

ITEM 5
FINAL STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES

Permanent Absent Voters II (03-TC-11)

Elections Code Sections 3201 through 3206

Statutes 2001, Chapter 922

Statutes 2002, Chapter 664

Statutes 2003, Chapter 347

PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

Permanent Absent Voters (CSM 4358)

Former Elections Code Sections 1450 through 1456

Statutes 1982, Chapter 1422

County of Sacramento, Claimant

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Hearing Date: July 28, 2006
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BEFORE THE
 COMMISSION ON STATE MANDATES
 STATE OF CALIFORNIA

IN RE TEST CLAIM:

Elections Code Sections 3100, 3101, 3103, 3104, 3106, 3108, 3110, 3200, 3201, 3202, 3203, 3204, 3205, and 3206;

Statutes 1994, Chapter 920; Statutes 1996, Chapter 724; Statutes 2001, Chapter 918; Statutes 2001, Chapter 922; Statutes 2002, Chapter 664; Statutes 2003, Chapter 347;

Filed on September 26, 2003, and amended on January 27, 2004, by County of Sacramento, Claimant.

Case No.: 03-TC-11

Permanent Absent Voters II

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

(Adopted on July 28, 2006)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates (“Commission”) heard and decided this test claim during a regularly scheduled hearing on July 28, 2006. Pamela Stone of Maximus, and Alice Jarboe, Assistant Registrar of Voters, appeared on behalf of claimant, County of Sacramento. Susan Geanacou appeared on behalf of the Department of Finance.

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

The Commission adopted the staff analysis to partially approve this test claim at the hearing by a vote of 7-0.

Summary of Findings

Claimant, County of Sacramento, filed this test claim on September 26, 2003, and an amendment on January 27, 2004, “to reflect changes in the election law pertaining to Permanent Absent Voters since the first test claim was filed.” The Commission previously determined Elections Code sections 1450 through 1456 imposed a reimbursable state-mandated program in an earlier test claim *Permanent Absent Voters* (CSM-4358) decision, effective September 21, 1989. Prior to the enactment of the current test claim legislation, Elections Code sections 1450 through 1456 provided that only voters with specified disabilities could apply for permanent absent voter status.

Statutes 1994, chapter 920 reorganized the entire Elections Code, including the repeal of Elections Code sections 1450 through 1456, and reenactment of those provisions as Elections Code sections 3200 through 3206. The other statutes claimed in *Permanent Absent Voters II*, further amended the Elections Code, including substantive changes in 2001 allowing *all* registered voters to apply for permanent absent voter status, rather than limiting eligibility to those voters with specific disabilities or conditions, as was the case under prior law.

The Commission concludes that Elections Code sections 3201 and 3203, subdivision (b)(2) mandates a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- County elections officials shall make an application for permanent absent voter status available to any voter. (Elec. Code, § 3201, as amended by Stats. 2001, ch. 922, Stats. 2002, ch. 664, and Stats. 2003, ch. 347.)

The above activity replaces the activity in *Permanent Absent Voters I* which was limited to those voters who provided evidence of certain physical disabilities.

- Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206. (Elec. Code, § 3203, subd. (b)(2), as amended by Stats. 2001, ch. 922.)

The Commission concludes that Elections Code sections 3200, 3202, 3203, subdivisions (a) and (b)(1) and (b)(3), 3204, 3205, subdivision (a) and 3206, as renumbered and reenacted by Statutes 1994, chapter 920 do not mandate *new* reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514, but remain a part of the *Permanent Absent Voter* program, as it now exists. Any references to former Elections Code sections 1450, 1452, 1454, 1455 and 1456 in the *Permanent Absent Voters I* parameters and guidelines should be designated by their new numbers when the parameters and guidelines are amended.

In addition, the Commission concludes that Statutes 2003, chapter 347, as it amended Elections Code sections 3100, 3101 and 3103, does not mandate a new program or higher level of service.

BACKGROUND

Prior to the enactment of the test claim legislation, Elections Code sections 1450 through 1456 provided that only voters with specified disabilities could apply for permanent absent voter status. The Commission previously determined these sections to constitute a reimbursable state-mandated program in the test claim *Permanent Absent Voters* (CSM-4358) [hereafter *Permanent Absent Voters I*].

In the *Permanent Absent Voters I* Statement of Decision, effective September 21, 1989, the Commission concluded

that sections 1450 through 1456, as added by Chapter 1422/82, require counties to implement a new program because the county clerk must now: (1) establish and maintain a list of permanent absent voters who provide evidence of physical disability, (2) mail absent voter ballots to such voters for each election in which they are eligible to vote, and (3) delete from the permanent absent voter list any

person who fails to return an executed absent voter ballot for any statewide direct primary or general election.

Furthermore, the Commission directs staff and the involved parties to consider any offsetting savings during the development of the parameters and guidelines.

Thus, the Commission determined that prior to the operation of Statutes 1982, chapter 1422, there was no permanent absent voters program. Statutes 1994, chapter 920 reorganized the entire Elections Code, including the repeal of Elections Code sections 1450 through 1456, and reenactment of those provisions as Elections Code sections 3200 through 3206. The other statutes claimed in *Permanent Absent Voters II*, further amended the Elections Code, making both technical changes in wording, as well as substantive changes. The substantive changes made in 2001 allow *all* registered voters to apply for permanent absent voter status, rather than limiting eligibility to those voters with specific disabilities or conditions, as was the case under prior law.

Claimant's Position

Claimant, County of Sacramento, filed this test claim on September 26, 2003, and an amendment on January 27, 2004,¹ “to reflect changes in the election law pertaining to Permanent Absent Voters since the first test claim was filed.” Claimant contends that Elections Code sections 3100, 3101,² 3103, 3104, 3106, 3108, 3110, and 3200 through 3206 constitutes a reimbursable state-mandated program. Following are some of the reimbursable activities asserted by the claimant:

- Providing permanent absent ballot applications.
- Receiving and processing permanent absent ballot applications.
- Sending a copy of the list of all voters who qualify as permanent absent voters to city or district elections officials.
- Preparing, printing, and sending sample ballots.
- Providing the permanent absent voter roll to city and district election officials.
- Making the roll available for public inspection.
- Maintaining the roll, including purging voters from the permanent absent voter list, when the voter fails to vote in any statewide direct primary or general election, and reinstating a voter's name on the roll upon the voter's request.
- Paying for increased postage of mailing out ballots to a larger permanent absent voter roll.

Claimant also requests that the parameters and guidelines for *Permanent Absent Voters I* be amended to include the findings for the present test claim.

¹ Potential reimbursement period for this claim begins no earlier than July 1, 2002. (Gov. Code, § 17557, subd. (c).)

² Page 5 of the Amended Test Claim Filing actually names section “3191,” but as the rest of the numbers are in sequence, this is presumed to be a typographical error.

In a response to Department of Finance's December 2003 comments on the test claim filing, claimant further alleges activities for: dealing with additional provisional voters "who have permanent absent voter status, ... but appear to vote in person;" answering additional phone calls at election time from voters who "forget they are on the permanent absentee voter roll;" and comparing the signature on absentee ballots with those on file, "to make sure that it was the voter who completed and signed the absentee ballot."

No comments were received on the draft staff analysis from the claimant or interested parties.

Department of Finance's Position

DOF filed comments on December 4, 2003, and May 27, 2004, addressing the allegations stated in the test claim and subsequent amendment. DOF ultimately concluded that the test claim statutes "expanded the scope of the permanent absent voter program to include all voters," which "could represent a higher level of service..."

No comments were received on the draft staff analysis from DOF or any other state agencies.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6, of the California Constitution³ recognizes the state constitutional restrictions on the powers of local government to tax and spend.⁴ "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."⁵ 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.⁶ 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.⁷

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

³ Article XIII B, section 6, subdivision (a), provides: (a) 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 that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

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

⁵ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁶ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

⁷ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.*); *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 (*Lucia Mar*).

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.⁸ 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.⁹ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”¹⁰

Finally, the newly required activity or increased level of service must impose costs mandated by the state.¹¹

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 6.¹² 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.”¹³

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

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a “program.” In *County of Los Angeles v. State of California*, the California Supreme Court defined the word “program” within the meaning of article XIII B, section 6 as one 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.¹⁴ The court has held that only one of these findings is necessary.¹⁵

The Commission finds that requiring a permanent absent voter process imposes a program within the meaning of article XIII B, section 6 of the California Constitution under both tests. County

⁸ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.)

⁹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

¹⁰ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

¹¹ *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 (*County of Sonoma*); Government Code sections 17514 and 17556.

¹² *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

¹³ *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹⁴ *County of Los Angeles*, *supra*, 43 Cal.3d at page 56.

¹⁵ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

elections officials provide a service to the members of the public who want to become permanent absent voters. The test claim legislation also requires local elections officials to engage in administrative activities solely applicable to local government, thereby imposing unique requirements upon counties that do not apply generally to all residents and entities of the state.

Accordingly, the Commission finds that the test claim legislation constitutes a “program” and, thus, may be subject to subvention pursuant to article XIII B, section 6 of the California Constitution if the legislation also mandates a new program or higher level of service, and costs mandated by the state.

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

In order to be subject to article XIII B, section 6, of the California Constitution, test claim legislation must mandate a state-mandated activity on a local agency or school district.¹⁶ Courts have adopted a “strict construction” interpretation of article XIII B, section 6.¹⁷ Consistent with this narrow interpretation, the term “mandate” has been construed according to its commonly understood meaning as an “order” or “command.”¹⁸ Thus, the test claim legislation must require a local government entity to perform an activity in order to fall within the scope of article XIII B, section 6.

According to the well-settled rules of statutory construction, an examination of a statute claimed to constitute a reimbursable state mandate begins with the plain language of the statute, and “where the language is clear there is no room for interpretation.”¹⁹ Where the Legislature has not found it appropriate to include express requirements in a statute, it is inappropriate for a court to write such requirements into the statute.²⁰ The California Supreme Court has noted that “[w]e cannot... read a mandate into language which is plainly discretionary.”²¹

Test claim legislation mandates a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not previously required.²² The courts have defined a “higher level of service” in conjunction with the phrase “new program” to give the subvention requirement of article XIII B, section 6 meaning. Accordingly, “it is apparent that the subvention requirement for increased or higher level of service is directed to state-mandated increases in the services provided by local agencies in existing programs.”²³ A statute or executive order mandates a reimbursable “higher level of

¹⁶ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 740.

¹⁷ *City of San Jose*, *supra*, 45 Cal.App.4th 1802, 1816-17.

¹⁸ *Long Beach Unified School Dist.*, *supra*, 225 Cal.App.3d 155, 174.

¹⁹ *City of Merced v. State of California* (1984) 153 Cal.App.3d 777.

²⁰ *Whitcomb Hotel, Inc. v. California Employment Commission* (1944) 24 Cal.App.2d 753, 757.

²¹ *City of San Jose*, *supra*, 45 Cal.App.4th 1802, 1816.

²² *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 836.

²³ *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56; *San Diego Unified School District*, *supra*, 33 Cal.4th 859, 874.

service” when the statute or executive order, as compared to the legal requirements in effect immediately before the enactment of the test claim legislation, increases the actual level of governmental service provided in the existing program.²⁴

Reenactment and Renumbering by Statutes 1994, Chapter 920:

Elections Code Sections 3200, 3202 and 3204:

As reenacted and renumbered by Statutes 1994, chapter 920, Elections Code section 3200 states:

A voter who qualifies under this chapter shall be entitled to become a permanent absent voter.

As reenacted and renumbered by Statutes 1994, chapter 920, Elections Code section 3202 states:

In lieu of executing the application set forth in Section 3201, any voter may execute a request for permanent absent voter status by making a written request to the county elections official requesting the status. If a written request is received by the county elections official and it contains the information set forth in Section 3201, the elections official shall process that application in the manner provided in Section 3203.

As reenacted and renumbered by Statutes 1994, chapter 920, Elections Code section 3204 states:

The county elections official shall send a copy of the list of all voters who qualify as permanent absent voters to each city elections official or district elections official charged with the duty of conducting an election within the county. The list shall be sent by the sixth day before an election.

These sections are identical to prior law, which was already determined in *Permanent Absent Voters I*. An uncodified portion of Statutes 1994, chapter 920 states the following legislative intent:

SEC. 3. It is the intent of the Legislature in enacting this act to reorganize and clarify the Elections Code and thereby facilitate its administration. The Legislature intends that the changes made to the Elections Code, as reorganized by this act, have only technical and nonsubstantive effect. Hence, no change made by this act shall be construed to create any new right, duty, or other obligation that did not exist on the effective date of this act, or result in the limitation or termination of any right, duty, or other obligation that existed on the effective date of this act.

SEC. 4. The Legislature finds that the reorganization of the Elections Code pursuant to this act, in view of the nonsubstantive statutory changes made, will not result in new or additional costs to local agencies responsible for the conduct of elections or charged with any duties or responsibilities in connection therewith.

²⁴ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

The Commission makes a general finding, in accordance with the legislative intent stated in the uncodified portion of Statutes 1994, chapter 920, that a renumbered or restated statute is not a newly enacted provision. In addition, Elections Code section 2 provides:

The provisions of this code, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments.

The rationale behind Elections Code section 2 is in accordance with the holding of *In re Martin's Estate* (1908) 153 Cal. 225, 229, which explains the general rule of statutory construction for repeal, replacement and renumbering, as follows:

Where there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the re-enactment takes effect at the same time.²⁵

The Commission finds that when a statute is renumbered or reenacted, only substantive changes to the law creating new duties or activities meets the criteria for finding a reimbursable state mandate. Thus, the Commission finds that Elections Code sections 3200, 3202, and 3204, as reenacted and renumbered by Statutes 1994, chapter 920, do not mandate a new program or higher level of service. However, any references to former Elections Code sections 1450, 1452, and 1454 in the *Permanent Absent Voters I* parameters and guidelines should be designated by the new numbers when the parameters and guidelines are amended.

Further Changes to *Permanent Absent Voters I* Test Claim Legislation:

Elections Code Section 3201:

As reenacted and renumbered by Statutes 1994, chapter 920, and subsequently amended by Statutes 2001, chapter 918,²⁶ Statutes 2001, chapter 922, Statutes 2002, chapter 664,²⁷ and Statutes 2003, chapter 347,²⁸ Elections Code section 3201 provides:

Any voter may apply for permanent absent voter status. Application for permanent absent voter status shall be made in accordance with Section 3001, 3100, or 3304. The voter shall complete an application, which shall be available from the county elections official, and which shall contain all of the following:

- (a) The applicant's name at length.
- (b) The applicant's residence address.
- (c) The address where ballot is to be mailed, if different from the place of

²⁵ *In re Martin's Estate* (1908) 153 Cal. 225, 229. See also 15 Ops.Cal.Atty.Gen. 49 (1950).

²⁶ This amendment was never operative upon the subsequent adoption of Statutes 2001, chapter 922. (Affected by two or more acts at the same session of the legislature, see Gov. Code, § 9605.)

²⁷ Code maintenance bill, non-substantive changes.

²⁸ Added references to Elections Code sections 3100 and 3304.

residence.

(d) The signature of the applicant.

Prior to Statutes 1982, chapter 1422, no permanent absent voter program existed. Statutes 1982, chapter 1422, approved as a reimbursable state-mandated program in *Permanent Absent Voters I* provided a list of specific conditions or disabilities required to qualify for permanent absent voter status. The 2001 amendment substantively changed the law to expand eligibility to all voters. This amendment goes beyond creating a higher level of service in an existing program, but rather creates an entirely different program. Instead of a permanent absent voter program created for a select group of voters who provide proof of certain disabling conditions, the Legislature now allows any registered voter to file with county elections officials for permanent absent voter status. Operative January 1, 2002 a new permanent absent voter program was substituted for the previous reimbursable state mandate.

Therefore, the Commission finds that Elections Code section 3201, mandates a new program or higher level of service on counties for the following activity:

- County elections officials shall make an application for permanent absent voter status available to any voter.

The above activity replaces the activity in *Permanent Absent Voters I* which was limited to those voters who provided evidence of certain physical disabilities.

Elections Code Section 3203:

As reenacted and renumbered by Statutes 1994, chapter 920, and subsequently amended by Statutes 1996, chapter 724,²⁹ Statutes 2001, chapter 922, and Statutes 2003, chapter 347, Elections Code section 3203 provides:

- (a) Upon receipt of an application for permanent absent voter status, the county elections official shall process the application in the same manner as an application for a regular absent voter's ballot, or, in the case of an application made pursuant to Section 3100 or 3304, in the same manner as an application for a special absent voter ballot or overseas ballot.
- (b) In addition to processing applications in accordance with Chapter 1 (commencing with Section 3000), if it is determined that the applicant is a registered voter, the county elections official shall do the following:
 - (1) Place the voter's name upon a list of those to whom an absentee ballot is sent each time there is an election within their precinct.
 - (2) Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Section 3206.
 - (3) Maintain a copy of the absentee ballot voter list on file open to the public inspection for election and governmental purposes.

Statutes 2001, chapter 922 added subdivision (b)(2) requiring the inclusion of an explanation of absentee voting procedures and of Elections Code section 3206 in all absentee ballot mailings.

²⁹ Made non-substantive changes.

Statutes 2003, chapter 347 added the clause in subdivision (a) referencing Elections Code sections 3100 and 3304.

Prior to the amendment by Statutes 2001, chapter 922, county elections officials did not have a statutory duty to “Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Section 3206.” Elections Code section 3206 is the provision that requires counties to purge names from the permanent absent voter rolls when a voter fails to return an absentee ballot for specified elections. Providing this information to voters mandates a new program or higher level of service upon counties for the following activity:

- Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206.

The remainder of Elections Code section 3203 is substantively identical to prior law, which was already decided by the Commission in *Permanent Absent Voters I*, and remains a reimbursable state-mandated program.

Elections Code Section 3205:

As reenacted and renumbered by Statutes 1994, chapter 920, and subsequently amended by Statutes 2001, chapter 925, Elections Code section 3205 provides:

(a) Absent voter ballots mailed to, and received from, voters on the permanent absent voter list are subject to the same deadlines and shall be processed and counted in the same manner as all other absent voter ballots.

(b) Prior to each primary election, county elections officials shall mail to every voter not affiliated with a political party whose name appears on the permanent absent voter list a notice and application regarding voting in the primary election. The notice shall inform the voter that he or she may request an absentee ballot for a particular political party for the primary election, if that political party adopted a party rule, duly noticed to the Secretary of State, authorizing these voters to vote in their primary. The notice shall also contain a toll-free telephone number, established by the Secretary of State, that the voter may call to access information regarding which political parties have adopted such a rule. The application shall contain a check-off box with a conspicuously printed statement that reads as follows: “I am not presently affiliated with any political party. However, for this primary election only, I request an absentee ballot for the ____ Party.” The name of the political party shall be personally affixed by the voter.

Subdivision (a) is substantively identical to prior law, which was already determined in *Permanent Absent Voters I*. The Commission finds that when a statute is renumbered or reenacted, only substantive changes to the law creating new duties or activities meets the criteria for finding a reimbursable state mandate. Thus, the Commission finds that Elections Code section 3205, subdivision (a), as reenacted and renumbered by Statutes 1994, chapter 920, does not mandate a new program or higher level of service. However, any references to former Elections Code section 1455 in the *Permanent Absent Voters I* parameters and guidelines should be designated by the new numbers when the parameters and guidelines are amended.

Subdivision (b) was added by Statutes 2001, chapter 925, however this statute was not pled as part of this test claim. Claimant instead states on page 3, footnote 3, of the test claim filing: “Please note that a test claim has been filed regarding this provision, which is commonly referred to as Modified Primary. That test claim, and all filings pertaining thereto, is incorporated herein by reference as though set forth in its entirety.” Statutes 2001, chapter 925 was not included in the *Permanent Absent Voters II* test claim filing, and another test claim cannot be incorporated by reference due to requirements that all test claims be pled with specificity (former Cal. Code Regs., tit. 2, section 1183, subd. (d)(1), now codified as Gov. Code, § 17553.) Therefore the Commission cannot reach the merits on Elections Code section 3205, subdivision (b) as part of the present test claim decision.

Elections Code Section 3206:

Elections Code section 3206 was reenacted and renumbered by Statutes 1994, chapter 920, as discussed above. The *Permanent Absent Voters I* parameters and guidelines already includes an activity for deleting from the permanent absent voter list any person who fails to return an executed absent voter ballot for any statewide primary or general election. The section was later amended to remove the reference to “primary,” and then again to require that a person be removed only after failing to vote in two consecutive general elections. However, those statutes have not been pled by the claimant, therefore the Commission does not have jurisdiction to make any findings on any this section.³⁰ However, the basic activity of deleting permanent absent voters from the list when they do not vote in an election remains a reimbursable activity.

Thus, the Commission finds that Elections Code section 3206, as reenacted and renumbered by Statutes 1994, chapter 920, does not mandate a new program or higher level of service. However, any references to former Elections Code sections 1456 in the *Permanent Absent Voters I* parameters and guidelines should be designated by the new number when the parameters and guidelines are amended.

Special Absentee Voters: New Program Alleged Mandated by Statutes 2003, Chapter 347:

In the test claim amendment filed on January 27, 2004, claimant contends that Election Code sections 3100, 3101,³¹ and 3103, as amended by Statutes 2003, chapter 347,³² constitute a

³⁰ The claimant pled Statutes 2003, chapter 347, but the section was amended by the later-enacted Statutes 2003, chapter 819 (see Gov. Code, § 9605), and then again by Statutes 2005, chapter 113.

³¹ Page 5 of the Amended Test Claim Filing actually lists section “3191,” but as the rest of the numbers are in sequence, this is presumed to be a typographical error.

³² Although on page 5 of the Amended Test Claim Filing, claimant states: “The mandated activities are contained in Elections Code, Sections ... 3104, 3106, 3108, 3110,...” claimant does not make any allegations regarding these sections in the narrative. The Commission’s process requires that all test claims be pled with specificity (former Cal. Code Regs., tit. 2, section 1183, subd. (d)(1), now codified as Gov. Code, § 17553. Gov. Code, § 17553, subd. (b)(2)(C) requires: “Declarations *describing new activities performed to implement specified provisions of the new statute* or executive order alleged to impose a reimbursable state-mandated program. Specific references shall be made to chapters, articles, sections, or page numbers alleged to

reimbursable state-mandated program. These code sections are not directly related to the *Permanent Absent Voters I* test claim. Claimant's allegations regarding this statute follow:

Additionally, with the passage of AB 188, Chapter 347, Statutes of 2003, there is a new absent voter, the "special absentee voter" under Section 3100. Pursuant to section 3103(e), [sic, reference is to subd. (f)] said person may register to vote by fax, and elections materials may be sent via e-mail, fax or other electronic transmission. However, if the person requests permanent absentee status, the application is to be transmitted pursuant to Section 3101.

For background, a "special absentee voter" is defined in Elections Code section 300, as "an elector who is any of the following: (1) A member of the armed forces of the United States or any auxiliary branch thereof. (2) A citizen of the United States temporarily living outside of the territorial limits of the United States or the District of Columbia. (3) Serving on a merchant vessel documented under the laws of the United States. (4) A spouse or dependent of a member of the armed forces or any auxiliary branch thereof."

Elections Code Section 3100:

Prior to amendment by Statutes 2003, chapter 347, Elections Code section 3100 provided:

When a special absentee voter applies for an absent voter's ballot and the elections official determines that he or she is not registered to vote, the elections official shall send the affidavit of registration card with the ballot. The affidavit of registration must be completed by the voter and returned with the voted ballot or the ballot shall not be counted.

If the application has been made upon a federal form for absentee ballots the form shall be deemed an affidavit of registration and the applicant shall be considered registered for that election only. If the special absentee voter requests an absentee ballot for the ensuing primary election, the elections official shall also consider the request valid for the ensuing general election.

If the applicant is not a resident of the county to which he or she has applied, the elections official receiving the application shall forward it immediately to the proper county.

Elections Code section 3100, as amended, removes the second paragraph, but leaves the third paragraph unchanged. The first paragraph now reads:

When a voter who qualifies as a special absentee voter pursuant to subdivision (b) of Section 300 applies for an absent voter's ballot, the application shall be deemed to be an affidavit of registration and an application for permanent absentee voter status, pursuant to Chapter 3 (commencing with Section 3200). The application must be completed by the voter and must contain the voter's name, residence

impose a reimbursable state-mandated program.") Therefore, the Commission will not address Elections Code sections 3104, 3106, 3108, and 3110 in this decision.

address for voting purposes, the address to which the ballot is to be sent, the voter's political party for a primary election, and the voter's signature.

Thus, there is no *new* type of absent voter established by Statutes 2003, chapter 347 – the law has long established a category of “special absentee voter.” The amended section allows an application for an absentee ballot to be considered both a permanent absentee ballot request and a registration to vote, eliminating the requirement to send a registration card with the absent voter's ballot if the requestor was not properly registered. In addition, since the request for an absent voter's ballot under this section is “deemed to be ... an application for permanent absentee voter status, pursuant to Chapter 3 (commencing with Section 3200)” any activities associated with new permanent absent voters are reimbursable under Elections Code section 3200 through 3206, as discussed above. Thus, the Commission finds that amendment to Elections Code section 3100 by Statutes 2003, chapter 347, does not in and of itself mandate a new program or higher level of service.

Elections Code Section 3101:

Amendment by Statutes 2003, chapter 347 to Elections Code section 3101, is indicated by underline and strikethrough:

Upon timely receipt of the ~~affidavit of registration and the voted~~ application for an absentee ballot, the elections official shall examine the ~~affidavit~~ application to ascertain that it is properly executed in accordance with this code ~~and that the applicant is a qualified elector of the county.~~ If the elections official is satisfied of ~~these~~ this facts, the applicant shall be deemed a duly registered voter as of the date appearing on the ~~affidavit~~ application to the same extent and with the same effect as though he or she had registered in proper time prior to the election.

These amendments reflect the fact that section 3100, as discussed above, no longer requires elections officials to send a registration card with the special absent voter's ballot if the requestor was not properly registered, but rather may consider the absent ballot request alone to be an executed voter registration. The Commission finds that the changes to Elections Code section 3101 by Statutes 2003, chapter 347 does not mandate a new program or higher level of service; in fact, it may reduce the burden on elections officials.

Elections Code Section 3103, Subdivision (f):

Amendment by Statutes 2003, chapter 347 to Elections Code section 3103, subdivision (f), is indicated by underline and strikethrough:

(f) Notwithstanding any other provision of law, a special absentee voter who qualifies pursuant to this section may, by facsimile transmission, register to vote and apply for an absent voter's ballot. Upon request, the elections official ~~shall~~ may send to the qualified special absentee voter either by mail, ~~or~~ or facsimile, ~~or~~ or electronic transmission the special absentee ballot or, if available, an absent voter's ballot pursuant to Chapter 1 (commencing with Section 3000).

The primary amendment by Statutes 2003, chapter 347 changes the word “shall” to “may” regarding available formats for transmitting the absent ballot. The Commission finds that such changes to Elections Code section 3103 by Statutes 2003, chapter 347 does not mandate a new program or higher level of service; but again may reduce the burden on elections officials.

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

Reimbursement under article XIII B, section 6 is required only if any new program or higher-level of service is also found to impose “costs mandated by the state.” Government Code section 17514 defines “costs mandated by the state” as any *increased* cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service. The claimant estimated costs of \$1000 or more for the test claim allegations. The claimant also stated that none of the Government Code section 17556 exceptions apply. For the activities listed in the conclusion below, the Commission agrees and finds accordingly that they impose costs mandated by the state upon counties within the meaning of Government Code section 17514.

CONCLUSION

The Commission concludes that Elections Code sections 3201 and 3203, subdivision (b)(2) mandates a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- County elections officials shall make an application for permanent absent voter status available to any voter. (Elec. Code, § 3201.)³³

The above activity replaces the activity in *Permanent Absent Voters I* which was limited to those voters who provided evidence of certain physical disabilities.

- Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206. (Elec. Code, § 3203, subd. (b)(2).)³⁴

The Commission concludes that Elections Code sections 3200, 3202, 3203, subdivisions (a) and (b)(1) and (b)(3), 3204, 3205, subdivision (a) and 3206, as renumbered and reenacted by Statutes 1994, chapter 920 do not mandate *new* reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514, but remain a part of the *Permanent Absent Voter* program, as it now exists. Any references to former Elections Code sections 1450, 1452, 1454, 1455 and 1456 in the *Permanent Absent Voters I* parameters and guidelines should be designated by their new numbers when the parameters and guidelines are amended as described above.

In addition, the Commission concludes that Statutes 2003, chapter 347, as it amended Elections Code sections 3100, 3101 and 3103, does not mandate a new program or higher level of service.³⁵

³³ As amended by Statutes 2001, chapter 922, Statutes 2002, chapter 664, and Statutes 2003, chapter 347. The reimbursement period for this claim begins no earlier than July 1, 2002, based on the initial test claim filing date of September 26, 2003. (Gov. Code, § 17557, subd. (c).)

³⁴ As amended by Statutes 2001, chapter 922. The reimbursement period for this claim begins no earlier than July 1, 2002, based on the initial test claim filing date of September 26, 2003. (Gov. Code, § 17557, subd. (c).)

³⁵ Allegations regarding Elections Code sections 3104, 3106, 3108, and 3110 were not pled with specificity and thus were not addressed in this decision.

4358

PARAMETERS AND GUIDELINES
Election Code Sections 1450 through 1456
Chapter 1422, Statutes of 1982
Permanent Absent Voters

I. SUMMARY OF MANDATES

Chapter 1422, Statutes of 1982, added Chapter 7, commencing with Section 1450 to the Elections Code, to establish a permanent absent voter program.

Prior to the enactment of Chapter 1422, an absent voter ballot was not mailed to a voter unless a written request for an absent voter ballot was received before each election. With the enactment of Chapter 1422, counties were required to establish and maintain a list of permanent absent voters and delete from the list if that person fails to return an executed absent voter ballot for any statewide primary or general election.

II. COMMISSION ON STATE MANDATES DECISION

On September 21, 1989 the Commission determined that Chapter 1422, Statutes of 1982, in adding Sections 1450 through 1456 to the Elections Code resulted in reimbursable costs mandated by the state.

III. ELIGIBLE CLAIMANTS

All counties that incurred increased costs as the result of the mandate.

IV. PERIOD OF CLAIM

Chapter 1422, Statutes of 1982 became effective January 1, 1983. The test claim was filed with the Commission on May 11, 1989. Section 17557 of the Government Code (GC) states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that fiscal year. Therefore, all costs incurred on or after July 1, 1988 are reimbursable.

One fiscal year shall be included in each claim. Pursuant to section 17561(d)(3) of the Government Code, all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of enactment of the claims bill. If the total costs for a given fiscal year do not exceed

\$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

V. REIMBURSABLE COSTS

A. Scope of Mandate

Elections Code sections 1450 through 1456, as added by Chapter 1422/82, require county clerks to implement a new program by performing the following:

- (1) Establish and maintain a list of permanent absent voters who provide evidence of physical disability.
- (2) Mail absent voter ballots to such voters for each election in which they are eligible to vote.
- (3) Delete from the permanent absent voter list any person who fails to return an executed absent voter ballot for any statewide direct primary or general election.

B. Reimbursable Activities

Counties shall be reimbursed for the increased costs associated with complying with Elections Code sections 1450 through 1456 in the following cost categories:

Election Planning and Preparation Costs

Increased costs associated with preparation costs, to include, but not limited to:

Initial one-time costs:

- Computer costs
- Sample Ballot (change format)
- Creating initial absentee file

Ongoing costs:

- Maintenance of permanent absentee file
- Increased postage
- Cancellation of voters who do not vote; then reinstatement upon request
- Marking of permanent absentee voter affidavit for identification

C. Justification of Purchases

If an entity claims for increased costs resulting from the purchase or modification of voting equipment or additional secrecy envelopes, an explanation of how these costs are a direct result of the mandate must be provided with the claim. The increase for these costs during the

fiscal year being claimed must be shown separately. Also, documents which indicate the cost and purchase dates of the above items must be submitted with the claim.

VI. CLAIM PREPARATION

- A. Description of Activity
- B. Supporting Documentation

Claimed costs should be supported by the following information

1. Employee Salaries and Benefits

Identify the employee(s), show the classification of the employee(s) involved, describe the mandated functions performed and specify the actual number of hours devoted to each function, the productive hourly rate, and the related benefits. The average number of hours devoted to each function may be claimed if supported by a documented time study.

2. Services and Supplies

Only expenditures which can be identified as a direct cost as a result of the mandate can be claimed. List cost of materials acquired which have been consumed or expended specifically for the purposes of this mandate.

3. Allowable Overhead Costs

Indirect costs may be claimed in the manner prescribed by the State Controller in his claiming instruction.

VII. SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence of and the validity of such costs. These documents must be kept on file by the agency submitting the claim for a period of no less than three years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller or his agent.

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimants experience as a direct result of this statute must be deducted from the costs claims. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

Hearing: _____
J://mandates/...

PROPOSED REVISED PARAMETERS AND GUIDELINES

Elections Code sections 3201 and 3203, subdivision (b)(2)
Chapter 922, Statutes of 2001, Chapter 664, Statutes of 2002, and
Chapter 347, Statutes of 2003

Permanent Absent Voter II
03-TC-11

County of Sacramento, Claimant

I. SUMMARY OF THE MANDATE

On July 28, 2006, the Commission on State Mandates (Commission) adopted a Statement of Decision finding that the test claim legislation imposes a partially reimbursable state-mandated program upon counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the following reimbursable activities:

- County elections officials shall make an application for permanent absent voter status available to any voter. (Elec. Code, § 3201.)
- Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206. (Elec. Code, § 3203, subd. (b)(2))

II. ELIGIBLE CLAIMANTS

Any county and city and county that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, subdivision (e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The County of Sacramento filed the test claim on September 26, 2003. Therefore, costs incurred pursuant to Elections Code sections 3201 and 3203, subdivision (b)(2) are reimbursable on or after July 1, 2002.

Actual costs for one fiscal year shall be included in each claim. Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

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

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

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

For each eligible claimant, the following activities are reimbursable:

A. One-Time Activities

- Computer costs as necessary to perform the mandated activities

B. Ongoing Activities

- Maintenance of permanent absentee file which includes cancelling and reinstating voters.
- Increased postage for:
 - Notice to Non-partisan Perm voters before a primary election advising as to their cross-over options and requesting they send back their choice of party's ballot.
 - Prior to purging, notice to permanent absentee voters who have not returned the permanent absentee ballot in the require time-frame needed to remain in the permanent absentee voter file.
- Cancellation of voters who do not vote.
- Reinstatement of cancelled voters upon request.
- Marking of permanent absentee voter affidavit for identification.

These activities can be claimed only to the extent that they are not claimable under any other mandated program.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must

be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

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

5. Travel

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

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each

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

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

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

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

IX. REMEDIES BEFORE THE COMMISSION

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

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

¹ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

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



JOHN CHIANG
California State Controller
Division of Accounting and Reporting

August 4, 2011

Drew Bohan, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Proposed Revised Parameters and Guidelines
Permanent Absent Voter II (03-TC-11)
Elections Code Sections 3201 and 3203(b)(2)
Statutes 2001, Chapter 922; Statutes 2002, Chapter 664; and Statutes 2003, Chapter 347
County of Sacramento, Claimant

Dear Mr. Bohan:

The State Controller's Office (SCO) has reviewed the proposed Parameters and Guidelines (P's and G's) for the above-referenced program. The SCO concurs with the staff to adopt the proposed P's and G's with the reimbursable activities approved on July 28, 2006 as follows:

- County election officials shall make an application for permanent absent voter status available to any voter; (Election Code section 3201)
- Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206. (Election Code section 3203, Subdivision (b)(2))

In addition, the SCO proposes several changes to the Proposed Revised P's and G's. Below are excerpts from the P's and G's indicating our proposed amendments. Additions are underlined and deletions are indicated with strikethrough.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, subdivision (e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The County of Sacramento filed the test claim on September 26, 2003. Therefore, costs incurred pursuant to Elections Code sections 3201 and 3203, subdivision (b)(2) are reimbursable on or after July 1, 2002.

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

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

IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, the following activities are reimbursable:

A. ~~One-Time Activities~~

- ~~• Computer costs as necessary to perform the mandated activities~~

COMMENT: The SCO does not feel that additional computer costs are eligible for reimbursement.

B. Ongoing Activities

These activities can be claimed only to the extent that they are not claimable under any other mandated program. This would mean that activities claimed in the Permanent Absent Voter II program are not claimable under the existing Permanent Absent Voters program.

V. CLAIM PREPARATION AND SUBMISSION

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services during the period covered by the reimbursement claim. If the contract services are were also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and ~~attorney~~ invoices with the claim and a description of the contract scope of services.

4. Fixed Assets ~~and Equipment~~

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

Should you have questions regarding the above, please contact Tin Bui at (916) 323-8137 or e-mail to tbui@sco.ca.gov.

Sincerely,



JAY LAL, Manager
Local Reimbursement Section

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
 SACRAMENTO, CA 95814
 PHONE: (916) 323-3562
 FAX: (916) 445-0278
 E-mail: csminfo@csm.ca.gov



October 3, 2011

Ms. Juliana Gmur
 MAXIMUS
 2380 Houston Ave
 Clovis, CA 93611

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

Re: **Draft Staff Analysis, Proposed Parameters and Guidelines and Amendment, and Hearing Date**

Proposed Parameters and Guidelines

Permanent Absent Voter II (03-TC-11)

Elections Code Sections 3201 and 3203(b)(2)

Statutes 2001, Chapters 922; Statutes 2002, Chapter 664;
 and Statutes 2003, Chapter 347

And

Proposed Amendment to Parameters and Guidelines

Permanent Absent Voters (CSM 4358)

Former Elections Code Sections 1450 through 1456

Statutes 1982, Chapter 1422

County of Sacramento, Claimant

Dear Ms. Gmur:

The draft staff analysis and proposed parameters and guidelines and amendment to existing parameters and guidelines for these matters are enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by **October 24, 2011**.

You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents on the Commission's website. Please see the Commission's website at <http://www.csm.ca.gov/dropbox.shtml> for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01(c)(1) of the Commission's regulations.

Hearing

This matter is set for hearing on **Thursday, December 1, 2011**, at 9:30 a.m., in the State Capitol, Room 447, Sacramento, California. The final staff analysis will be issued on or about November 17, 2011. Please let us know in advance if you or a representative of your agency will

Ms. Juliana Gmur

October 3, 2011

Page Two

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(c)(2) of the Commission's regulations.

Please contact Camille Shelton at (916) 323-3562 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to be 'Drew Bohan', with a long horizontal flourish extending to the right.

Drew Bohan
Executive Director

ITEM __
DRAFT STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES

Permanent Absent Voters II (03-TC-11)

Elections Code Sections 3201 through 3206

Statutes 2001, Chapter 922

Statutes 2002, Chapter 664

Statutes 2003, Chapter 347

PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

Permanent Absent Voters (CSM 4358)

Former Elections Code Sections 1450 through 1456

Statutes 1982, Chapter 1422

County of Sacramento, Claimant

EXECUTIVE SUMMARY

Background

The test claim on *Permanent Absent Voters II* (03-TC-11) was filed to reflect changes in the election law pertaining to Permanent Absent Voters. In 1989, the Commission originally determined that Elections Code sections 1450 through 1456 imposed a reimbursable state-mandated program in *Permanent Absent Voters* (CSM-4358). Elections Code sections 1450 through 1456 provided that only voters with specified disabilities could apply for permanent absent voter status.

Statutes 1994, chapter 920 reorganized the entire Elections Code, including the repeal of Elections Code sections 1450 through 1456, and reenactment of those provisions as Elections Code sections 3200 through 3206. The other statutes claimed in *Permanent Absent Voters II*, further amended the Elections Code, including substantive changes in 2001 allowing *all* registered voters to apply for permanent absent voter status, rather than limiting eligibility to those voters with specific disabilities or conditions, as was the case under prior law.

In *Permanent Absent Voters II*, the Commission concluded that Elections Code sections 3201 and 3203(b)(2) mandate a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- County elections officials shall make an application for permanent absent voter status available to any voter. (Elec. Code, § 3201, as amended by Stats. 2001, ch. 922, Stats. 2002, ch. 664, and Stats. 2003, ch. 347.)

The above activity replaces the activity in *Permanent Absent Voters I* which was limited to those voters who provided evidence of certain physical disabilities.

- Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206. (Elec. Code, § 3203(b)(2), as amended by Stats. 2001, ch. 922.)

The Commission further concluded that Elections Code sections 3200, 3202, 3203(a) and (b)(1) and (b)(3), 3204, 3205(a) and 3206, as renumbered and reenacted by Statutes 1994, chapter 920 do not mandate *new* reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514, but remain a part of the Permanent Absent Voter program as it now exists.

Claimant's Proposal and Responses from State Agencies

The claimant has filed several proposed parameters and guidelines for the *Permanent Absent Voter II* program, and has requested that the parameters and guidelines be consolidated with *Permanent Absent Voter I* for future claiming. On July 11, 2011, the claimant filed revised proposed parameters and guidelines for *Permanent Absent Voter II*, requesting reimbursement for the following activities:

A. One-Time Activities

- Computer costs as necessary to perform the mandated activities

B. Ongoing Activities

- Maintenance of permanent absentee file which includes cancelling and reinstating voters
- Increased postage for:
 - Notice to Non-partisan permanent absent voters before a primary election advising as to their cross-over options and requesting they send back their choice of party's ballot.
 - Prior to purging, notice to permanent absentee voters who have not returned the permanent absentee ballot in the required time-frame needed to remain in the permanent absentee voter file.
- Cancellation of voters who do not vote.
- Reinstatement of cancelled voters upon request.
- Marking of permanent absentee voter affidavit for identification.

These activities can be claimed only to the extent that they are not claimable under any other mandated program.

This proposal is similar to what the Commission adopted in *Permanent Absent Voter I* (CSM 4358).

The State Controller's Office requests that computer costs be deleted from the reimbursable activities and that the Commission adopt the most recent boilerplate language for the parameters and guidelines.

The Department of Finance argues that notifying non-partisan absent voters about primary voting options should not be reimbursed under these parameters and guidelines, but should be considered for reimbursement through *Modified Primary Election* (01-TC-13). The Department further requests that the Commission delete “travel” from the list of direct costs since there is no travel required for this mandate.

Staff’s Proposed Parameters and Guidelines for *Permanent Absent Voter II* (03-TC-11)

Staff recommends that the Commission deny the claimant’s request for reimbursement for computer costs. The parameters and guidelines for *Permanent Absent Voter I* authorize reimbursement, on a one-time basis, for computer costs necessary to allow voters with specified disabilities or conditions to vote by absentee ballot. Although the program has been expanded by the test claim statutes in *Permanent Absent Voter II* to allow any voter to become a permanent absent voter, there is no evidence in the record to support a finding that additional computer costs are necessary to carry out the mandated program. Thus, staff recommends that the Commission deny this request.

Staff also recommends that the Commission deny the request to reimburse the activity of providing notice to non-partisan permanent absent voters before a primary election “advising as to their cross-over options and requesting they send back their choice of party’s ballot.” Elections Code section 3205(b) requires that before each primary election, county elections officials shall mail to every voter not affiliated with a political party whose name appears on the permanent absent voter list a notice and application regarding voting in the primary election. The notice shall inform the voter that he or she may request an absentee ballot for a particular political party for the primary election, if that political party adopted a party rule, duly noticed to the Secretary of State, authorizing these voters to vote in their primary. Section 3205 was addressed in *Permanent Absentee Voters II*, but the Commission determined that it was not properly pled in that test claim and did not reach any conclusions on that statute. Moreover, this activity is recommended for inclusion in the parameters and guidelines for the *Modified Primary Elections* mandate (01-TC-13).

Staff recommends that the Commission adopt parameters and guidelines that include all the activities approved by the Commission in the statement of decision, using language that conforms to the statutes. Thus, Section IV, Reimbursable Activities, would authorize reimbursement as follows:

- A. One-Time Activity – add information to all absentee ballot mailings explaining the absentee voting procedure in Elections Code sections 3200 et seq. and the requirements of Elections Code section 3206 when a voter fails to return an executed absent voter ballot for any statewide direct primary or general election.
- B. Ongoing Activities
 - 1. Make an application for permanent absent voter status available to any voter.
 - 2. Upon receipt of an application or request for permanent absent voter status:
 - a) Determine: (1) whether the applicant is a registered voter; and (2) whether the signature of the applicant and residence address on the application or request appears to be the same as that on the original affidavit of registration.

- b) Mark the permanent absent voter affidavit for identification.
3. For each application or request for permanent absent voter status received and verified for registration, place the voter's name on a list of those whom an absentee ballot is sent each time there is an election within the voter's precinct.
4. Maintain a copy of the list on file open to public inspection for election and governmental purposes.
5. Send a copy of the list of all voters who qualify as permanent absent voters to each city elections official or district elections official charged with the duty of conducting an election within the county on the sixth day before an election.
6. Process and count ballots received from voters on the permanent absent voter list in the same manner as all other absent voter ballots.
7. If the permanent absent voter fails to return an executed absent voter ballot for any statewide direct primary or general election, delete the voter's name from the list of permanent absent voters.

If costs to perform the activities identified above have been claimed under either the Absentee Ballots program (CSM 3713) or the Permanent Absent Voter I program (CSM 4358), the costs are not eligible for reimbursement under these parameters and guidelines.

Section V of the proposed parameters and guidelines governing "Direct Costs" incorporates the boilerplate language most recently adopted by the Commission and deletes reimbursement for training. The claimant has not requested reimbursement for training, and there is no evidence in the record that counties incurred costs for training as a result of this mandate.

Proposed Amendment to the Parameters and Guidelines in *Permanent Absent Voter I* (CSM 4358) to End Reimbursement

The test claim statutes for *Permanent Absent Voter II* allow *all* registered voters to apply for permanent absent voter status, and removed the limitations on eligibility that were imposed by the statutes in the *Permanent Absent Voter I* program to allow only those voters with specific disabilities or conditions to vote by absentee ballot. Since the limitations have been removed on who can apply for permanent absentee voter status, staff recommends that the parameters and guidelines for *Permanent Absent Voter I* (CSM 4358) be amended to end reimbursement under that program on June 30, 2010. Costs incurred through and including the 2009-2010 fiscal year for *Permanent Absent Voter I* (CSM 4358) have already been filed with the State Controller's Office pursuant to Government Code section 17560(a). Reimbursement claims for the 2010-2011 fiscal year are due on February 15, 2012. Thus, under this proposal, the costs for all permanent absent voters, beginning with the 2010-2011 fiscal year costs, can be claimed under *Permanent Absent Voter II*.

Conclusion and Staff Recommendation

Staff recommends that the Commission:

- Adopt the proposed parameters and guidelines for *Permanent Absent Voter II* (03-TC-11), for costs incurred beginning July 1, 2002 (page 18);
- Amend the parameters and guidelines for *Permanent Absent Voter I* (CSM 4358) to end reimbursement on June 30, 2010 (page 24); and
- Authorize staff to make any non-substantive, technical corrections to these parameters and guidelines following the hearing.

STAFF ANALYSIS

Claimant

County of Sacramento

Chronology

07/28/2006	Commission adopts statement of decision
08/07/2006	Statement of decision issued
08/23/2006	Claimant files proposed parameters and guidelines (03-TC-11) and proposed consolidation with <i>Permanent Absent Voter I</i> (CSM 4328)
10/12/2006	Department of Finance files comments
11/02/2006	Claimant files reply
03/16/2007	Claimant files revised proposed parameters and guidelines consolidating <i>Permanent Absent Voter II</i> (03-TC-11) with <i>Permanent Absent Voter I</i> (CSM 4328)
05/04/2007	Department of Finance files comments on proposed amended parameters and guidelines
02/13/2008	State Controller's Office files comments on proposed amended parameters and guidelines
03/27/2008	Prehearing conference held
08/14/2008	Claimant requests that the Commission amend the existing parameters and guidelines for <i>Permanent Absent Voter I</i> (CSM 4328) to be consistent with the statement of decision adopted for <i>Permanent Absent Voter II</i> (03-TC-11)
08/06/2009	Claimant requests that proposed parameters and guidelines be placed on inactive status while claimant pursues joint reasonable reimbursement methodology with Department of Finance.
01/__/2010	Claimant informs Commission staff that it is no longer negotiating an RRM with Department of Finance, and parameters and guidelines may proceed
07/11/2011	Claimant files revised proposed parameters and guidelines for <i>Permanent Absent Voter II</i> (03-TC-11) only
08/04/2011	State Controller's Office files comments on the revised proposed parameters and guidelines

I. Background and Summary of the Mandate

This test claim was filed to reflect changes in the election law pertaining to Permanent Absent Voters. In 1989, the Commission originally determined that Elections Code sections 1450 through 1456 imposed a reimbursable state-mandated program in *Permanent Absent Voters* (CSM-4358). Elections Code sections 1450 through 1456 provided that only voters with specified disabilities could apply for permanent absent voter status.

Statutes 1994, chapter 920 reorganized the entire Elections Code, including the repeal of Elections Code sections 1450 through 1456, and reenactment of those provisions as Elections Code sections 3200 through 3206. The other statutes claimed in *Permanent Absent Voters II*, further amended the Elections Code, including substantive changes in 2001 allowing *all* registered voters to apply for permanent absent voter status, rather than limiting eligibility to those voters with specific disabilities or conditions, as was the case under prior law.

The Commission concluded that Elections Code sections 3201 and 3203(b)(2) mandate a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- County elections officials shall make an application for permanent absent voter status available to any voter. (Elec. Code, § 3201, as amended by Stats. 2001, ch. 922, Stats. 2002, ch. 664, and Stats. 2003, ch. 347.)

The above activity replaces the activity in *Permanent Absent Voters I* which was limited to those voters who provided evidence of certain physical disabilities.

- Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206. (Elec. Code, § 3203(b)(2), as amended by Stats. 2001, ch. 922.)

The Commission further concluded that Elections Code sections 3200, 3202, 3203(a) and (b)(1) and (b)(3), 3204, 3205(a), and 3206, as renumbered and reenacted by Statutes 1994, chapter 920 do not mandate *new* reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514, but remain a part of the *Permanent Absent Voter* program, as it now exists.

In addition, the Commission concluded that Statutes 2003, chapter 347, as it amended Elections Code sections 3100, 3101 and 3103, does not mandate a new program or higher level of service.

II. Commission's Responsibility for Adopting Parameters and Guidelines

If the Commission approves a test claim, the Commission is required by Government Code section 17557 to adopt parameters and guidelines for the reimbursement of any claims. The successful test claimant is required to submit proposed parameters and guidelines to the Commission for review. The parameters and guidelines shall include the following information: a summary of the mandate; a description of the eligible claimants; a description of the period of reimbursement; a description of the specific costs and types of costs that are reimbursable, including activities that are not specified in the test claim statute or executive order, but are determined to be reasonably necessary for the performance of the state-mandated program; instructions on claim preparation, including instructions for the direct or indirect reporting of the

actual costs of the program or the application of an RRM; and any offsetting revenue or savings that may apply.¹

As of January 1, 2011, Commission hearings on the adoption of proposed parameters and guidelines are conducted under Article 7 of the Commission's regulations.² Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is based on substantial evidence in the record, and oral or written testimony is offered under oath or affirmation.³ Each party has the right to present witnesses, introduce exhibits, and submit declarations. However, the hearing is not conducted according to the technical rules of evidence. Any relevant non-repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence may be used to supplement or explain, but is not sufficient in itself to support a finding unless the hearsay evidence would be admissible in civil actions.⁴

Should the Commission adopt this analysis and proposed parameters and guidelines, a cover sheet would be attached indicating that the Commission adopted the analysis as its decision. The decision and adopted parameters and guidelines are then submitted to the State Controller's Office to issue claiming instructions to local governments, and to pay and audit reimbursement claims. Issuance of the claiming instructions constitutes the notice of the right of local governments to file reimbursement claims with the State Controller's Office based on the parameters and guidelines.

III. Party Positions

Proposed Parameters and Guidelines filed by the Claimant

The claimant has filed several proposed parameters and guidelines for the *Permanent Absent Voter II* program, and has requested that the parameters and guidelines be consolidated with *Permanent Absent Voter I* for future claiming. On July 11, 2011, the claimant filed revised proposed parameters and guidelines for *Permanent Absent Voter II*, requesting reimbursement for the following activities:

A. One-Time Activities

- Computer costs as necessary to perform the mandated activities

B. Ongoing Activities

- Maintenance of permanent absentee file which includes cancelling and reinstating voters
- Increased postage for:
 - Notice to Non-partisan permanent absent voters before a primary election advising as to their cross-over options and requesting they send back their choice of party's ballot.

¹ Government Code section 17557; California Code of Regulations, Title 2, section 1183.1.

² California Code of Regulations, Title 2, section 1187.

³ Government Code section 17559(b); California Code of Regulations, Title 2, section 1187.5.

⁴ California Code of Regulations, Title 2, section 1187.5.

- Prior to purging, notice to permanent absentee voters who have not returned the permanent absentee ballot in the required time-frame needed to remain in the permanent absentee voter file.
- Cancellation of voters who do not vote.
- Reinstatement of cancelled voters upon request.
- Marking of permanent absentee voter affidavit for identification.

These activities can be claimed only to the extent that they are not claimable under any other mandated program.

The requested activities are similar to those approved by the Commission in *Permanent Absent Voter I*, which authorizes reimbursement for the following activities:

Election Planning and Preparation Costs

Increased costs associated with preparation costs, to include, but not limited to:

Initial one-time costs:

- Computer costs
- Sample Ballots (change format)
- Creating initial absentee file

Ongoing costs:

- Cancellation of voters who do not vote; then reinstatement upon request
- Marking of permanent absentee voter affidavit for identification

Comments from the State Controller's Office

The State Controller's Office filed comments on the revised proposed parameters and guidelines for *Permanent Absent Voter II* as follows:

- The Period of Reimbursement section should be amended to add the boilerplate language typically included in parameters and guidelines.
- The one-time cost for computers should be deleted. The State Controller's Office "does not feel that additional computer costs are eligible for reimbursement."
- The following proposed language should be amended by adding the following underlined language: "These activities can be claimed only to the extent that they are not claimable under any other mandated program. This would mean that activities claimed in the Permanent Absent Voter II program are not claimable under the existing Permanent Absent Voters program."
- Revise Section V, Claim Preparation and Submission, for "Contracted Services" to reflect recently adopted boilerplate as follows:

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

for those services during the period covered by the reimbursement claim. If the contract services ~~are~~were also used for purposes other than the reimbursable activities, only the pro rata portion of the services used to implement the reimbursable activities can be claimed. Submit consultant contract and ~~attorney~~ invoices with the claim and a description of the contract scope of services.

- Section V, Claim Preparation and Submission, should be amended to delete eligibility for reimbursement of equipment costs.

Department of Finance

The Department of Finance has not filed comments on the revised proposed parameters and guidelines submitted in July 2011. However, the Department of Finance filed comments in May 2007 on an earlier proposed version submitted by the claimant, and some of those comments are applicable to the revised proposal as follows:

- Notifying non-partisan absent voters about primary voting options should not be reimbursed under these parameters and guidelines, but should be considered for reimbursement through *Modified Primary Election* (01-TC-13).
- Delete “travel” from the list of direct costs since there is no travel required for this mandate.

IV. Discussion

Staff reviewed the claimant’s revised proposed parameters and guidelines, and comments from the parties. As described below, staff recommends that the Commission adopt parameters and guidelines for *Permanent Absent Voters II* (03-TC-11) for reimbursement beginning July 1, 2002.

Staff further recommends that the parameters and guidelines for *Permanent Absent Voter I* (4358) be amended to end reimbursement under that program on June 30, 2010, so that the costs for all permanent absent voters, beginning with the 2010-2011 fiscal year costs, can be claimed under *Permanent Absent Voter II*.⁵ The test claim statutes for *Permanent Absent Voter II* allow *all* registered voters to apply for permanent absent voter status, and removed the limitations on eligibility that were imposed by the statutes in the *Permanent Absent Voter I* program to allow only those voters with specific disabilities or conditions to vote by absentee ballot.

A. Adoption of Parameters and Guidelines for Permanent Absent Voters II

1. Reimbursable Activities

The Commission approved this test claim for the following activities:

- County elections officials shall make an application for permanent absent voter status available to any voter. (Elec. Code, § 3201, as amended by Stats. 2001, ch. 922, Stats. 2002, ch. 664, and Stats. 2003, ch. 347.)

⁵ Costs incurred through and including the 2009-2010 fiscal year have already been filed with the State Controller’s Office pursuant to Government Code section 17560(a). Reimbursement claims for the 2010-2011 fiscal year are due on February 15, 2012.

- Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206. (Elec. Code, § 3203, subd. (b)(2), as amended by Stats. 2001, ch. 922.)

Although the claimant did not include these activities in its revised proposed parameters and guidelines, the Commission is required to identify all costs mandated by the state in the parameters and guidelines.⁶ The second activity to include in all absentee ballot mailings an explanation of the absentee voting procedure and an explanation of Elections Code section 3206 is proposed as a one-time activity to add boilerplate language to the mailings.

The Commission also found that Elections Code sections 3200, 3202, 3203(a) and (b)(1) and (b)(3), 3204, 3205(a) and 3206, as renumbered and reenacted by Statutes 1994, chapter 920 do not mandate *new* reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514, but remain a part of the *Permanent Absent Voter* program, as it now exists and continue to be eligible for reimbursement. Most of the activities required by these code sections have been requested by the claimant and are discussed further below.

However, Elections Code section 3205(a), which requires that “[a]bsent voter ballots mailed to, and received from, voters on the permanent absent voter list are subject to the same deadlines and shall be processed and counted in the same manner as all other absent voter ballots,” was not identified by the claimant in its proposed parameters and guidelines as a reimbursable activity. Staff recommends that the activity be identified in these parameters and guidelines as determined in the statement of decision as follow:

- Process and count ballots received from voters on the permanent absent voter list in the same manner as all other absent voter ballots.

Reimbursement for this activity, however, needs clarification. Counties are currently eligible for reimbursement for counting and processing absentee voter ballots under the *Absentee Ballots* program (CSM 3713), a legislatively determined mandate based on Elections Code sections 3000 et seq. Under the *Absentee Ballots* program, any voter can request to vote absentee for any particular election, but not on a permanent basis, as long as a request or application is received by the county within a specified number of days before the election. The parameters and guidelines, originally adopted by the Board of Control and later amended by the Commission, authorize reimbursement based on several formulas for the costs associated with increased filings of absentee ballots. Such costs would include processing and counting the absentee ballots for the election. The *Absentee Ballots* program, however, does not expressly authorize reimbursement for ballots received from *permanent* absent voters under Elections Code sections 3200 et seq. Thus, to the extent counties have been claiming reimbursement to process and count ballots from permanent absentee voters under the *Absentee Ballots* program (CSM 3713), they would not be eligible to claim those same costs under the *Permanent Absent Voter II* program.

Similarly, to the extent counties have been claiming reimbursement for the costs of the *Permanent Absent Voter II* program under the parameters and guidelines for *Permanent Absent*

⁶ Government Code sections 17514 and 17557.

Voter I (CSM 4358), they would not be eligible to claim those same costs under *Permanent Absent Voter II*.

The following clarifying language is proposed for inclusion in the parameters and guidelines for *Permanent Absent Voter II*:

If costs to perform the activities identified above have been claimed under either the *Absentee Ballots* program (CSM 3713) or the *Permanent Absent Voter I* program (CSM 4358), the costs are not eligible for reimbursement under these parameters and guidelines.

The remaining activities requested by the claimant are analyzed below.

One-time computer costs necessary to perform the mandated activities

The claimant requests reimbursement for “computer costs as necessary to perform the mandated activities.” The State Controller’s Office contends that additional computer costs are not eligible for reimbursement.

The Commission may authorize reimbursement for activities that are “the most reasonable methods of complying with the mandate” pursuant to section 1183.1(a)(4) of the Commission’s regulations. Section 1183.1(a)(4) states the following:

Reimbursable Activities. A description of the specific costs and types of costs that are reimbursable, including one-time costs and on-going costs, and a description of the most reasonable methods of complying with the mandate. “The most reasonable methods of complying with the mandate” are those methods not specified in statute or executive order that are necessary to carry out the mandated program.

Approval of the most reasonable methods of complying with the mandate requires substantial evidence in the record, provided through oral or written testimony offered under oath or affirmation, to support the finding that the requested activity is necessary to carry out the mandated program.⁷

The parameters and guidelines for *Permanent Absent Voter I* authorize reimbursement, on a one-time basis, for computer costs necessary to allow voters with specified disabilities or conditions to vote by absentee ballot. Although the program has been expanded by the test claim statutes in *Permanent Absent Voter II* to allow any voter to become a permanent absent voter, there is no evidence in the record to support a finding that additional computer costs are necessary to carry out the mandated program. Thus, staff recommends that the Commission deny this request.

Marking the permanent absentee voter affidavit for identification

The claimant requests reimbursement for “marking of permanent absentee voter affidavit for identification.” This activity was included in the parameters and guidelines for *Permanent Absent Voter I*, and the claimant requests that reimbursement continue for the expanded program.

⁷ Government Code section 17559(b); California Code of Regulations, Title 2, section 1187.5.

Elections Code section 3203 requires counties to process the application or request⁸ for permanent absent voter status in the same manner as an application for regular absent voter's ballot (commencing with Elections Code section 3000). Under this process, the application for permanent absent voter status shall contain the applicant's name, residence address, the address where ballots are to be mailed, and the signature of the applicant.⁹ Upon receipt, the county is required to determine whether the applicant is a registered voter and determines if the signature and residence address on the application for permanent absent voter status appears to be the same as that on the original affidavit of registration.¹⁰ Once it is determined that the applicant is a registered voter, the voter's name goes on a list of those to whom an absentee ballot is sent each time there is an election in their precinct.¹¹

Although the Commission determined that this portion of Elections Code section 3203 did not mandate a new program or higher level of service, the Commission found that the process still remained a part of the Permanent Absent Voter program as it now exists and continues to be eligible for reimbursement.

Thus, staff recommends that the Commission approve the activity for ongoing reimbursement, but also adopt language that conforms to the statutes as follows:

- Upon receipt of an application or request for permanent absent voter status:
 - a. Determine: (1) whether the applicant is a registered voter ;and (2) whether the signature of the applicant and residence address on the application or request appears to be the same as that on the original affidavit of registration.
 - b. Mark the permanent absent voter affidavit for identification.

Maintenance of permanent absentee file which includes cancelling and reinstating voters

The claimant requests reimbursement for:

- Maintenance of permanent absentee file which includes cancelling and reinstating voters;
- Cancellation of voters who do not vote;
- Reinstatement of cancelled voters upon request; and
- Prior to purging, providing notice to permanent absentee voters who have not returned the permanent absentee ballot in the required time-frame needed to remain in the permanent absentee voter file.

⁸ Elections Code section 3202 allows any voter, in lieu of executing an application, to execute a request for permanent absent voter status by making a written request to the county elections official requesting the status. If a written request is received and it contains the information set forth in section 3201 (the applicant's name, residence address, the address where ballots are to be mailed, and a signature of the voter), then the county processes the request in the same manner as an application.

⁹ Elections Code sections 3001 and 3201(a).

¹⁰ Elections Code sections 3009 and 3201(b).

¹¹ Elections Code section 3203(b)(1).

Once it is determined that an applicant for permanent absent voter status is a registered voter, the county is required by Elections Code section 3203 to place the voter's name on a list of those to whom an absentee ballot is sent each time there is an election within their precinct, and maintain a copy of the list on file open to the public inspection for election and governmental purposes. Elections Code section 3204 requires the county elections official, on the sixth day before an election, to send a copy of the list of all voters who qualify as permanent absent voters to each city elections official or district elections official charged with the duty of conducting an election within the county. Elections Code section 3206 then provides that a voter whose name appears on the permanent absent voter list shall remain on the list and be mailed an absentee ballot for each election conducted within his or her precinct. If the voter fails to return an executed absent voter ballot for any statewide direct primary or general election, however, the voter's name shall be deleted from the list.

Although the Commission determined that Elections Code sections 3203, 3204, and 3206 did not mandate a new program or higher level of service, the Commission found that the process still remained a part of the Permanent Absent Voter program as it now exists and continues to be eligible for reimbursement.

Thus, staff recommends that the Commission approve these activities required by Elections Code sections 3203, 3204, and 3206 for reimbursement, but adopt language that conforms to the statutes as follows:

- For each application or request for permanent absent voter status received and verified for registration, place the voter's name on a list of those whom an absentee ballot is sent each time there is an election within the voter's precinct.
- Maintain a copy of the list on file open to the public inspection for election and governmental purposes.
- Send a copy of the list of all voters who qualify as permanent absent voters to each city elections official or district elections official charged with the duty of conducting an election within the county on the sixth day before an election.
- If the permanent absent voter fails to return an executed absent voter ballot for any statewide direct primary or general election, delete the voter's name from the list of permanent absent voters.

Staff further recommends that the Commission deny the claimant's request for reimbursement to provide individual notice to voters who fail to return an absent voter ballot prior to deleting their names from the list of permanent absent voters. The Elections Code does not require this activity. The only notice requirement in statute is to include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206, and that activity is included in the proposed parameters and guidelines.¹² Thus, the claimant's request for reimbursement of providing individual notice goes beyond the scope of the mandate.

¹² Elections Code section 3203(b)(2).

Providing notice to non-partisan permanent absent voters before a primary election advising as to their cross-over options (under the *Modified Primary* program) and requesting they send back their choice of party's ballot.

The claimant requests reimbursement for the increased postage for providing notice to non-partisan permanent absent voters before a primary election “advising as to their cross-over options and requesting they send back their choice of party's ballot.”

Staff recommends that the claimant's request be denied. Elections Code section 3205(b) requires that before each primary election, county elections officials shall mail to every voter not affiliated with a political party whose name appears on the permanent absent voter list a notice and application regarding voting in the primary election. The notice shall inform the voter that he or she may request an absentee ballot for a particular political party for the primary election, if that political party adopted a party rule, duly noticed to the Secretary of State, authorizing these voters to vote in their primary. Section 3205 was addressed in *Permanent Absentee Voters II*, but the Commission determined that it was not properly pled in that test claim and did not reach any conclusions on that statute.¹³

Moreover, this activity is recommended for inclusion in the parameters and guidelines for the *Modified Primary Elections* mandate (01-TC-13) as follows:

4. Add the following information regarding the *Modified Primary* program to the notice and application to vote by mail:
 - a. Language informing the voter that if he or she is not affiliated with a political party, the voter may request an absentee ballot for a particular political party for the primary election, if that political party has adopted a party rule, duly noticed to the Secretary of State, authorizing that vote.
 - b. A toll-free telephone number, established by the Secretary of State, which the voter may call to access information to identify which political parties have adopted such a rule authorizing decline to state voters to vote their party ballot. The application shall also contain a check-off box with a statement that says “I am not presently affiliated with any political party. However, for this primary election only, I request a vote by mail ballot for the ___ Party.” (Elec. Code, § 3006.)

Accordingly, staff recommends that the Commission deny the request to include the activity of providing notice to nonpartisan permanent absentee voters the rules under the *Modified Primary* program.

Summary of proposed reimbursable activities

Based on the above analysis, staff recommends that Section IV of the parameters and guidelines state the following:

- A. One-Time Activity – add information to all absentee ballot mailings explaining the absentee voting procedure in Elections Code sections 3200 et seq. and the requirements of Elections Code section 3206 when a voter fails to return an executed absent voter ballot for any statewide direct primary or general election.

¹³ Statement of decision, pages 10-11.

B. Ongoing Activities

1. Make an application for permanent absent voter status available to any voter.
2. Upon receipt of an application or request for permanent absent voter status:
 - a. Determine (1) whether the applicant is a registered voter and, (2) whether the signature of the applicant and residence address on the application or request appears to be the same as that on the original affidavit of registration.
 - b. Mark the permanent absent voter affidavit for identification.
3. For each application or request for permanent absent voter status received and verified for registration, place the voter's name on a list of those whom an absentee ballot is sent each time there is an election within the voter's precinct.
4. Maintain a copy of the list on file open to public inspection for election and governmental purposes.
5. Send a copy of the list of all voters who qualify as permanent absent voters to each city elections official or district elections official charged with the duty of conducting an election within the county on the sixth day before an election.
6. Process and count ballots received from voters on the permanent absent voter list in the same manner as all other absent voter ballots.
7. If the permanent absent voter fails to return an executed absent voter ballot for any statewide direct primary or general election, delete the voter's name from the list of permanent absent voters.

If costs to perform the activities identified above have been claimed under either the Absentee Ballots program (CSM 3713) or the Permanent Absent Voter I program (CSM 4358), the costs are not eligible for reimbursement under these parameters and guidelines.

2. Boilerplate language and Section V, Direct Costs

The State Controller's Office requests that the proposed parameters and guidelines be revised to reflect current boilerplate language in the "Period of Reimbursement" and "Direct Costs, Contract Services" sections. Staff agrees and has incorporated current boilerplate language in these sections.

In addition, the State Controller's Office and the Department of Finance request that the "Direct Costs" section be revised to delete reimbursement for equipment and travel. There is no evidence in the record that counties have incurred increased costs for equipment or travel as a result of the *Permanent Absent Voter II* program, and thus these costs have been deleted from the proposed parameters and guidelines.

Finally, staff has deleted training from Section V, Direct Costs. The claimant has not requested reimbursement for training, and there is no evidence in the record that counties incurred costs for training as a result of this mandate.

Thus, Section V of the proposed parameters and guidelines states the following:

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services during the period covered by the reimbursement claim. If the contract services were also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and invoices with the claim and a description of the contract scope of services.

4. Fixed Assets

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

B. Amend the Parameters and Guidelines in Permanent Absent Voter I (CSM 4358) to End Reimbursement

The test claim statutes for *Permanent Absent Voter II* allowed *all* registered voters to apply for permanent absent voter status, and removed the limitations on eligibility that were imposed by the statutes in the *Permanent Absent Voter I* program to allow only those voters with specific disabilities or conditions to vote by absentee ballot. Since the limitations have been removed on who can apply for permanent absentee voter status, staff recommends that the parameters and guidelines for *Permanent Absent Voter I* (CSM 4358) be amended to end reimbursement under that program on June 30, 2010. Costs incurred through and including the 2009-2010 fiscal year for *Permanent Absent Voter I* (CSM 4358) have already been filed with the State Controller's

Office pursuant to Government Code section 17560(a). Reimbursement claims for the 2010-2011 fiscal year are due on February 15, 2012. Thus, under this proposal, the costs for all permanent absent voters, beginning with the 2010-2011 fiscal year costs, can be claimed under *Permanent Absent Voter II*.

V. Conclusion and Staff Recommendation

Staff recommends that the Commission:

- Adopt the proposed parameters and guidelines for *Permanent Absent Voter II* (03-TC-11), for costs incurred beginning July 1, 2002 (page 18);
- Amend the parameters and guidelines for *Permanent Absent Voter I* (CSM 4358) to end reimbursement on June 30, 2010 (page 24); and
- Authorize staff to make any non-substantive, technical corrections to these parameters and guidelines following the hearing.

STAFF'S PROPOSED PARAMETERS AND GUIDELINES

Elections Code Sections 3201 through 3206

Statutes 2001, Chapter 922

Statutes 2002, Chapter 664

Statutes 2003, Chapter 347

Permanent Absent Voters II (03-TC-11)

I. SUMMARY OF THE MANDATE

The test claim on *Permanent Absent Voters II* (03-TC-11) was filed to reflect changes in the election law pertaining to Permanent Absent Voters. In 1989, the Commission originally determined that Elections Code sections 1450 through 1456 imposed a reimbursable state-mandated program in *Permanent Absent Voters* (CSM-4358). Elections Code sections 1450 through 1456 provided that only voters with specified disabilities could apply for permanent absent voter status.

Statutes 1994, chapter 920 reorganized the entire Elections Code, including the repeal of Elections Code sections 1450 through 1456, and reenactment of those provisions as Elections Code sections 3200 through 3206. The other statutes claimed in *Permanent Absent Voters II*, further amended the Elections Code, including substantive changes in 2001 allowing *all* registered voters to apply for permanent absent voter status, rather than limiting eligibility to those voters with specific disabilities or conditions, as was the case under prior law.

In *Permanent Absent Voters II*, the Commission concluded that Elections Code sections 3201 and 3203, subdivision (b)(2) mandate a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- County elections officials shall make an application for permanent absent voter status available to any voter. (Elec. Code, § 3201, as amended by Stats. 2001, ch. 922, Stats. 2002, ch. 664, and Stats. 2003, ch. 347.)

The above activity replaces the activity in *Permanent Absent Voters I* which was limited to those voters who provided evidence of certain physical disabilities.

- Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206. (Elec. Code, § 3203(b)(2), as amended by Stats. 2001, ch. 922.)

The Commission further concluded that Elections Code sections 3200, 3202, 3203(a) and (b)(1) and (b)(3), 3204, 3205(a) and 3206, as renumbered and reenacted by Statutes 1994, chapter 920 do not mandate *new* reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514, but remain a part of the Permanent Absent Voter program as it now exists.

II. ELIGIBLE CLAIMANTS

Any county, or city and county, that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The County of Sacramento filed the test claim on September 26, 2003, establishing eligibility for reimbursement beginning July 1, 2002.

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

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

IV. REIMBURSABLE ACTIVITIES

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

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

The claimant is only allowed to claim and be reimbursed for the increased costs of the reimbursable activities identified below.

- A. One-Time Activity – add information to all absentee ballot mailings explaining the absentee voting procedure in Elections Code sections 3200 et seq. and the requirements of Elections Code section 3206 when a voter fails to return an executed absent voter ballot for any statewide direct primary or general election.
- B. Ongoing Activities
 1. Make an application for permanent absent voter status available to any voter.
 2. Upon receipt of an application or request for permanent absent voter status:
 - a. Determine (1) whether the applicant is a registered voter and, (2) whether the signature of the applicant and residence address on the application or request appears to be the same as that on the original affidavit of registration.
 - b. Mark the permanent absent voter affidavit for identification.
 3. For each application or request for permanent absent voter status received and verified for registration, place the voter’s name on a list of those whom an absentee ballot is sent each time there is an election within the voter’s precinct.
 4. Maintain a copy of the list on file open to public inspection for election and governmental purposes.
 5. Send a copy of the list of all voters who qualify as permanent absent voters to each city elections official or district elections official charged with the duty of conducting an election within the county on the sixth day before an election.
 6. Process and count ballots received from voters on the permanent absent voter list in the same manner as all other absent voter ballots.
 7. If the permanent absent voter fails to return an executed absent voter ballot for any statewide direct primary or general election, delete the voter’s name from the list of permanent absent voters.

If costs to perform the activities identified above have been claimed under either the Absentee Ballots program (CSM 3713) or the Permanent Absent Voter I program (CSM 4358), the costs are not eligible for reimbursement under these parameters and guidelines.

V. CLAIM PREPARATION AND SUBMISSION

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services during the period covered by the reimbursement claim. If the contract services were also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and invoices with the claim and a description of the contract scope of services.

4. Fixed Assets

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

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include: (1) the overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10% of labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distributions base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. the allocation of allowable indirect costs (as defined and described in 2 CRF Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected; or
2. the allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹⁴ is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenues the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.

¹⁴ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

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

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

IX. REMEDIES BEFORE THE COMMISSION

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

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d)(1), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

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

Adopted: 3/27/90

WPO549s

Proposed Amendment: December 1, 2011

PARAMETERS AND GUIDELINES

Election Code Sections 1450 through 1456

Chapter 1422, Statutes of 1982

Permanent Absent Voters

Reimbursement for this program ends June 30, 2010

I. SUMMARY OF MANDATES

Chapter 1422, Statutes of 1982, added Chapter 7, commencing with Section 1450 to the Elections Code, to establish a permanent absent voter program. Prior to the enactment of Chapter 1422, an absent voter ballot was not mailed to a voter unless a written request for an absent voter ballot was received before each election. With the enactment of Chapter 1422, counties were required to establish and maintain a list of permanent absent voters and delete from the list if that person fails to return an executed absent voter ballot for any statewide primary or general election.

II. COMMISSION ON STATE MANDATES DECISION

On September 21, 1989 the Commission determined that Chapter 1422, Statutes of 1982, in adding Sections 1450 through 1456 to the Elections Code resulted in reimbursable costs mandated by the state.

III. ELIGIBLE CLAIMANTS

All counties that incurred increased costs as the result of the mandate.

IV. PERIOD OF CLAIM

Chapter 1422, Statutes of 1982 became effective January 1, 1983. The test claim was filed with the Commission on May 11, 1989. Section 17557 of the Government Code (GC) states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that fiscal year. Therefore, all costs incurred on or after July 1, 1988 are reimbursable. Reimbursement for this program ends on June 30, 2010.

~~One fiscal year shall be included in each claim. Pursuant to section 17561(d)(3) of the Government Code, all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of enactment of the claims bill. If the total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.~~

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

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. In the event revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

V. REIMBURSABLE COSTS

A. Scope of Mandate

Elections Code sections 1450 through 1456, as added by Chapter 1422/82, require county clerks to implement a new program by performing the following:

- (1) Establish and maintain a list of permanent absent voters who provide evidence of physical disability.
- (2) Mail absent voter ballots to such voters for each election in which they are eligible to vote.
- (3) Delete from the permanent absent voter list any person who fails to return an executed absent voter ballot for any statewide direct primary or general election.

B. Reimbursable Activities

Counties shall be reimbursed for the increased costs associated with complying with Elections Code sections 1450 through 1456 in the following cost categories:

Election Planning and Preparation Costs

Increased costs associated with preparation costs, to include, but not limited to:

Initial one-time costs:

- Computer costs
- Sample Ballot (change format)
- Creating initial absentee file

Ongoing costs:

- Maintenance of permanent absentee file
- Increased postage
- Cancellation of voters who do not vote; then reinstatement upon request
- Marking of permanent absentee voter affidavit for identification

C. Justification of Purchases

If an entity claims for increased costs resulting from the purchase or modification of voting equipment or additional secrecy envelopes, an explanation of how these costs are a direct

result of the mandate must be provided with the claim. The increase for these costs during the fiscal year being claimed must be shown separately. Also, documents which indicate the cost and purchase dates of the above items, must be submitted with ,the claim.

VI. CLAIM PREPARATION

A. Description of Activity

B. Supporting Documentation

Claimed costs should be supported by the following information

1. Employee Salaries and Benefits

Identify the employee(s), show the classification of the employee(s) involved, describe the mandated functions performed and specify the actual number of hours devoted to each function, the productive hourly rate, and the related benefits. The average number of hours devoted to each function may be claimed if supported by a documented time study.

2 . Services and Supplies

Only expenditures which can be identified as a direct cost as a result of the mandate can be claimed. List cost of materials acquired which have been consumed or expended specifically for the purposes of this mandate.

3 Allowable Overhead Costs

Indirect costs may be claimed in the manner prescribed by the State Controller in his claiming instruction.

VII. SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence of and the validity of such costs. These documents must be kept on file by the agency submitting the claim for a period of no less than three years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller or his agent.

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimants experience as a direct result of this statute must be deducted from the costs claims. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

Commission on State Mandates

Original List Date: 10/1/2003
Last Updated: 9/21/2011
List Print Date: 10/03/2011
Claim Number: 03-TC-11
Issue: Permanent Absent Voters II

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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Ms. Julie Valverde County of Sacramento 700 H Street, Room 3650 Sacramento, CA 95814	Tel: (916)874-7248 Email valverdej@sacounty.net Fax: (916)874-5263
Mr. Lowell Finley Secretary of State's Office (D-15) 1500 11th Street Sacramento, CA 95814	Tel: (916)653-7244 Email janice.lumsden@sos.ca.gov Fax: (916)653-4795
Mr. Jeff Carosone Department of Finance (A-15) 915 L Street, 8th Floor Sacramento, CA 95814	Tel: (916)445-8913 Email jeff.carosone@dof.ca.gov Fax:
Ms. Susan Geanacou Department of Finance (A-15) 915 L Street, Suite 1280	Tel: (916)445-3274 Email susan.geanacou@dof.ca.gov Fax: (916)449-5252

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**COMMENTS ON DRAFT STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES**

Permanent Absent Voters II (03-TC-11)

Elections Code Sections 3201 through 3206
Statutes 2001, Chapter 922
Statutes 2002, Chapter 664
Statutes 2003, Chapter 347

PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

Permanent Absent Voters (CSM 4358)

Former Elections Code Sections 1450 through 1456
Statutes 1982, Chapter 1422

County of Sacramento, Claimant

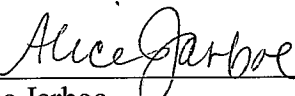
Test claimant County of Sacramento (hereinafter "County") submits its concurrence with the Draft Staff Analysis issued by Commission staff on October 3, 2011.

Based on the preceding, County urges the Commission to find in accordance with Staff's analysis and adopt Staff's proposed Parameters and Guidelines for the Permanent Absent Voter I and II programs.

CERTIFICATION

I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and correct, except as to those matters stated upon information and belief and as to those matters, I believe them to be true.

Executed this 18th day of October, 2011, at Sacramento, California, by:



Alice Jarboe
County of Sacramento



JOHN CHIANG
California State Controller
Division of Accounting and Reporting

October 21, 2011

Drew Bohan, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Comment on Proposed Parameters and Guidelines
Permanent Absent Voters II (03-TC-11); Election Code Sections 3201 and 3203(b)(2);
Statutes 2001, Chapter 922; Statutes 2002, Chapter 664; and Statutes 2003, Chapter 347
and Proposed Amendment to Parameters and Guidelines
Permanent Absent Voters (CSM 4358); Former Elections Code Sections 1450 through
1456; Statutes 1982, Chapter 1422
County of Sacramento, Claimant

Dear Mr. Bohan:

The State Controller's Office (SCO) has reviewed the Commission's draft staff analysis on the proposed parameters and guidelines (P's and G's) for Permanent Absent Voters II and the proposed amendment to the P's and G's for Permanent Absent Voters (CSM 4358). We agree with the Commission's recommendations.

Should you have questions regarding the above, please contact Tin Bui at (916) 323-8137 or e-mail to tbui@sco.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "JAL", written over a horizontal line.

JAY LAL, Manager
Local Reimbursement Section



DEPARTMENT OF
FINANCE

EDMUND G. BROWN JR. ■ GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

October 24, 2011

Mr. Drew Bohan
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Mr. Bohan:

RE: Proposed Parameters and Guidelines for Permanent Absent Voter II (03-TC-11) and Proposed Amendment to Parameters and Guidelines for the Permanent Absent Voters (CSM 4358) Mandates.

The Department of Finance (Finance) has reviewed the Commission on State Mandate's (Commission) draft staff analysis for the above-referenced Parameters and Guidelines (Ps & Gs).

Finance has a concern about the inclusion of ongoing activity six in the proposed Ps & Gs for the Permanent Absent Voter II mandate, "Process and count ballots received from voters on the permanent absent voter list in the same manner as all other absent voter ballots." It is not clear that this activity is reasonably necessary for the performance of the state-mandated program, which is limited to making an application for permanent absent voter status available to any voter. In addition, it would be inappropriate to include this activity because permanent absent voters are a subset of the absent voter population, which already allows them to file reimbursement claims under the Absentee Ballots program.

Nonetheless, Finance recommends the following be added to the clarifying language of the Permanent Absent Voter II Ps & Gs: "If costs to perform the activities identified above have been claimed under the Absentee Ballots program (CSM 3713), Permanent Absent Voter I program (CSM 4358), or any other program, the costs are not eligible for reimbursement under these parameters and guidelines."

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents that are e-filed with the Commission need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any questions regarding this letter, please contact Jeff Carosone, Principal Program Budget Analyst at (916) 445-8913.

Sincerely,

A handwritten signature in cursive script that reads "Nonna Martinez".

NONA MARTINEZ
Assistant Program Budget Manager

Enclosure

Enclosure A

DECLARATION OF
DEPARTMENT OF FINANCE
CLAIM NO. CSM 4358 and 03-TC-11

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

10-24-11
at Sacramento, CA

Jeff Carosone
Jeff Carosone