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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

07CS00355

**STATE OF CALIFORNIA DEPARTMENT OF
FINANCE, CALIFORNIA INTEGRATED
WASTE MANAGEMENT BOARD,**

PETITIONERS,

v.

COMMISSION ON STATE MANDATES,

RESPONDENT,

**SANTA MONICA COMMUNITY COLLEGE
DISTRICT, LAKE TAHOE COMMUNITY
COLLEGE DISTRICT,**

REAL PARTIES IN INTEREST.

CASE NO.

**PETITION FOR WRIT OF
ADMINISTRATIVE
MANDAMUS**

[Gov. Code, § 17559(b);
Code Civ. Proc., § 1094.5]

1 Petitioners State of California Department of Finance (Department of Finance)
2 and the California Integrated Waste Management Board hereby petition this Court for a
3 writ of administrative mandamus pursuant to Government Code section 17559(b) and
4 Code of Civil Procedure section 1094.5. Petitioners Department of Finance and the
5 California Integrated Waste Management Board seek a writ directed at respondent
6 Commission on State Mandates, commanding it to set aside its Statement of Decision on
7 Test Claim No. 00-TC-07, which was adopted by the Commission on March 25, 2004,
8 and to issue a new decision on Test Claim No. 00-TC-07; and, further, commanding
9 respondent Commission on State Mandates to issue new Parameters and Guidelines on
10 Test Claim No. 00-TC-07.

11 Petitioners Department of Finance and the California Integrated Waste
12 Management Board allege as follows:

13 1. Petitioner Department of Finance is the state government entity charged
14 with supervising the financial and business policies of the State of California. The
15 Department of Finance is given these fiscal supervisory powers in order to conserve the
16 financial interests of the State, to prevent improvidence, and to control the expenditure of
17 State funds by various state government entities. The Department of Finance is
18 authorized to institute proceedings as it deems proper in order to conserve the rights and
19 interests of the State. Petitioner Department of Finance is authorized to commence this
20 proceeding to set aside the decision of respondent Commission on the ground that the
21 Commission's decision is not supported by substantial evidence. Petitioner Department
22 of Finance is beneficially interested in this proceeding and is aggrieved by the decision of
23 respondent Commission to grant and implement Test Claim No. 00-TC-07, as alleged
24 herein.

25 2. Petitioner California Integrated Waste Management Board is within the
26 California Environmental Protection Agency. Among other things, the California
27 Integrated Waste Management Board is responsible for administering the California
28 Integrated Waste Management Act of 1989, the State Agency Waste Management Plan,

1 and other state laws that seek to reduce, recycle, and reuse solid waste generated in
2 California to the maximum extent feasible in an efficient and cost-effective manner to
3 conserve water, energy and other natural resources, to protect the environment, to
4 improve regulation of existing solid waste landfills, to ensure that new solid waste
5 landfills are environmentally sound, to improve permitting procedures for solid waste
6 management facilities, and to specify the responsibilities of local governments to develop
7 and implement integrated waste management programs.

8 3. Respondent Commission on State Mandates is the quasi-judicial body
9 charged with carrying out the administrative procedures for resolving claims for
10 reimbursement of state mandated local costs arising out of article XIII B, section 6, of the
11 California Constitution. The functions, powers and duties of respondent Commission are
12 set out in article XIII B, section 6, of the California Constitution, Government Code
13 sections 17500, et seq., and the Commission's implementing regulations, 2 Cal. Code
14 Regs. § 1181, et seq.

15 4. Real parties in interest, Santa Monica Community College District and
16 South Lake Tahoe Community College District are "local governments" within the
17 meaning of article XIII B, section 6, of the California Constitution, and are "school
18 districts" within the meaning of Government Code sections 17514 and 17519.

19 5. Real parties filed the underlying Test Claim No. 00-TC-07 which is the
20 subject of this proceeding and, therefore, real parties have an interest in the outcome of
21 petitioner's proceeding to set aside the decision of respondent Commission.

22 6. Venue is proper because the cause of action arose in Sacramento County.

23 7. Test Claim No. 00-TC-07 pertains to Statutes of 1999, chapter 764 (AB
24 75), and Statutes of 1992, chapter 1116 (AB 3521). AB 75 added provisions to the
25 Public Resources Code, including the State Agency Integrated Waste Management Plan,
26 Public Resources Code section 42920, et seq., which requires development and adoption
27 of an integrated waste management plan to reduce solid waste, reuse materials whenever
28 possible, recycle recyclable materials, and the diversion of specified percentages of all

1 solid waste from landfill disposal or transformation facilities through source reduction,
2 recycling, and composting activities. AB 3521 amended sections 12167 and 12167.1 of
3 the Public Contract Code, pertaining to revenues from the collection and/or sale of
4 recyclable materials.

5 8. In or about March 2001, real parties in interest Santa Monica Community
6 College District and South Lake Tahoe Community College District filed a Test Claim
7 with respondent Commission asserting, among other things, that portions of AB 75 and
8 AB 3521 constitute a reimbursable state mandated program within the meaning of
9 Government Code section 17514 and article XIII B, section 6, of the California
10 Constitution. The Test Claim was subsequently designated as "Test Claim No.
11 00-TC-07."

12 9. "Costs mandated by the state" means any increased costs that a local
13 agency or school district are required to incur after July 1, 1980, as a result of any statute
14 enacted on or after January 1, 1975, or any executive order implementing any statute
15 enacted on or after January 1, 1975, which mandates a new program or higher level of
16 service of an existing program within the meaning of article XIII B, section 6, of the
17 California Constitution. Pursuant to article XIII B, section 6, of the California
18 Constitution, whenever the Legislature or any state agency mandates a new program or
19 higher level of service on a local agency, the state shall provide a subvention of funds to
20 reimburse the local agency for the costs of such program or increased level of service.

21 10. On March 25, 2004, respondent Commission on State Mandates adopted its
22 Statement of Decision granting Test Claim No. 00-TC-07.

23 11. On March 16, 2005, respondent Commission on State Mandates issued its
24 "Final Staff Analysis and Proposed Parameters and Guidelines" for Test Claim No.
25 00-TC-07.

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1 12. On March 30, 2005, respondent Commission on State Mandates adopted
2 the Parameters and Guidelines for Test Claim No. 00-TC-07. The Parameters and
3 Guidelines implement the Statement of Decision by describing the claimable
4 reimbursable activities allowed for Test Claim No. 00-TC-07.

5 13. The Commission's Statement of Decision for Test Claim No. 00-TC-07 is
6 invalid, in part, as a matter of law because it fails to give full and proper consideration to
7 the cost savings real parties will achieve, and the revenues real parties will receive, by
8 complying with AB 75. As a matter of law, cost savings and revenues must be fully
9 considered and offset against the amount of State subvention allowed, otherwise, real
10 parties will obtain a windfall by receiving a subvention of State funds in addition to
11 retaining cost savings and/or revenues. The Statement of Decision for Test Claim No.
12 00-TC-07 is not supported by substantial evidence and is invalid, in part, as a matter of
13 law, for the following reasons:

14 (a) Respondent Commission failed to give proper consideration to the cost
15 savings real parties will achieve by complying with AB 75. For example, by diverting
16 solid waste from landfills, compliance with AB 75 will result in costs savings through
17 avoided fees and charges that real parties would otherwise incur as landfill disposal fees.
18 As a matter of law, respondent Commission must consider cost savings that will be
19 realized as a result of compliance with AB 75.

20 (b) Respondent Commission failed to give proper consideration to the
21 revenues real parties in interest will receive by complying with AB 75. For example, the
22 collection and/or sale of recyclable materials will result in revenues to real parties in
23 interest. Therefore, compliance with AB 75 will result in revenues to real parties in
24 interest. As a matter of law, respondent Commission must consider all revenues that will
25 be received by real parties as a result of their compliance with AB 75.

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1 (c) Respondent Commission concluded that Public Contract Code
2 sections 12167 and 12167.1 apply to real parties in interest “to the extent the statutes
3 guide the redirection of funds.” This conclusion is incorrect as a matter of law. As a
4 matter of law, community colleges and community college districts are not subject to the
5 requirements of Public Contract Code sections 12167 and 12167.1 and, therefore, real
6 parties in interest may retain all revenues received from recycling programs instituted as
7 a result of AB 75. Community colleges and community college districts are not required
8 to deposit revenues received from the collection and sale of recyclable materials into the
9 Integrated Waste Management Account, but rather are authorized to retain all revenues
10 received from the collection and sale of recyclable materials. In addition, community
11 colleges and community college districts retain all revenues received from recycling
12 programs and must apply revenues derived from the sale of recyclable materials toward
13 offsetting recycling program costs, without obtaining the approval of the Legislature or
14 the California Integrated Waste Management Board.

15 (d) The Statement of Decision does not comport with article XIII B,
16 section 6, of the California Constitution, because the Statement of Decision allows real
17 parties to retain their cost savings achieved and/or revenues received from compliance
18 with AB 75, in addition to a subvention of State funds.

19 14. Following the adoption of its Statement of Decision for Test Claim No.
20 00-TC-07, in March 2005, respondent Commission issued its Final Staff Analysis and
21 Proposed Parameters and Guidelines for Test Claim No. 00-TC-07. Based on the
22 findings made in the Statement of Decision, in the Final Staff Analysis respondent
23 Commission concluded there was insufficient legal authority to require real parties in
24 interest to identify the cost savings that result from avoiding landfill disposal costs as a
25 result of AB 75. This conclusion is incorrect as a matter of law. Rather, pursuant to
26 article XIII B, section 6, of the California Constitution, real parties are entitled only to a
27 subvention of funds to reimburse real parties for their mandated costs. Thus, as a matter

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1 of law, all cost savings and revenues must be fully considered and offset against the
2 amount of subvention allowed, otherwise, real parties will obtain a windfall by retaining
3 their cost savings and/or revenues, in addition to receiving a subvention of State funds.

4 15. In March 2005, respondent Commission adopted the Parameters and
5 Guidelines for Test Claim No. 00-TC-07. The Parameters and Guidelines implement the
6 Commission's Statement of Decision by describing the claimable reimbursable activities
7 for Test Claim No. 00-TC-07, as approved in the Statement of Decision. The Parameters
8 and Guidelines for Test Claim No. 00-TC-07 are also invalid, in part, as a matter of law
9 because they allow real parties in interest to retain cost savings obtained and revenues
10 received by complying with AB 75 in addition to receiving a subvention of State funds.

11 16. Pursuant to respondent Commission's regulations, the Parameters and
12 Guidelines for Test Claim 00-TC-07 were required to identify offsetting revenues and
13 reimbursements, including dedicated State funds appropriated for the program; non-local
14 agency funds dedicated for the program; the local agency's general purpose funds for the
15 program; and any fee authority to offset partial costs of the program.

16 17. The Parameters and Guidelines for Test Claim 00-TC-07 fail to require
17 real parties to adequately identify all offsetting revenues and reimbursements, including
18 all revenue real parties will receive through the collection and/or sale of recyclable
19 materials.

20 18. Pursuant to respondent Commission's regulations, the Parameters and
21 Guidelines for Test Claim 00-TC-07 were required to identify all offsetting savings,
22 including avoided landfill fees and charges that are experienced because of compliance
23 with AB 75.

24 19. The Parameters and Guidelines for Test Claim 00-TC-07 fail to require real
25 parties to adequately identify all offsetting savings, including avoided landfill fees and
26 charges that are experienced because of compliance with AB 75.

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1 20. Petitioners Department of Finance and the California Integrated Waste
2 Management Board have no plain, speedy and adequate remedy in the ordinary course of
3 law.

4 21. Petitioners Department of Finance and the California Integrated Waste
5 Management Board have requested that respondent Commission prepare a true and
6 correct copy of the administrative record of all proceedings had in connection with Test
7 Claim No. 00-TC-07. A true and correct copy of the administrative record will be lodged
8 with the court prior to the hearing on this petition.

9 WHEREFORE, petitioners Department of Finance and the California Integrated
10 Waste Management Board pray as follows:

11 1. That a writ of mandate issue pursuant to Government Code section
12 17559(b) and Code of Civil Procedure section 1094.5, directed to respondent
13 Commission on State Mandates, commanding it to set aside its decision granting Test
14 Claim No. 00-TC-07, in part, and to issue a new decision on Test Claim No. 00-TC-07
15 that gives full and proper consideration to the cost savings real parties will achieve, and
16 the revenues real parties will receive by complying with AB 75, including all cost
17 savings achieved through avoided landfill disposal fees and charges, and revenues
18 received from the collection and/or sale of recyclable materials, as a result of compliance
19 with AB 75;

20 2. That the writ of mandate further command respondent Commission on
21 State Mandates to issue new Parameters and Guidelines on Test Claim No. 00-TC-07
22 that give full and proper consideration to the cost savings real parties will achieve, and
23 the revenues real parties will receive by complying with AB 75, including all cost
24 savings achieved through avoided landfill disposal fees and charges, and revenues
25 received from the collection and/or sale of recyclable materials, as a result of compliance
26 with AB 75;

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- 3. That petitioners recover their costs incurred in this proceeding; and,
- 4. For such other relief that the Court considers proper.

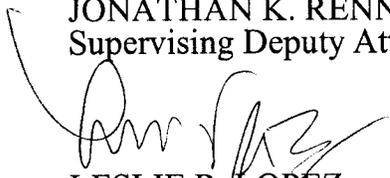
Dated: March 22, 2007

Respectfully submitted,

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