 Cal.Rptr. 722]; *Nelson v. Dean* (1946) 27 Cal.2d 873, 880-881 [168 P.2d 16, 168 A.L.R. 467]; *Whitcomb Hotel, Inc. v. Cal. Emp. Com.* (1944) 24 Cal.2d 753, 757 [151 P.2d 233, 155 A.L.R. 405]; *Thornton v. Carlson* (1992) 4 Cal.App.4th 1249, 1256-1257 [6 Cal.Rptr.2d 375]; *Lute v. Governing Board* (1988) 202 Cal.App.3d 1177, 1183 [249 Cal.Rptr. 161]; *Napa Valley Educators' Assn. v. Napa Valley Unified School Dist.* (1987) 194 Cal.App.3d 243, 252 [239 Cal.Rptr. 395]; *Horn v. Swoap* (1974) 41 Cal.App.3d 375, 382 [116 Cal.Rptr. 113].) Moreover, this principle applies to administrative practices embodied in staff attorney opinions and other expressions short of formal, quasi-legislative regulations. (See, e.g., *DeYoung, supra*, 147 Cal.App.3d 11, 19-21 [long-standing interpretation of city charter provision embodied in city attorney's opinions]; *Napa Valley Educators' Assn., supra*, 194 Cal.App.3d at pp. 251-252 [evidence in the record of the case, including a declaration by official with the State Department of Education, shows long-standing practice of following a certain interpretation of an Education Code provision].)

Two reasons have been advanced for this principle. First, "When an administrative interpretation is of long standing and has remained uniform, it is likely that numerous transactions have been entered into in reliance thereon, and it could be invalidated only at the cost of major readjustments and extensive litigation." (*Whitcomb Hotel, Inc. v. Cal. Emp. Com.*, *supra*, 24 Cal.2d at p. 757; see also *Nelson v. Dean, supra*, 27 Cal.2d at p. 881; *Rizzo v. Board of Trustees, supra*, 27 Cal.App.4th at p. 862.)

Second, as we stated in *Moore, supra*, 2 Cal.4th at pages 1017-1018, "a presumption that the Legislature is aware of an administrative construction of a statute should be applied if the agency's interpretation of the statutory provisions is of such longstanding duration that the Legislature may be *22 presumed to know of it." As the Court of Appeal has further articulated: "[L]awmakers are presumed to be aware of long-standing administrative practice and, thus, the reenactment of a provision, or the failure to substantially modify a provision, is a strong indication [that] the administrative practice was consistent with

underlying legislative intent.' " (*Rizzo v. Board of Trustees, supra*, 27 Cal.App.4th at p. 862; see also *Thornton v. Carlson, supra*, 4 Cal.App.4th at p. 1257; *Lute v. Governing Board, supra*, 202 Cal.App.3d at p. 1183; *Napa Valley Educators' Assn. v. Napa Valley Unified School Dist., supra*, 194 Cal.App.3d at 252; *Horn v. Swoap, supra*, 41 Cal.App.3d at p. 382.) I note that in the present case, the statute under consideration, Revenue and Taxation Code section 6009.1, has been amended twice since the issuance of Annotation No. 280.0040. (Stats. 1965, ch. 1188, § 1, p. 3004; Stats. 1980, ch. 546, § 1, p. 1503.)

To state the matter in other terms, courts often recognize the propriety of assigning great weight to administrative interpretations of law either by reference to an explicit or implicit delegation of power by the Legislature to an administrative agency (see *Moore, supra*, 2 Cal.4th at pp. 1013-1014; Asimow, *supra*, 42 UCLA L.Rev. at pp. 1198-1199), or by noting the agency's specialization and expertise in interpreting the statutes it is charged with administering (see *Physicians & Surgeons Laboratories, Inc. v. Department of Health Services* (1992) 6 Cal.App.4th 968, 982 [8 Cal.Rptr.2d 565]; Asimow, *supra*, 42 UCLA L.Rev. at pp. 1195-1196). But there is a third reason for paying special heed to an administrative interpretation: the reality that the administrative agency-by virtue of the necessity of performing its administrative functions-creates a body of de facto law in the interstices of statutory law, which is relied on by the business community and the general public to order their affairs and, after a sufficient passage of time, is presumptively accepted by the Legislature. In the present case, this third rationale for according great weight to an administrative interpretation is particularly applicable. Thus, judicial deference in this case is owed not so much to the tax annotation per se but to a long-standing practice of enforcement and interpretation by Board staff of which the annotation is evidence.

There are also particularly sound reasons why the principle of giving especially greater weight to long-standing administrative practice should apply when, as in this case, that practice is embodied in a published ruling of the Board's legal counsel. These rulings have a special legal status. As noted, they have been specifically exempted from the APA by

section 11342, subdivision (g). The purpose of this exemption was stated by the Franchise Tax Board staff in its enrolled bill report to the Governor immediately prior to the enactment of the 1983 amendment containing the exemption, and its statement could be equally well applied to the Board of *23 Equalization. "Department counsel issues a large number of legal rulings in several forms which address specific problems of taxpayers. While these opinions address specific problems, *they are intended to have general application to all taxpayers similarly situated.* This bill provides that such rulings are not regulations, and accordingly, not subject to the [Office of Administrative Law (OAL)] review process. This statutory determination will permit the department to continue to provide a valuable service to taxpayers. If rulings were deemed to be regulations, the service would have to be discontinued because of the administrative burdens created by the OAL review process." (Franchise Tax Bd. staff, Enrolled Bill Rep., Assem. Bill No. 227 (1983-1984 Reg. Sess.) Sept. 16, 1983, p. 3, italics added.)

Thus, the passage of the 1983 amendment to section 11342 was evidently designed for the benefit of taxpayers, so that they would continue to have information about the effective legal positions of the two tax boards. The complexity of tax law and its application to the manifold factual situations of individual taxpayers appears to far outpace an agency's capacity to promulgate and amend formal regulations. Given the importance of certainty in tax law, the Board has long engaged in the practice of issuing legal opinions to individual taxpayers. (See 1 Cal. Taxes (Cont.Ed.Bar Supp. 1996) § 2.152, p. 347.) The Legislature recognized such practice, and recognized the propriety of taxpayer reliance on such rulings, in Revenue and Tax Code section 6596. That section provides that if a person's failure to make a timely payment or return "is due to the person's reasonable reliance on written advice from the [B]oard," that person would be relieved of certain payment obligations. The authorization in section 11342 to publish such individual rulings without following APA requirements is a further legislative means of facilitating business planning and increasing taxpayer certainty about tax law. Publication of this information allows taxpayers subject to the sales and use tax to structure their affairs accordingly, and, if they perceive the need, lobby the Board or the Legislature to overturn these

legal rulings. As the Attorney General states in his brief, such rulings, while not binding on the agency, "have substantial precedential effect within the agency." There is accordingly no reason to decline to extend to such legal rulings, insofar as they embody the Board's long-standing interpretations of the sales and use tax statutes, the especially great weight accorded to other representations of long-standing administrative practice. [FN4]

FN4 Yamaha and amicus curiae claim that tax annotations are frequently inconsistent, and that the Board legal staff has been lax in purging the Business Taxes Law Guide of outdated annotations. Obviously, to the extent that an old annotation does *not* represent the Board's long-standing, *consistent*, interpretation, it does not merit the same consideration. (See *Hudgins v. Neiman Marcus Group, Inc.* (1995) 34 Cal.App.4th 1109, 1125 [41 Cal.Rptr.2d 46].) In the present case, Yamaha does not contend that Annotation No. 280.0040 is inconsistent with other annotations, or with the Board's actual practice, since it was issued.

Tax annotations representing the Board's long-standing position may usefully be contrasted to positions the Board might adopt in the context of *24 litigation. In *Culligan Water Conditioning v. State Bd. of Equalization* (1976) 17 Cal.3d 86 [130 Cal.Rptr. 321, 550 P.2d 593], we found that such litigating positions were not entitled to as great a level of deference as administrative rulings that were "embodied in formal regulation[s] or even interpretive ruling[s] covering the ... industry as a whole" (*Id.* at p. 92). [FN5] The tax annotation at issue in this case, although originally addressing an individual taxpayer's query, was published and has represented the Board's categorical position regarding taxation of gifts originating from a California source. The annotation, therefore, being both an interpretive ruling of a general nature, and one of long standing, is deserving of significantly greater weight than if the Board had adopted its position only as part of the present litigation. [FN6]

FN5 I note that some of the *Culligan*

court's language may be open to misinterpretation. The Board in that case contended that the proper standard of review was whether its position was "arbitrary, capricious or without rational basis." (17 Cal.3d at p. 92.) The court disagreed, holding that "[t]he interpretation of a regulation, like the interpretation of the statute, is, of course, a question of law [citations], and while an administrative agency's interpretation of its own regulation obviously deserves great weight [citations], the ultimate resolution of such legal questions rests with courts." (*Id.* at p. 93.) In expressing its disagreement with the proposition that the Board's litigating position deserves the highest level of deference, the *Culligan* court differentiated such positions from "formal regulation" of a general nature, which, the court agreed, would be overturned only if arbitrary and capricious. (*Id.* at p. 92.) Perhaps because the *Culligan* court was focused on making a distinction between regulations of a general nature and litigating positions, it did not articulate the two-pronged judicial inquiry into the validity of quasi-legislative regulations as discussed above, nor did it specify that the arbitrary and capricious standard applied only to the *second* prong. Nonetheless, the *Culligan* court was correct in holding that statutory interpretations contained in formal regulations merit more deference, all other things being equal, than an agency's litigating positions.

FN6 Moreover, although the *Culligan* court referred to "litigating positions of the Board (announced either in tax bulletins or merely as the result of an individual audit)" (*Culligan Water Conditioning v. State Bd. of Equalization, supra*, 17 Cal.3d at p. 93, fn. 4), it was not implying that all material contained in tax bulletins were "litigating positions." Indeed the *Culligan* court cited *Henry's Restaurants of Pomona, Inc. v. State Bd. of Equalization* (1973) 30 Cal.App.3d 1009 [106 Cal.Rptr. 867] as an example of a case typifying the limited judicial review appropriate for regulations

of a general nature. (*Culligan, supra*, at p. 92.) The court in *Henry's Restaurants* considered the Board's interpretation of a sales tax question issued in the form of a General Sales Tax Bulletin. (30 Cal.App.3d at p. 1014.) The citation to *Henry's Restaurants* shows that the *Culligan* court's reference to "litigating positions of the Board ... announced ... in tax bulletins" was not to legal rulings of a general nature that might be contained in tax bulletins.

It may be argued that regulations formally adopted in compliance with the APA should intrinsically be assigned greater weight than tax annotations, because the former are promulgated only after a notice and comment period, whereas the latter are devised by the Board's legal staff without public input. *25 In the abstract, that argument is not without merit. But even if the statutory interpretations contained in tax annotations are not, *ab initio*, as reliable or worthy of deference as formally adopted regulations, the well-established California case law quoted above demonstrates that such reliability may be earned subsequently. Tax annotations that represent the Board's administrative practices may, if they withstand the test of time, merit a weight that initially may not have been intrinsically warranted. Or in other words, while formal APA adoption is one factor in favor of giving greater weight to an agency construction of a statute, the fact that a rule is longstanding and the statute it interprets has been reenacted are other such factors.

In sum, as the Attorney General correctly sets forth in his brief, the appropriate standard of review for Annotation No. 280.0040 can be stated as follows: (1) the court should exercise its independent judgment to determine whether the Board's legal counsel correctly construed the statute; (2) the Board's construction of the statute is nonetheless entitled to "great weight"; (3) when, as here, the Board is construing a statute it is charged with administering and that statutory interpretation is longstanding and has been acquiesced in by persons interested in the matter, and by the Legislature, it is particularly appropriate to give these interpretations great weight. (*Rizzo v. Board of Trustees, supra*, 27 Cal.App.4th at p. 861.) [FN7]

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FN7 The majority quote at length from *Skidmore v. Swift & Co.* (1944) 323 U.S. 134 [65 S.Ct. 161, 89 L.Ed. 124]) to describe the proper standard of judicial review of administrative rulings. I note that the United States Supreme Court has at least partly abandoned *Skidmore's* open-ended formulation in favor of a more bright line one. (See *Chevron U.S.A. v. Natural Res. Def. Council* (1984) 467 U.S. 837 [104 S.Ct. 2778, 81 L.Ed.2d 694].) In any case, I agree with the majority that many of the factors discussed in Justice Jackson's opinion in *Skidmore* are appropriate considerations under the governing California decisions, and that the discussion in *Skidmore* may be a useful guide to the extent it is consistent with the independent judgment/great weight test subsequently developed under California law.

The Court of Appeal in this case, although it stated the standard of review nearly correctly, reflected some of the confusion found in our case law when it suggested that it would defer to the Board's annotation unless it was "arbitrary, capricious or without rational basis." It is therefore appropriate to remand to the Court of Appeal for reconsideration in light of the proper standard of review.

George, C. J., and Werdegar, J., concurred. *26

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H

SHELDON PRAISER, Plaintiff and Appellant,
 v.
 BIGGS UNIFIED SCHOOL DISTRICT et al.,
 Defendants and Respondents.

No. C035358.

Court of Appeal, Third District, California.

Feb. 28, 2001.

SUMMARY

A teacher who had taken part-time status under Ed. Code, § 44922 (reduced workload programs for certificated employees at least 55 years of age), and had been required by the district to pay a portion of his health insurance premiums in order to maintain that insurance, filed a petition for writ of mandate challenging the district's policy requiring him to pay a portion of the premiums. The trial court denied the petition. (Superior Court of Butte County, No. 123818, Roger G. Gilbert, Judge.)

The Court of Appeal reversed and remanded, holding that the trial court erred in denying the petition. Ed. Code, § 44922, subd. (e), provides that the employee retains all rights and benefits for which he or she makes payments that would be required if he or she had remained full-time, and further states that the employee shall receive health benefits as provided in Gov. Code, § 53201, in the same manner as a full-time employee. Gov. Code, § 53201, permits a district to establish conditions for the provision of health insurance benefits. However, the relevance of Gov. Code, § 53201, in the Ed. Code, § 44922, scheme is simply that if a particular school district chooses to offer its employees health benefits, the part-time employees in that district will receive health benefits in the same manner as full-time employees. The court held that, since plaintiff's district required no payments from full-time teachers, none were required of him. (Opinion by Davis, Acting P. J., with Nicholson and Callahan, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Statutes § 21--Construction--Legislative Intent. The objective of statutory interpretation is to ascertain the Legislature's intent to effectuate the law's purpose. In determining intent, the court looks first to *399 the statute's words and gives them their usual and ordinary meanings. When the language is unambiguous, there is no need for judicial construction. When the language is susceptible of more than one reasonable interpretation, however, the court looks to a variety of extrinsic aids, including the statutory scheme of which the statute is a part, the legislative history, and the ostensible objects to be achieved.

[See 7 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 94.]

(2) Schools § 26--Teachers and Other Employees--Employment and Employment Contracts--Reduced Workload Program--Retention of Benefits.

Under Ed. Code, § 44922 (reduced workload programs for certificated employees at least 55 years of age), a part-time employee is to be paid a prorated salary, but is to retain all other rights and benefits as long as the employee makes the payments for those rights and benefits that would be required if the employee were still working full-time. If the employee would not have to make any payments for those rights and benefits as a full-time employee (i.e., if the employer pays in full for those rights and benefits), the employee does not have to make any payments as a part-time employee under Ed. Code, § 44922.

(3a, 3b) Schools § 26--Teachers and Other Employees--Employment and Employment Contracts--Reduced Workload Program--Retention of Benefits--Payment of Health Insurance Premiums.

The trial court erred in denying the mandate petition of a teacher who had taken part-time status under Ed. Code, § 44922 (reduced workload programs for certificated employees at least 55 years of age), and who challenged the school district's requirement that he pay a portion of his health insurance premiums in order to maintain that insurance. Ed. Code, § 44922, subd. (e), provides that the employee retains all rights and benefits for which he or she makes payments that would be

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required if he or she had remained full-time, and further states that the employee shall receive health benefits as provided in Gov. Code, § 53201, in the same manner as a full-time employee. Gov. Code, § 53201, permits a district to establish conditions for the provision of health insurance benefits. However, the relevance of Gov. Code, § 53201, in the Ed. Code, § 44922, scheme is simply that if a particular school district chooses to offer its employees health benefits, the part-time employees in that district will receive health benefits in the same manner as full-time employees. Since plaintiff's district required no payments from full-time teachers, none were required of him. *400

(4) Statutes § 52--Construction--Conflicting Provisions--General and Specific Provisions.

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

COUNSEL

Wells, Small, Selke & Graham, Donald A. Selke, Jr., and Bartley S. Fleharty, for Plaintiff and Appellant.

Shepherd & Crabtree and Richard L. Crabtree for Defendants and Respondents.

DAVIS, Acting P. J.

In this appeal we interpret Education Code section 44922, subdivision (e). [FN1] Section 44922 allows school districts to establish reduced workload programs (i.e., part-time schedules) for certificated employees who are at least 55 years old and who satisfy certain other conditions. We read section 44922(e) to mean that while the reduced workload employee is paid the prorated share of his full-time salary, he retains the insurance benefits accorded to full-time employees as long as he makes the benefit payments that would be required if he remained in full-time employment (specifically at issue here are health insurance benefits). Consequently, we reverse the judgment denying plaintiff Sheldon Praiser's petition for writ of

mandate, and remand for further proceedings.

FN1 All further references to undesignated sections are to the Education Code; subdivisions of section 44922 will be referred to in the format "section 44922(e)".

Background

Plaintiff Sheldon Praiser (Praiser) was a full-time, certificated teacher employed by defendant Biggs Unified School District (District or the District) for over 10 years. On February 11, 1999, Praiser requested reduced workload/part-time status pursuant to section 44922. Section 44922(d) states that "[t]he option of [section 44922] part-time employment shall be exercised at the request of the employee" Under section 44922, Praiser became a part-time employee, with a corresponding prorated salary. Pursuant to article XIX of the collective bargaining agreement between District *401 and its teachers (Article XIX), District paid for Praiser's insurance benefits on a prorated basis and allowed him to pay the difference.

In November 1999, Praiser filed a petition for writ of mandate. He alleged that Article XIX violates section 44922 because it requires him to pay a portion of the health insurance premiums he would not have to pay if he were a full-time employee. To avoid losing these insurance benefits, Praiser has continued to pay a portion of the health insurance premiums to keep those benefits in effect. Praiser requested a writ of mandate compelling District to pay the insurance premiums to the same extent as if he had remained in full-time employment, and to reimburse him for the premiums he has paid. Praiser also requested his attorney fees.

The trial court denied Praiser's petition for writ of mandate "in its entirety." The court found that section 44922(e) "permits [District] to provide part-time certificated employees, on a prorated basis, the same health benefits provided to full-time employees."

Discussion

At the center of this dispute is the meaning of section 44922(e). This presents a question of

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statutory interpretation for us to determine independently. [FN2]

FN2 Rudd v. California Casualty Gen. Ins. Co. (1990) 219 Cal.App.3d 948, 951 [268 Cal.Rptr. 624].

(1) The objective of statutory interpretation is to ascertain the Legislature's intent to effectuate the law's purpose. [FN3] In determining intent, we look first to the statute's words and give them their usual and ordinary meaning. [FN4] When the language is unambiguous, there is no need for judicial construction. [FN5] When the language is susceptible of more than one reasonable interpretation, however, we look to a variety of extrinsic aids, including the statutory scheme of which the statute is a part, the legislative history, and the ostensible objects to be achieved. [FN6]

FN3 White v. Ultramar, Inc. (1999) 21 Cal.4th 563, 572 [88 Cal.Rptr.2d 19, 981 P.2d 944] (*White*); *Department of Fish & Game v. Anderson-Cottonwood Irrigation Dist.* (1992) 8 Cal.App.4th 1554, 1562 [11 Cal.Rptr.2d 222] (*Anderson-Cottonwood*), quoting *People v. Woodhead* (1987) 43 Cal.3d 1002, 1007-1008 [239 Cal.Rptr. 656, 741 P.2d 154].

FN4 White, supra, 21 Cal.4th at page 572; *Anderson-Cottonwood, supra*, 8 Cal.App.4th at page 1562.

FN5 Anderson-Cottonwood, supra, 8 Cal.App.4th at page 1562.

FN6 Anderson-Cottonwood, supra, 8 Cal.App.4th at page 1562.

Section 44922 provides in part:

"Notwithstanding any other provision, the governing board of a school district or a county superintendent of schools may establish regulations

*402 which allow their certificated employees to reduce their workload from full-time to part-time duties.

"The regulations shall include, but shall not be limited to, the following, if the employees wish to reduce their workload and maintain retirement benefits pursuant to Section 22724 of this code or Section 20815 of the Government Code:

"(a) The employee shall have reached the age of 55 prior to reduction in workload.

"(b) The employee shall have been employed full time in a position requiring certification for at least 10 years of which the immediately preceding five years were full-time employment.

"(c) During the period immediately preceding a request for a reduction in workload, the employee shall have been employed full time in a position requiring certification for a total of at least five years without a break in service....

"(d) The option of part-time employment shall be exercised at the request of the employee and can be revoked only with the mutual consent of the employer and the employee.

"(e) The employee shall be paid a salary which is the pro rata share of the salary he or she would be earning had he or she not elected to exercise the option of part-time employment but shall retain all other rights and benefits for which he or she makes the payments that would be required if he or she remained in full-time employment.

"The employee shall receive health benefits as provided in Section 53201 of the Government Code in the same manner as a full-time employee.

"(f) The minimum part-time employment shall be the equivalent of one-half of the number of days of service required by the employee's contract of employment during his or her final year of service in a full-time position.

"(g) This option is limited in prekindergarten through grade 12 to certificated employees who do not hold positions with salaries above that of a school principal.

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"(h) The period of this part-time employment shall include a period of time, as specified in the regulations, which shall be up to and include five *403 years for employees subject to Section 20815 of the Government Code or 10 [FN7] years for employees subject to Section 22724 of this code. [¶]]... [¶]"

FN7 Section 44922, italics added.

(2) Under the part-time employment authorized by section 44922, the part-time employee is to be paid a prorated salary, but is to retain all other rights and benefits as long as he makes the payments for those rights and benefits that would be required if he were still a full-time employee. If he would not have to make any payments for those rights and benefits as a full-time employee (i.e., if the employer pays in full for those rights and benefits), he does not have to make any payments as a part-time employee under section 44922.

(3a) The second paragraph of section 44922(e) states "The employee shall receive health benefits as provided in Section 53201 of the Government Code in the same manner as a full-time employee." (Italics added.) The italicized phrase provides the cornerstone of District's argument that Article XIX specifically governs here.

Subdivision (a) of Government Code section 53201 provides in relevant part that "The legislative body of a local agency [including a school district], *subject to conditions as may be established by it*, may provide for any health and welfare benefits for the benefit of its officers, employees, retired employees, and retired members of the legislative body ..., who elect to accept the benefits and who authorize the local agency to deduct the premiums, dues, or other charges from their compensation, to the extent that the charges are not covered by payments from funds under the jurisdiction of the local agency as permitted by [Government Code] Section 53205." (Italics added.)

District notes in its brief that section 44922(e) requires the District to provide part-time employees with "health benefits as provided in Section 53201 of the Government Code in the same manner as a full[-]time employee." (Underscoring in District's

brief.) District further notes that "... Government Code [section] 53201(a) permits the District, 'subject to conditions as may be established by it,' to 'provide for any health and welfare benefits for the benefit ... of its officers [and] employees ... who elect to accept the benefits and who authorize the local agency to deduct the premiums, dues or other charges from their compensation' " (Underscoring and boldface in District's brief.) From this District argues, "... Government Code [section] 53201(a) specifically allows the District to establish ' conditions' for the provision of health insurance benefits to its employees."

District claims that Article XIX establishes those "conditions" authorized by Government Code section 53201, subdivision (a) by specifying that a *404 "certificated employee granted a reduced services employment contract [which encompasses section 44922] will be afforded on a prorated basis the same major medical, dental and vision plan provided regular employees of the District and shall have the right to pay the balance of the cost of insurance premiums not paid by the District"

District bolsters its argument by noting that Government Code section 53205, referenced in Government Code section 53201, subdivision (a), states in relevant part that "From funds under its jurisdiction, the legislative body [including the governing board of a school district] 'may authorize payment of all, or such portion as it may elect, of the premiums, dues, or other charges for health and welfare benefits of officers [and] employees ...' subject to its jurisdiction." (Underscoring in District's brief.)

There is a fundamental flaw, however, in the District's reading of section 44922(e)'s reference to Government Code section 53201. Government Code section 53201 is a general statute that simply authorizes local agencies (counties, cities, school districts, districts, municipal corporations, political subdivisions, public corporations or other public agencies of the state) to offer health and welfare benefits to their employees, if they choose to do so; Government Code section 53205 is a general statute that simply sets forth how the cost of those benefits can be allocated as between the local agency and the employee. [FN8] Section 44922(e) states in part that the section 44922 part-time employee "shall retain all other rights and benefits for which he or

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she makes the payments that would be required if he or she remained in full-time employment," and "shall receive health benefits as provided in Section 53201 of the Government Code in the same manner as a full-time employee." Thus, Government Code section 53201's relevance in the section 44922 scheme is simply that if a particular school district chooses to offer its employees health benefits, the section 44922 part-time employee in that district will receive health benefits in the same manner as a full-time employee as long as the part-time employee makes the health benefit payments that would be required of him if he had remained a full-time employee. If no such payments would be required of him as a full-time employee, no such payments are required of him as a section 44922 part-time employee. In this way, the section 44922 part-time employee receives health benefits in the same manner as a full-time employee, i.e., subject to the conditions established by the district for the receipt of full-time health benefits.

FN8 See title 5, division 2, article 1 of the Government Code, section 53200 et seq.

District's reading of Government Code section 53201's placement in section 44922(e) would leave section 44922(e) trumped by "conditions" set forth in a collective bargaining agreement. That cannot happen. A companion provision to section 44922, section 44924, provides, with certain exceptions not applicable here, that "any contract or agreement, express or implied, made by any employee to waive the benefits of this chapter or any part thereof is null and void." Section 44924 was at issue in *United Teachers-L.A. v. Los Angeles Unified School Dist.*, where the court stated that since section 44924 specifies that employees may not waive the benefits of section 44922, the mandatory provisions of section 44922 granting employees additional benefits prevail over conflicting regulations in the parties' collective bargaining agreement. [FN9] *United Teachers* added: "[S]ection 44922 specifies that while adoption of a part-time program may initially be a matter of discretion with the district, once such a plan is adopted, the official body has no discretion to alter regulations the statutes make mandatory." [FN10]

FN9 *United Teachers-L.A. v. Los Angeles Unified School Dist.* (1994) 24 Cal.App.4th 1510, 1517-1520 [29 Cal.Rptr.2d 897] (*United Teachers*).

FN10 *United Teachers, supra*, 24 Cal.App.4th at page 1516.

(4) Furthermore, District's reading of section 44922(e) and Government Code section 53201 contravenes the settled principle of statutory interpretation that a "specific provision relating to a particular subject will govern in respect to that subject [i.e., section 44922(e)], as against a general provision [i.e., Government Code section 53201], although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates." [FN11]

FN11 *San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 577 [7 Cal.Rptr.2d 245, 828 P.2d 147], quoting *Rose v. State of California* (1942) 19 Cal.2d 713, 724 [123 P.2d 505].

(3b) With its laser-like focus on the section 44922(e) phrase "as provided in Section 53201 of the Government Code," the District, in the end, reads out of section 44922(e) the critical phrases "shall retain all other rights and benefits for which he or she makes the payments that would be required if he or she remained in full-time employment" and "shall receive health benefits ... in the same manner as a full-time employee." Our reading of Government Code section 53201's placement in section 44922(e) allows all three of these phrases to function according to the purposes of these statutes.

District's argument that section 44922 part-time employees "earn, on [a] prorated basis, the same salary and benefits as full-time employees" is misplaced. Section 44922(e) does not apply proration to salary *and* benefits, which it could easily do; instead, the section expressly distinguishes between the payment of a prorated "salary," and the retention of "all other rights and benefits" as if the section 44922 part-time employee

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remained in full-time employment. And District's assertion, citing section 44922(e), that District *406 "provides health benefits to part-time employees, on a prorated basis, 'in the same manner as a full-time employee' " is also misplaced. (Italics added to District's brief.) Section 44922(e) states that the section 44922 part-time employee "shall receive health benefits ... in the same manner as a full-time employee." (Italics added.) It cannot be said that a section 44922 part-time employee who receives prorated health benefits "receive[s] health benefits ... in the same manner as a full-time employee" whose health benefits are not prorated.

A look at the statutory scheme of which section 44922 is a part supports our interpretation as well. Section 44922 is part of a scheme that governs compensation and benefits for experienced teachers who are at least 55 years old and who wish to work part-time. Section 44922's introductory paragraphs state in relevant part that, "Notwithstanding any other provision, ... a school district ... may establish regulations which allow their certificated employees to reduce their workload from full-time to part-time duties. [¶] The regulations shall include ... the following, if the employees wish to reduce their workload and maintain retirement benefits pursuant to [former] Section 22724 of this code or [former] Section 20815 of the Government Code[.]"

Former section 22724 (now § 22713) allows school districts to establish a program whereby an experienced teacher who is at least 55 years old can reduce his workload from full-time to part-time, and still receive the retirement service credit he would have received if he had been employed full-time; in addition, he can have his retirement allowance, as well as other specified benefits, calculated pursuant to the salary he would have received if he had been employed full-time. This program requires the teacher and the employer to contribute to the retirement fund the amount that would have been contributed if the teacher had been employed full-time. Former Government Code section 20815 (now Gov. Code, § 20900) sets forth a similar program for academic employees of the California State University system, and includes certain certificated school district employees as well.

Thus, former section 22724 (now § 22713) and former Government Code section 20815 (now Gov. Code, § 20900) coordinate with section 44922 and

support our interpretation of that section. The Legislature has offered an inducement under section 44922 to certificated employees to become part-time employees if they are at least 55 years old and otherwise qualify—they will be paid a prorated salary, but they will retain and receive full-time rights and benefits so long as they make the payments for those rights and benefits that would be required of them had they remained in full-time employment. *407

The legislative history supports our view of section 44922(e) too. [FN12] That history covers Assembly Bill No. 3339 (1973-1974 Reg. Sess.) and describes the substantively identical statute that preceded section 44922, [FN13] and the referenced former statute on retirement credit and allowance, [FN14] in the following pertinent terms: "Permits certificated employees of school districts and academic teaching employees of the CSUC to receive a full year of retirement credit for part-time teaching under specified conditions. *Such an employee would receive health benefits in the same manner as a full-time employee.* The governing body is empowered to establish regulations governing such a program. The regulations shall include, but are not limited to the following: [¶] ... [¶] 4. The employee's salary must be a pro rata share of his salary had he elected to remain full-time. [¶] 5. Employer and employee contributions are the same as if he were employed full-time...." [FN15] That history also states that "AB 3339 would amend [the] Public Employees' Retirement Law, the State Teachers' Retirement Law, and the State Education Code to permit certain full-time employees to work on a part-time basis and allow full retirement credit and benefits for such service." [FN16]

FN12 We deny Praiser's motion to take judicial notice of certain items in the legislative history. We have obtained our own copy of that history.

FN13 Former section 13337.7, Statutes 1974, chapter 1367, section 1, page 2960.

FN14 Former section 14009, Statutes 1974, chapter 1367, section 2, pages

2960-2961.

FN15 Senate Committee on Education, Staff Analysis of Assembly Bill No. 3339 (1973-1974 Reg. Sess.) as amended August 8, 1974, pages 1-2, italics added.

FN16 Assembly Retirement Committee, Analysis of Assembly Bill No. 3339 (1973-1974 Reg. Sess.), as amended April 30, 1974, italics added.

Finally, our interpretation of section 44922(e) aligns with the ostensible objects to be achieved. Section 44922 envisions the gradual withdrawal of older, higher salaried, experienced teachers and the gradual introduction of younger, lower salaried, inexperienced teachers to take their place. [FN17] If the older teachers do not retain their full health benefits, at a time when those benefits become increasingly important, it would significantly diminish their incentive to gradually withdraw. District sees the "sky falling" from our interpretation, claiming that "if this Court were to hold that the District must pay health insurance benefits for part-time employees at the same rate as full-time employees, the financial consequences to the District could be devastating." There are at least three problems with this claim, however: first, section 44922 does not encompass all part-time employees, but only a narrow slice of them; second, the section 44922 program is optional with *408 school districts; and third, the legislative history recognizes there could be cost *savings* premised on the salary factor. [FN18]

FN17 Department of Finance, Enrolled Bill Report on Assembly Bill No. 3339 (1973-1974 Reg. Sess.) September 12, 1974, pages 1-2; State Teachers' Retirement System, Department of Agriculture and Services Enrolled Bill Report on Assembly Bill No. 3339 (1973-1974 Reg. Sess.) September 5, 1974, pages 1-2.

FN18 See footnote 17, *ante*.

We conclude that under section 44922(e), Praiser is entitled to retain and receive the insurance benefits accorded to full-time employees as long as he makes the benefit payments that would be required of him if he were a full-time employee; if Praiser would not have to make benefit payments as a full-time employee, he need not make them as a section 44922 part-time employee.

Disposition

The judgment is reversed. The matter is remanded to the trial court to determine the appropriate remedies consistent with this opinion. Praiser is awarded his costs on appeal.

Nicholson, J., and Callahan, J., concurred.

Respondents' petition for review by the Supreme Court was denied May 23, 2001. *409

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SHELDON PRAISER, Plaintiff and Appellant, v. BIGGS UNIFIED SCHOOL DISTRICT et al., Defendants and Respondents.

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