

**ITEM 10**  
**FINAL STAFF ANALYSIS**  
**PROPOSED PARAMETERS AND GUIDELINES**

Elections Code 13303  
Statutes 2000, Chapter 899  
*Fifteen Day Close of Voter Registration*  
01-TC-15  
County of Orange, Claimant

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**EXECUTIVE SUMMARY**

Claimant, County of Orange, filed this test claim on changes to the deadline for voter registration prior to an election. Prior law allowed voters to newly register to vote, reregister, or change their address with county elections officials, until the 29th day before an election. After that date, voter registration closed until the conclusion of the upcoming election. Statutes 2000, chapter 899 allow new registrations or changes to voter registrations through the 15th day prior to an election.

The Commission adopted a Statement of Decision on October 4, 2006,<sup>1</sup> concluding that Statutes 2000, chapter 899, as it amended Elections Code section 13303, subdivision (c), 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 imposes costs mandated by the state pursuant to Government Code section 17514, for the following one-time activity:

- Amend the polling place notice sent to each voter who registered after the 29th day prior to the election, to include the following: information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed. (Elec. Code, § 13303, subd. (c).)

The Commission denied the other amendments by Statutes 2000, chapter 899, concluding that they were not subject to article XIII B, section 6 of the California Constitution, or did not mandate a new program or higher level of service.

**Discussion**

The claimant submitted proposed parameters and guidelines on November 28, 2006, and amended proposed parameters and guidelines on January 18, 2007.<sup>2</sup> No comments were filed on

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<sup>1</sup> Exhibit A.

<sup>2</sup> Exhibit B.

either version of the claimant's proposed parameters and guidelines. On July 1, 2008, Commission staff issued the draft staff analysis and proposed parameters and guidelines, as modified by staff. Staff proposed modifications to the proposed parameters and guidelines as described below.

1. Revise the period of reimbursement to correctly reflect that reimbursement begins on January 1, 2001.
2. Delete the following activities because the Commission found that they were not mandated by the state under this test claim statute:
  - Redesign and republish the sample ballot and absentee voter application.
  - Notify every voter who registered from 28 days prior to the election through 15 days prior to the election via post card, the location of their polling place and where they can obtain a sample ballot.
  - Provide all sample ballots for each ballot type and the poll site locations.
  - Hire additional staff to process registration forms and absentee ballot requests due to the fact that the time period for close of registration was reduced by fourteen days and increased overtime to process all registration forms between the original cut off of 28 days prior to the election to 15 days prior to the election.
  - Provide an increased amount of official and sample ballots.
3. Add the one activity of amending the polling place notice sent to each voter who registered after the 29<sup>th</sup> day prior to the election to include specific information as it was approved in the Statement of Decision.
4. Retain the following activities because staff finds that pursuant to section 1183.1 of the Commission regulations, they are necessary to carry out the mandate, and modify them to limit reimbursement to the scope of the mandated program:
  - Redesign new election software used to amend the polling place notice sent to each voter who registered between the 29<sup>th</sup> and 15<sup>th</sup> day prior to the election pursuant to Elections Code section 13303, subdivision (c), as amended by Statutes 2000, chapter 899.
  - Modify the Registrar of Voters website to reflect the amendment to Elections Code section 13303, subdivision (c), by Statutes 2000, chapter 899 that allows voters to register through the 15<sup>th</sup> day prior to an election.

#### Comments on the Draft Staff Analysis

On July 15, 2008, the Department of Finance submitted comments on the draft staff analysis, recommending that the activity of modifying the Registrar of Voters website to reflect the test claim statute be deleted because it was not approved in the Statement of Decision.<sup>3</sup> Staff did not make this change. While the Statement of Decision does not include modifying the website as a reimbursable activity, it mandates reimbursement for amending the polling place notice to include the address of "the county website where a sample ballot may be viewed." Therefore, staff finds that, pursuant to section 1183.1 of the Commission's regulations, authorizing reimbursement for counties to modify their websites to conform to the mandate is necessary to carry out the mandated program.

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<sup>3</sup> Exhibit D.

### **Staff Recommendation**

Staff recommends that the Commission adopt the proposed parameters and guidelines, as modified by staff, beginning on page 7. Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

## **Claimant**

County of Orange

## **Chronology**

05/17/02 Claimant files test claim

10/04/06 Commission on State Mandates (Commission) adopted Statement of Decision

11/28/06 Claimant submits Draft Parameters and Guidelines

01/18/07 Claimant submits Amended Proposed Parameters and Guidelines

07/01/08 Staff issues draft staff analysis and proposed parameters and guidelines, as modified by staff

07/15/08 Department of Finance submits comments on draft staff analysis and modified proposed parameters and guidelines

07/16/08 Commission staff issues final staff analysis and modified proposed parameters and guidelines

## **Summary of Findings**

Claimant, County of Orange, filed this test claim on changes to the deadline for voter registration prior to an election. Prior law allowed voters to newly register to vote, reregister, or change their address with county elections officials, until the 29th day before an election. After that date, voter registration closed until the conclusion of the upcoming election. Statutes 2000, chapter 899 allow new registrations or changes to voter registrations through the 15th day prior to an election.

The Commission adopted a Statement of Decision on October 4, 2006,<sup>4</sup> concluding that Statutes 2000, chapter 899, as it amended Elections Code section 13303, subdivision (c), 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 imposes costs mandated by the state pursuant to Government Code section 17514, for the following one-time activity:

- Amend the polling place notice sent to each voter who registered after the 29th day prior to the election, to include the following: information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed. (Elec. Code, § 13303, subd. (c).)

The Commission denied the other amendments by Statutes 2000, chapter 899, concluding that they were not subject to article XIII B, section 6 of the California Constitution, or did not mandate a new program or higher level of service.

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<sup>4</sup> Exhibit A.

## Discussion

The claimant submitted proposed parameters and guidelines on November 28, 2006, and amended proposed parameters and guidelines on January 18, 2007.<sup>5</sup> No comments were filed on either version of the claimant's proposed parameters and guidelines. On July 1, 2008, Commission staff issued the draft staff analysis and proposed parameters and guidelines, as modified by staff. Staff proposed modifications to the proposed parameters and guidelines as described below.

Staff made non-substantive, technical changes for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision and statutory language. Staff also made the following substantive changes:

### *II. Eligible Claimants*

Claimant proposed that reimbursement begin on the effective date of the test claim statute – September 29, 2000. However, the test claim statute does not contain an urgency clause, so it does not become effective until January 1, 2001. Therefore, staff revised this section to clarify that reimbursement begins on January 1, 2001.

### *IV. Reimbursable Activities*

#### Denied Activities

The claimant proposed the following one-time activities in the parameters and guidelines:

- Redesign and republish the sample ballot and absentee voter application.
- Notify every voter who registered from 28 days prior to the election through 15 days prior to the election via post card, the location of their polling place and where they can obtain a sample ballot.
- Provide all sample ballots for each ballot type and the poll site locations.
- Hire additional staff to process registration forms and absentee ballot requests due to the fact that the time period for close of registration was reduced by fourteen days and increased overtime to process all registration forms between the original cut off of 28 days prior to the election to 15 days prior to the election.
- Provide an increased amount of official and sample ballots.

Staff deleted the above activities regarding sample ballots, polling place notices, absentee ballots and processing registration forms because the Commission found that they were not mandated by the state under this test claim statute. The Statement of Decision states that these activities have long been performed by county elections officials.<sup>6</sup> The Commission did not dispute claimant's allegations that the test claim statute imposed a burden on the way business is conducted during the weeks before an election and there are likely associated costs, but the test claim statute itself did not require the post-voter registration and pre-election activities alleged by claimant. Thus, staff finds that these activities go beyond the scope of the one-time reimbursable activity to amend the existing notice.

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<sup>5</sup> Exhibit B.

<sup>6</sup> Exhibit A., Statement of Decision, page 9.

### Approved Activities

The claimant did not include the one activity approved in the Statement of Decision. Therefore, staff added the one activity of amending the polling place notice sent to each voter who registered after the 29<sup>th</sup> day prior to the election to include specific information as it was approved in the Statement of Decision.

The claimant also proposed the following one-time activities:

- Redesign and implement new election software.
- Modification of Registrar of Voters website.

Section 1183.1, subdivision (a)(4), of the Commission's regulations authorizes the Commission to include the "most reasonable methods of complying with the mandate" in the parameters and guidelines. 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."

Staff finds that redesigning the election software used to amend the notice, and modifying the website to reflect the amended notices sent to voters who register between the 29<sup>th</sup> and 15<sup>th</sup> day are necessary one-time activities to carry out the mandated program. Staff deleted the activity to implement the new software since it implies that the activity is ongoing. The Commission's decision limits reimbursement to one-time activities. Staff further added the following underlined language to limit reimbursement to the scope of the mandated program:

- Redesign and implement new election software used to amend the polling place notice sent to each voter who registered between the 29<sup>th</sup> and 15<sup>th</sup> day prior to the election pursuant to Elections Code section 13303, subdivision (c), as amended by Statutes 2000, chapter 899.
- Modification of the Registrar of Voters website to reflect the amendment to Elections Code section 13303, subdivision (c), by Statutes 2000, chapter 899 that allows voters to register through the 15<sup>th</sup> day prior to an election.

### Comments on the Draft Staff Analysis

On July 15, 2008, the Department of Finance submitted comments on the draft staff analysis, recommending that the activity of modifying the Registrar of Voters website to reflect the test claim statute be deleted because it was not approved in the Statement of Decision.<sup>7</sup> Staff did not make this change.

As stated above, Section 1183.1, subdivision (a)(4), of the Commission's regulations authorizes the Commission to include the "most reasonable methods of complying with the mandate" in the parameters and guidelines. 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." While the Statement of Decision does not include modifying the website as a reimbursable activity, it mandates reimbursement for amending the polling place notice to include the address of "the county website where a sample ballot may be viewed." Therefore, staff finds that authorizing reimbursement for counties to modify their websites to conform to the mandate is necessary to carry out the mandated program.

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<sup>7</sup> Exhibit C.

### **Staff Recommendation**

Staff recommends that the Commission adopt the proposed parameters and guidelines, as modified by staff, beginning on page 9.

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





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BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

Exhibit A

**IN RE TEST CLAIM:**

Elections Code Sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13300, 13303 and 13306;

Statutes 2000, Chapter 899;

Filed on May 17, 2002,

By County of Orange, Claimant.

Case No.: 01-TC-15

*Fifteen Day Close of Voter Registration*

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

(Adopted on October 4, 2006)

**STATEMENT OF DECISION**

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on October 4, 2006. Juliana Gmur of Maximus appeared, representing the claimant, County of Orange. Also testifying were Neal Kelly, Orange County Registrar of Voters, Deborah Seiler, Solano County Assistant Registrar of Voters, and Allan Burdick, CSAC SB-90 Service. Carla Castañeda and Susan Geanacou appeared on behalf of the Department of Finance (DOF).

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

The Commission adopted the staff analysis to partially approve this test claim at the hearing by a vote of 5-1.

**Summary of Findings**

Claimant, County of Orange, filed this test claim on changes to the deadline for voter registration prior to an election. Prior law allowed voters to newly register to vote, reregister, or change their address with county elections officials, until the 29th day before an election. After that date, voter registration closed until the conclusion of the upcoming election. Statutes 2000, chapter 899 amended Elections Code sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13303 and 13306, and repealed and reenacted Elections Code section 13300, allowing new registrations or changes to voter registrations through the 15th day prior to an election. The claimant seeks mandate reimbursement for costs incurred to register voters from the 28th through the 15th day before elections, such as for: implementation planning meetings; revising training programs; holding an informational media campaign; responding to additional inquiries about the new law; and providing additional personnel to accommodate the increased workload.

Generally, the Commission finds that most of the statutory amendments by Statutes 2000, chapter 899, do not mandate a new program or higher level of service on county elections

Statement of Decision  
*Fifteen Day Close of Voter Registration (01-TC-15)*

officials within the meaning of article XIII B, section 6. Processing and accepting voter registration affidavits and changes of address are not newly required under the Elections Code. County elections officials have been required to perform these activities long before the enactment of Statutes 2000, chapter 899. The test claim allegations generally request reimbursement for increased staffing expenses, developing and conducting training, and holding planning meetings; these are not new *activities* directly required by the test claim legislation, but instead are *costs* that the claimant is associating with the changed timeframes. Counties are required to perform the same activities they have long performed – accepting new voter registrations and changes of address. The courts have consistently held that increases in the *cost of an existing program*, are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of article XIII B, section 6.

The Commission concludes that Statutes 2000, chapter 899, as it amended Elections Code section 13303, subdivision (c), 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 imposes costs mandated by the state pursuant to Government Code section 17514, for the following one-time activity:

- Amend the polling place notice sent to each voter who registered after the 29th day prior to the election, to include the following: information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed. (Elec. Code, § 13303, subd. (c).)

The other amendments by Statutes 2000, chapter 899, are not subject to article XIII B, section 6 of the California Constitution, or do not mandate a new program or higher level of service, and are denied.

## BACKGROUND

This test claim deals with changes to the deadline for voter registration prior to an election in California. Prior law allowed voters to newly register to vote, reregister, or change their address with county elections officials, until the 29th day before an election. After that date, voter registration closed until the conclusion of the upcoming election. Statutes 2000, chapter 899 was chaptered on September 29, 2000; it amended Elections Code sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13303 and 13306, and repealed and reenacted Elections Code section 13300. These amendments allow new registrations or changes to voter registrations through the 15th day prior to an election. The claimant is seeking mandate reimbursement for costs incurred to register voters from the 28th through the 15th day before elections.

### Claimant's Position

Claimant, County of Orange, filed this test claim on May 17, 2002.<sup>1</sup> Claimant contends that "The specific sections which contain the mandated activities are Elections Code, Sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13300, 13303 and 13306." Claimant asserts that

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<sup>1</sup> Potential reimbursement period for this claim begins no earlier than July 1, 2000, based on the filing date of the test claim. (Gov. Code, § 17557, subd. (e).)

these code sections, as amended by Statutes 2000, chapter 899, constitute a reimbursable state-mandated program. Following are some of the reimbursable activities or costs asserted by the claimant:

- have internal planning meetings, as well as meetings with the Secretary of State, in order to make sure the changes were implemented properly;
- printing, processing and mailing of postcards and additional sample ballot pamphlets for voters registering between the 28th day and up to and including the 15th day prior to the election;
- retrain personnel on new program, including revising training program, videos, and manuals;
- hold a media campaign to inform the public of the additional time to register and vote;
- respond to additional media and public inquiries about the new law;
- redesign and republish the sample ballot and absentee voter materials;
- redesign and implement voter election software;
- provide additional personnel to accommodate the increased workload;
- change the method of delivery rosters to the polls, including express delivery and dispatch;
- notify those who registered too late;
- complete additional steps in order to conduct the election.

In response to DOF's July 2002 comments on the test claim filing, described below, claimant disputes DOF's disagreements with the reimbursable activities identified, with the exception of agreeing that software redesign is a one-time activity, and reasserts that all of activities identified are necessary to implement the test claim legislation, or are the most reasonable method to comply.

Written comments on the draft staff analysis were received on September 15, 2006, and are discussed in the findings below.

#### **Interested Party Positions**

On September 18, 2006, a late filing was received from the County of Sacramento, describing the impact that changing the timeframe for registration prior to an election has had on county registrars and argues that this change has mandated an increased level of service resulting in a reimbursable state-mandated program. The County of Sacramento comments, page one, state:

This shortened time frame clearly provides for a higher level of service from that previously required, in that the deadline to register to vote for any election was shortened from E-29 days prior to any election to E-15 days prior to the election. This creates a new window of time in which eligible citizens can qualify to vote for any specific election. And, in order to implement this legislation, county election offices have had to drastically increase the level of service provided to the public in order to provide the legally required voting material to both the voter and the polling place on election day.

In addition, at the Commission hearing on October 4, 2006, testimony was received from the Solano County Assistant Registrar of Voters, supporting the test claim allegations.

### **Department of Finance's Position**

DOF filed comments on July 3, 2002, addressing the allegations stated in the test claim. The comments state: "we do not concur with all of the activities identified by the claimant. ... we note our concern with what appears to be a fundamental assumption asserted by the claimants that there was an increase in the number of voters as a result of the test claim legislation, ... ."

Specifically, claimants cite costs related to an increase in the number of voters needing assistance, and costs for voters who registered between the 28th day and the 15th day prior to the election, necessitating additional staff, printing, processing and mailing costs. We have two objections with this assumption: First, there is no evidence that the test claim legislation resulted in an increase of persons registering to vote. The test claim legislation could have merely shifted the cost from before the 29th day until after the 29th and before the 14th day prior to an election, as people may have waited longer to register. This would not constitute new costs since local agencies would have had to incur those costs already under prior law.

In addition, we note that even if there were an increase in the number of registrants subsequent to the test claim legislation, this legislation did not increase the number of persons eligible to register. The Secretary of State's Website indicates that approximately 71 percent of the eligible voters were registered during the 2002 Primary Election. To the extent that the remaining 29 percent chose to register, it would be incumbent upon the local agencies to accommodate those persons, regardless of the test claim legislation. Accordingly, there does not appear to be a correlation between the test claim legislation and an increase in the number of registrants and there should be no reimbursement for those costs.

DOF then describes several claimant-identified activities that should either be designated as "one-time" activities, or denied altogether on the grounds that they are not required by the test claim legislation, if the test claim is approved by the Commission.

In comments on the draft staff analysis, dated August 7, 2006, DOF concurs with staff's identification of a one-time reimbursable activity for amending the polling place notice, but reiterates opposition to any reimbursement for the other test claim activities alleged, "such as training, public education and addressing public complaints."

### **Secretary of State's Position**

The Secretary of State's office filed comments on the test claim filing, received July 15, 2002, agreeing with the claimant that Statutes 2000, chapter 899 "imposed significant new responsibilities on county elections officials and that the costs of these additional responsibilities should be borne by the state."

## COMMISSION FINDINGS

The courts have found that article XIII B, section 6, of the California Constitution<sup>2</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>3</sup> “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.”<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.<sup>7</sup> 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.<sup>8</sup> A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”<sup>9</sup>

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<sup>2</sup> 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.

<sup>3</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

<sup>4</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>5</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

<sup>6</sup> *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*).

<sup>7</sup> *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.)

<sup>8</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>9</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>10</sup>

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.<sup>11</sup> 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."<sup>12</sup>

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

Elections Code Sections 2187 and 9094:

As a preliminary matter, the claimant alleges Elections Code section 2187, as amended by Statutes 2000, chapter 899, imposes a reimbursable state-mandated program. This code section addresses long-standing county reporting requirements on the numbers of registered voters to the Secretary of State. The amendment to Elections Code section 2187 by Statutes 2000, chapter 899 was never operative upon the subsequent adoption of Statutes 2000, chapter 1081 in the same session.<sup>13</sup> The amendments made by Statutes 2000, chapter 1081 are entirely different from the amendments in Statutes 2000, chapter 899, and were not pled as part of this test claim.<sup>14</sup> Thus, Elections Code section 2187, as pled, is not subject to article XIII B, section 6 of the California Constitution.

Elections Code section 9094, as amended by Statutes 2000, chapter 899, addresses the duties of the Secretary of State to provide ballot pamphlets. The amendment to this code section is in subdivision (a), which is specific to the Secretary of State and does not mandate any requirements on local government. Thus, Elections Code section 9094, as amended by the test claim statute, is not subject to article XIII B, section 6 of the California Constitution.

Therefore, any future references to "test claim legislation" do not include Elections Code sections 2187 or 9094.

Remaining Test Claim Legislation:

In order for the remaining 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.*

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<sup>10</sup> *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.

<sup>11</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

<sup>12</sup> *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.

<sup>13</sup> Affected by two or more acts at the same session of the Legislature. (See Gov. Code, § 9605.)

<sup>14</sup> The changes made by Statutes 2000, chapter 1081 included the deletion of two commas, and the deletion of one of seven regular reporting dates to the Secretary of State.

*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.<sup>15</sup> The court has held that only one of these findings is necessary.<sup>16</sup>

The Commission finds that registering voters imposes a program within the meaning of article XIII B, section 6 of the California Constitution under both tests. County elections officials provide a service to the members of the public who register to vote. 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?**

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.<sup>17</sup> 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."<sup>18</sup> A statute or executive order mandates a reimbursable "higher level of 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 to the public provided in the existing program.<sup>19</sup>

*Elections Code Sections 2035, 2102, 2107, 2119, and 2154:*

Elections Code section 2035 formerly provided that a voter registered in California who moves during the last 28 days before an election shall be entitled to vote in the precinct where they were last properly registered. The amendment by Statutes 2000, chapter 899 changed that period to the last 14 days before an election.

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<sup>15</sup> *County of Los Angeles, supra*, 43 Cal.3d at page 56.

<sup>16</sup> *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

<sup>17</sup> *Lucia Mar Unified School Dist., supra*, 44 Cal.3d 830, 836.

<sup>18</sup> *County of Los Angeles, supra*, 43 Cal.3d 46, 56; *San Diego Unified School District, supra*, 33 Cal.4th 859, 874.

<sup>19</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.



Elections Code sections 2102 and 2107 describe what constitutes an effective new voter registration affidavit. The amendment by Statutes 2000, chapter 899, changed the received date, postmarked date, or alternative delivery deadlines from on or before the 29th day prior to an election, to on or before the 15th day prior to an election. The amendment to Elections Code section 2119 made similar changes to the deadlines for accepting notices of change of address for voters who have moved.

Elections Code section 2154 states a number of presumptions that county elections officials shall apply if there is missing information on a voter registration affidavit, in order to hold the registration valid. If the affidavit is not dated, the amendment by Statutes 2000, chapter 899 requires the elections official to presume the registration affidavit was signed on or before the 15th day prior to the election, instead of on or before the 29th day, if the document is received or postmarked by the 15th day prior to the election.

The amendments to numbers of days before an election are the only changes made to these Elections Code sections by the test claim statute. As an example, the complete text of Elections Code section 2107, as amended by Statutes 2000, chapter 899 follows, with changes indicated in underline and strikethrough:

(a) Except as provided in subdivision (b), the county elections official shall accept affidavits of registration at all times except during the ~~28~~14 days immediately preceding any election, when registration shall cease for that election as to electors residing in the territory within which the election is to be held. Transfers of registration for an election may be made from one precinct to another precinct in the same county at any time when registration is in progress in the precinct to which the elector seeks to transfer.

(b) The county elections official shall accept an affidavit of registration executed as part of a voter registration card in the forthcoming election if the affidavit is executed on or before the ~~29~~15th day prior to the election, and if any of the following apply:

(1) The affidavit is postmarked on or before the ~~29~~15th day prior to the election and received by mail by the county elections official.

(2) The affidavit is submitted to the Department of Motor Vehicles or accepted by any other public agency designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg) prior to the election.

(3) The affidavit is delivered to the county elections official by means other than those described in paragraphs (2) and (3) on or before the ~~29~~15th day prior to the election.

At page two of the test claim filing, claimant alleges that these statutory amendments, lengthening the period prior to an election that voter registrations must be processed, "has substantial repercussions on the management and operation of the county elections office. Staffed during elections season with temporary employees, the increased workload and shortened time line to perform the work results in an increase in the number of employees needed to staff the election."

In response to the test claim allegations, DOF argues:

[C]laimants cite ... costs for voters who registered between the 28th day and the 15th day prior to the election, necessitating additional staff, printing, processing and mailing costs. We have two objections with this assumption: First, there is no evidence that the test claim legislation resulted in an increase of persons registering to vote. The test claim legislation could have merely shifted the cost from before the 29th day until after the 29th and before the 14th day prior to an election, as people may have waited longer to register. This would not constitute new costs since local agencies would have had to incur those costs already under prior law.

The Commission finds that the code sections as amended do not mandate a new program or higher level of service on county elections officials within the meaning of article XIII B, section 6 as determined by the courts. Processing and accepting voter registration affidavits and changes of address are not newly required under the Elections Code. County elections officials have been required to perform these activities long before the enactment of Statutes 2000, chapter 899.<sup>20</sup> The test claim allegations generally request reimbursement for increased staffing expenses, developing and conducting training, and holding planning meetings; these are not new *activities* directly required by the test claim legislation, but instead are *costs* that the claimant is associating with the changed timeframes. The Commission does not dispute the claimant's allegations that the changed timeframes impose a burden on the way business is conducted by elections officials during the weeks before an election, and that there are likely associated costs; but the test claim legislation itself did not require the activities alleged in the manner required for reimbursement under mandates law.

The courts have consistently held that increases in the *cost* of an existing program, are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of article XIII B, section 6.

In 1987, the California Supreme Court decided *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d 46, and, for the first time, defined a "new program or higher level of service" within the meaning of article XIII B, section 6. Counties were seeking the costs incurred as a result of legislation that required local agencies to provide the same increased level of workers' compensation benefits to their employees as private individuals or organizations. The Supreme Court recognized that workers' compensation is not a new program and, thus, determined whether the legislation imposed a higher level of service on local agencies. Although the court defined a "program" to include "laws which, to implement a state policy, impose unique requirements on local governments," the court emphasized that a new program or higher level of

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<sup>20</sup> The voter registration timelines were last substantively amended following the decision in *Young v. Gness* (1972) 7 Cal.3d 18, in which the California Supreme Court found the 54-day residency requirement and corresponding voter registration deadlines unconstitutional and declared 30 days to be the maximum voter registration restriction permissible under a reasonableness standard.

service requires "state mandated increases in the services provided by local agencies in existing programs."<sup>21</sup>

Looking at the language of article XIII B, section 6 then, it seems clear that by itself the term "higher level of service" is meaningless. It must be read in conjunction with the predecessor phrase "new program" to give it meaning. Thus read, 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."<sup>22</sup>

Applying these principles, the court held that reimbursement for the increased costs of providing workers' compensation benefits to employees was not required by the California Constitution. The court stated the following:

Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of section 6.<sup>23</sup>

In 1998, the Third District Court of Appeal decided *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1196 and found:

Increasing the cost of providing services cannot be equated with requiring an increased level of service under a[n] [article XIII B,] section 6 analysis.

Seventeen years later, the Supreme Court summarized and maintained its earlier holding in *County of Los Angeles* and stated that although "[t]he law increased the cost of employing public servants, ... it did not in any tangible manner increase the level of service provided by those employees to the public."<sup>24</sup> Thus, the courts have found that a new program or higher level of service requires something more than increased costs experienced uniquely by local government.

Claimant alleges the following new activities were required by the test claim statute, and seeks reimbursement for "[holding] planning meetings with both its own staff, as well as other elections officials and the Secretary of State, to make sure that the new changes were implemented properly. These meetings resulted in the implementation of the following new procedures, as well as redesign and publication of forms and other voting materials[:]"

1. To accommodate the change in dates, the elections software had to be redesigned.
2. Staffing needs to address the increased workload as a result of this legislation were evaluated, and additional staff had to be hired.
3. For voters who registered between the 28th day and up to and including the 15th day prior to the election, the legislation necessitated the printing,

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<sup>21</sup> *County of Los Angeles, supra*, 43 Cal.3d 46, 56-57.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Id.* at 57-58.

<sup>24</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 875.

processing and mailing of postcards; and/or printing, processing and mailing of additional sample ballot pamphlets.<sup>25</sup>

4. An increase number of voters needed assistance either in person or on the telephone.
5. A methodology was developed for addressing voter complaints concerning registration.
6. It was necessary to change the method by which rosters are delivered to the polls, including express delivery and dispatch.
7. Because of the substantial changes, regular, temporary permanent employees, and poll workers had to be retrained. This resulted in the coordination and planning for the training, training instruction for the trainers, conducting the training classes, revising training videos, producing training aids, and revising the training manual.
8. In order that voters not be confused about the changes, press releases were prepared, development of educational material for the sample ballot pamphlet and audio visual instructions to both voters and staff.

At the October 4, 2006 Commission hearing, testimony was heard from the claimant's representatives, as well as a representative from an interested party, the Solano County Assistant Registrar of Voters, Deborah Seiler. Ms. Seiler testified that pre-election activities must be performed in a different manner due to the test claim statute:

First of all, one of the things that we're doing at the time that we would ordinarily be finished with voter registration, when it was formerly at 29 days before the election, after that time period, what we were doing is we were putting together the rosters of voters that go out to the polling places. Those rosters we were putting together in time to give to our precinct inspectors to go out to the polling places.

Now, because of the late registrations, we're not able to compile the rosters at the time that we need to get them out to the precinct inspectors. So we've had to come up with alternate methods of delivering those rosters rather than just when the inspectors come in for the training class. So we now have either personal delivery or other mechanisms where staff is delivering it or we have roving inspectors that we have to hire to send out those rosters.

The other issue with the rosters is that particularly in very busy elections -- and a number of counties experienced this in the November of 2004 election, very hotly contested election -- the registration levels were off the charts for all of us. And we had tremendous difficulty getting -- due to the later close of registration, we had tremendous difficulty even getting those names entered into our files and getting those names on the rosters.

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<sup>25</sup> This activity appears to be connected to Elections Code sections 2155, 13303, and 13306, which are discussed separately below.

In some cases, we did not. In some cases, the counties failed to get the names on the rosters.

The consequence of that was that voters came into the polling place and had to vote provisional ballots, which is the requirement under the law for a person whose name is not on the roster.

So that provisional voting process then actually contributed to the amount of time that it took us to perform the canvass and the amount of staff that we had to have.<sup>26</sup>

One of the big effects of this later close of registration, too, is on the absentee ballot processing.<sup>27</sup>

Ordinarily, our supervisors and lead people in the absentee processing area -- in the voter registration area, excuse me -- would sort of morph into the absentee processing area. So the curtain would fall at 29 days before the election, and then that 29 days before the election is also the commencement of the absentee voting period. And so then that staff would finish up with the voter registration and then go in and start processing, getting the absentees out in the mail and processing those that had returned.

No longer can the same staff be used for the absentee voting process. We have to have a whole new set of people, managers, supervisors, and expertise now to come in and do the absentee processing because our voter registration people who had done it in the past are busy.

They're still engaged in voter registration activities. So that's had a huge influence on our whole staffing process.

One of the biggest impacts also with respect to the absentee process is that now we have a setup -- as a result of this new law, we have a situation where the absentee voting period starts before the close of registration.

What does that mean for voter registration? It means that a person who is, for example, a permanent absentee voter -- and we have many more permanent absentee voters now than we used to. In Solano County, it's up to almost 40 percent of our electorate who votes absentee. So you've got all of these people to whom we send at 29 days, because that's the beginning of the absentee period, we send them their permanent absentee ballot.

At E-minus-15, between 29 days and 15 days, those same people can move and reregister to vote; and they do.

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<sup>26</sup> Counting provisional ballots is the subject of another test claim, *Voter Identification Procedures* (03-TC-23), approved at the October 4, 2006 Commission hearing.

<sup>27</sup> Absentee ballots are the subject of several other approved test claims, including *Absentee Ballots* (3713), *Permanent Absent Voters I* (CSM-4358), and *Permanent Absent Voters II* (03-TC-11).

So, now, we send them their first ballot. Then they reregister to vote at the fifteen-day close. Any we have to send them a second ballot -- a second absentee ballot. So we have to go back -- and, obviously, we can't let them vote twice.

So now we're going into this huge retrieval, storage, tracking process, to make sure that these absentee voters who are being able to register at a later point in time are not duplicate voters.

So this is a major impact on our whole process. And in addition, this is just one more thing that carries over into our canvass process, because these are all things that we have to account for in the canvass process.<sup>28</sup>

The plain language<sup>29</sup> of Statutes 2000, chapter 899, as it amended Elections Code sections 2035, 2102, 2107, 2119, and 2154, does not require counties to carry out any of the new activities as alleged.<sup>30</sup> Instead, counties are required to perform the same activities they have long performed -- accepting new voter registrations and changes of address. If the test claim legislation explicitly required any *new* activities to be performed on the part of county elections officials, alleged activities such as training, preparing press releases, and hiring additional employees could be examined at the parameters and guidelines phase of the test claim process to determine whether they are a reasonable method of complying with the mandate.<sup>31</sup> However, there must *first* be a finding of a reimbursable state-mandated activity based on the statutory language of the test claim legislation in order to reach the other issues in the parameters and guidelines. The Commission finds that the amendments by Statutes 2000, chapter 899 to Elections Code sections 2035, 2102, 2107, 2119, and 2154 do not mandate a new program or higher level of service on counties.

Elections Code Section 2155:

Elections Code section 2155 requires county elections officials to send voter notification forms to the voter "[u]pon receipt of a properly executed affidavit of registration or address correction notice." One sentence on this form was changed by Statutes 2000, chapter 899 to read "you may vote in any election held 15 or more days after the date shown on the reverse side of this card." If county elections officials had to change these cards in response to the test claim legislation, this would have met the legal standards for finding a new program or higher level of service, at least for a one-time activity of amending and reprinting the cards. However, the very next section in the code, Elections Code section 2156, requires that:

The Secretary of State shall print, or cause to be printed, the blank forms of the voter notification prescribed by Section 2155. The Secretary of State shall supply the forms to the county elections official in quantities and at times requested by the county elections official.

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<sup>28</sup> October 4, 2006 Commission Hearing Transcript, pages 24-28.

<sup>29</sup> "If the terms of the statute are unambiguous, the court presumes the lawmakers meant what they said, and the plain meaning of the language governs." (*Estate of Griswold* (2001) 25 Cal.4th 904, 911.)

<sup>30</sup> *County of Los Angeles, supra*, 110 Cal.App.4th 1176, 1189.

<sup>31</sup> California Code of regulations, title 2, section 1183.1, subdivision (a)(4).

Therefore the Commission finds that Elections Code section 2155, as amended by the test claim statute, does not mandate a new program or higher of service, because the only activity required of the county is the same as required by prior law – sending a newly registered or re-registered voter a notification form.

Elections Code Section 13300:

Elections Code section 13300, subdivision (a), as repealed and reenacted<sup>32</sup> by Statutes 2000, chapter 899, requires that “at least 29 days before the primary, each county elections official shall prepare separate sample ballots for each political party and a separate sample nonpartisan ballot.” This is unchanged from prior law following the United States Supreme Court decision in *California Democratic Party v. Jones* (2000) 530 U.S. 567, which found the 1996 amendments to the code section by Proposition 198, the “Open Primary Act,” unconstitutional, and therefore void.<sup>33</sup> Subdivision (b), also unchanged from prior law, provides that “The sample ballot shall be identical to the official ballots, except ... [that they] shall be printed on paper of a different texture ... .”

The amendments to subdivision (c) are indicated in underline and strikethrough, as follows:

(c) One sample ballot of the party to which the voter belongs, as evidenced by his or her registration, shall be mailed to each voter entitled to vote at the primary who registered at least 29 days prior to the election not more than 40 nor less than 10 days before the election. A nonpartisan sample ballot shall be so mailed to each voter who is not registered as intending to affiliate with any of the parties participating in the primary election, provided that on election day any such person may, upon request, vote the ballot of a political party if authorized by the party's rules, duly noticed to the Secretary of State.

*Modified Primary Election* (01-TC-13) is a test claim on Statutes 2000, chapter 898 (SB 28) that was heard and decided at the July 28, 2006 Commission hearing. The Legislature largely amended the Elections Code back to the state of the law before Proposition 198 through the adoption of Statutes 2000, chapter 898. Elections Code section 13300 was also amended by Statutes 2000, chapter 898, but that amendment did not take effect when Statutes 2000, chapter

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<sup>32</sup> The Commission finds that when a statute is renumbered or reenacted, only substantive changes to the law creating new duties or activities meet the criteria for finding a reimbursable state mandate. This is consistent with long-standing case law: “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.” (*In re Martin's Estate* (1908) 153 Cal. 225, 229. See also 15 Ops.Cal.Atty.Gen. 49 (1950).)

<sup>33</sup> Before the amendments by Statutes 2000, chapters 898 and 899, the changes to the Elections Code made by Proposition 198 reverted to prior law because of the legal principles of *Cummings v. Morez* (1974) 42 Cal.App.3d 66, 73: “A statute which violates either [US or California] Constitution is to that extent void and, ‘[i]n legal contemplation, a void act is as inoperative as though it had never been passed. ...’” For legal purposes, there was no gap in the law because the law treats Proposition 198 as though it never existed; meaning prior law was continuous in effect.

899 (AB 1094) passed in the same session. The legislation specified that in the event that both statutes were chaptered, *and* Assembly Bill 1094 was the one enacted last, section 11.5 of Statutes 2000, chapter 899 prevailed.

In *Modified Primary Election*, the Commission found that Elections Code section 13102, subdivision (b), as amended by Statutes 2000, chapter 898, requires county elections officials to engage in a new activity to "Allow voters who declined to state a party affiliation to vote a party ballot if the political party, by party rule duly noticed to the Secretary of State, authorizes such a person to do so." Any activity required by Elections Code section 13300, subdivision (c), for allowing decline-to-state voters to request partisan primary ballots at the polls, is already part of the test claim on the earlier-enacted Statutes 2000, chapter 898, and is therefore not *new*. Activities can be attributed to Elections Code section 13102, subdivision (b), and reimbursement can be sought under the *Modified Primary Election* parameters and guidelines, when adopted. Therefore, the Commission finds that the amendment to Elections Code section 13300 by Statutes 2000, chapter 899, does not mandate a new program or higher level of service.

Elections Code Section 13303:

Elections Code section 13303 follows, as amended by Statutes 2000, chapter 899 -- indicated in underline and strikethrough below:

(a) For each election, each appropriate elections official shall cause to be printed, on plain white paper or tinted paper, without watermark, at least as many copies of the form of ballot provided for use in each voting precinct as there are voters in the precinct. These copies shall be designated "sample ballot" upon their face and shall be identical to the official ballots used in the election, except as otherwise provided by law. A sample ballot shall be mailed, postage prepaid, ~~to each voter~~ not more than 40 nor less than 21 days before the election to each voter who is registered at least 29 days prior to the election.

(b) The elections official shall send notice of the polling place to each voter with the sample ballot. Only official matter shall be sent out with the sample ballot as provided by law.

(c) The elections official shall send notice of the polling place to each voter who registered after the 29th day prior to the election and is eligible to participate in the election. The notice shall also include information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed.

At page 4 of the test claim filing, claimant alleges that "Those who registered late were entitled to notification, and an additional mailing was required." DOF did not dispute this allegation in its comments on the test claim filing.

The prior law of Elections Code section 13303, subdivision (b), already required that an "elections official shall send notice of the polling place to each voter with the sample ballot." In addition, Elections Code section 13306, discussed further below, has long provided that "*Notwithstanding Sections 13300, 13301, 13303, and 13307, sample ballots and candidates' statements need not be mailed to voters who registered after the 54th day before an election, but*



*all of these voters shall receive polling place notices ...*” [Emphasis added.] Therefore under prior law, elections official were required to send polling place notices to voters who registered after the 54th day prior to an election. Elections Code section 13303, subdivision (c), as added by Statutes 2000, chapter 899, added information to the polling place notice, which provides a higher level of service to the public within an existing program.

The Commission finds that Elections Code section 13303, subdivision (c) mandates a new program or higher level of service for the following one-time activity:

- Amend the polling place notice sent to each voter who registered after the 29th day prior to the election, to include the following: information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed.

In a late filing received September 15, 2006, County of Orange asserts that this activity should be approved as an ongoing activity:

First of all this particular provision is not applicable just to one election: it is applicable to all elections held. Any voter can register to vote, or change their address for voting purposes up until the 15th day before any election. Thus, to provide this as an activity on a one time basis ignores the fact that elections are continually held, and this legislation was not just applicable to one election.

Thus, this is an ongoing activity which is conducted before each election.

Elections are held throughout the state semi-annually to biennially, but the act of amending a pre-existing polling place notice is not one that reoccurs at every election. The Commission finds that once the text of the notice is amended to include the material required by Statutes 2000, chapter 899, there are no additional activities required that were not already required under prior law.

Elections Code Section 13306:

Elections Code section 13306 follows, as amended by Statutes 2000, chapter 899 -- indicated in underline and strikethrough below:

Notwithstanding Sections 13300, 13301, 13303, and 13307, sample ballots and candidates' statements need not be mailed to voters who registered after the 54th day before an election, but all of these voters shall receive polling place notices and state ballot pamphlets. A state ballot pamphlet is not required to be mailed to a voter who registered after the 29th day prior to an election. Each of these voters shall receive a notice in bold print that states: “Because you are a late registrant, you are not receiving a sample ballot or candidates' statements.”

The addition of a sentence clarifying that state ballot pamphlets are not required to be mailed out to voters who register after the 29th day prior to an election in fact makes the code section identical to prior law, and does not require any activities on the part of county elections officials.

In “Response to Department of Finance,” received July 29, 2002, claimant alleges that they “were unable to mail sample ballot pamphlets to those voters who registered between the 29th and 15th days prior to the election. This resulted in an increase in telephone calls from voters

inquiring as to why they did not receive a sample ballot pamphlet. This required additional staff time to explain to the voters why they did not receive the sample ballot pamphlet.”

First, the Commission notes that the test claim legislation does not *prohibit* counties from sending the ballot pamphlets to these registrants; it just does not require it. Receiving phone calls from the public is not “mandated” by the test claim legislation; it is part of the business of being a public agency. If the test claim legislation explicitly required any new activities to be performed on the part of county elections officials, responding to public inquiries could be examined at the parameters and guidelines phase to determine whether the requested activities are a reasonable method of complying with the mandate. (Cal. Code of Regs., tit. 2, § 1183.1, subd. (a)(4).) However, there must first be a finding of a reimbursable state-mandated activity in order to reach the issue in parameters and guidelines. The Commission finds that the plain language of the amendment to Elections Code section 13306 does not mandate a new program or higher level of service on county 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 \$200 or more for the test claim allegations, which was the statutory threshold at the time the test claim was filed. The claimant also stated that none of the Government Code section 17556 exceptions apply. For the one-time activity listed in the conclusion below, the Commission agrees and finds accordingly that it imposes costs mandated by the state upon counties within the meaning of Government Code section 17514.

### CONCLUSION

The Commission concludes that Statutes 2000, chapter 899, as it amended Elections Code section 13303, subdivision (c), 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 imposes costs mandated by the state pursuant to Government Code section 17514, for the following one-time activity:

- Amend the polling place notice sent to each voter who registered after the 29th day prior to the election, to include the following: information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed. (Elec. Code, § 13303, subd. (c).)<sup>34</sup>

The other amendments by Statutes 2000, chapter 899, are not subject to article XIII B, section 6 of the California Constitution, or do not mandate a new program or higher level of service, and are denied.

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<sup>34</sup> As amended by Statutes 2000, chapter 899, operative January 1, 2001.



**AMENDED PROPOSED PARAMETERS AND GUIDELINES**

**RECEIVED**

**JAN 18 2007**

**Exhibit B**

*Fifteen Day Close of Voter Registration*  
(01-TC-15)

Elections Code Sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13300  
13303 and 13306  
Statutes 2000, Chapter 899 (AB 1094)

County of Orange, Claimant

**I. SUMMARY OF THE MANDATE**

This test claim deals with changes in the deadline for voter registration prior to an election in California. Prior law allowed voters to newly register to vote, reregister, or change their address with county elections officials until the 29<sup>th</sup> day prior to an election. After that time, the voter registration closed until the conclusion of the upcoming election. Statutes 2000, chapter 899 was chaptered on September 29, 2000, and amended Elections Code Sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13300 13303 and 13306. These amendments allow new registrations or changes to voter registrations through the 15<sup>th</sup> day prior to an election.

On October 4, 2006, the Commission on State Mandates found that the above referenced test claim constituted a partially reimbursable mandate for the following one time new activities:

- Amend the polling place notice sent to each voter who registered after the 29<sup>th</sup> day prior to the election, to include the following": information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed. (Elec. Code, § 13303, subd. (c).)

**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 of those costs.

**III. PERIOD OF REIMBURSEMENT**

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that

fiscal year. The test claim for this mandate was filed by the test claimant, County of Orange, on April 18, 2002. Therefore, the period of reimbursement begins September 29, 2000, the date of enactment.

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 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 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 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, 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 increased costs for reimbursable activities identified below.

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office.

For each eligible claimant, the following activities are eligible for reimbursement on a one time basis:

1. Redesign and republish the sample ballot and absentee voter application
2. Redesign and implement new election software

3. Notify every voter who registered from 28 days prior to the election through 15 days prior to the election via a post card, the location of their polling place and where they can obtain a sample ballot.
4. Provide all sample ballots for each ballot type and the poll site locations
5. Hire additional staff to process registration forms and absentee ballot requests due to the fact that the time period for close of registration was reduced by fourteen days and increased overtime to process all registration forms between the original cut off of 28 days prior to the election to 15 days prior to the election.
6. Modification of Registrar of Voters website.
7. Provide an increased amount of official and sample ballots.

## 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. 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 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 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.

### 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 the 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 OMB Circular A-87 Attachments A and B) and the indirect shall exclude capital expenditures and unallowable costs (as defined and described in OMB 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 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) separate 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. RECORDS RETENTION**

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>1</sup> 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 SAVINGS AND REIMBURSEMENTS**

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

Pursuant to Government Code section 17558, subdivision (c), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the parameters and guidelines from the Commission, to assist local

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



agencies 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)(2), issuance of the claiming instructions shall constitute a notice of the right of local agencies to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

## **VII. 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, subdivision (a), and California Code of Regulations, title 2, section 1183.2.

## **IX. 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.

A. One-Time Activities

1. Conducted meetings in order to obtain information from the Secretary of State as to which political parties allowed voters who have not designated their political party to vote in primary elections of given political parties.
2. Had meetings with the elections department in order to ascertain what activities were necessary to implement the legislation.
3. Developed new internal policies and procedures.
4. Redesignated and republished the sample ballot and absentee voter application.
5. Redesignated and implemented new election software.
6. Informed and trained poll workers regarding the voting options for the decline to state voter.
7. Provided specialized official ballots for the decline to state voter at each poll site.

B. On-Going Activities

1. Notify every permanent voter who is registered as a decline to state voter that they have an option to vote a partisan ballot as long as that political party has agreed.
2. Hand process absentee voter requests.
3. Provide postage paid post card for the permanent absent voter decline to state voter to indicate which partisan absentee ballot they would like sent to them.
4. Enter the requested partisan ballot information from the post card into the computer software database.
5. Send to each voter a sample ballot containing the information regarding the options available to the decline to state voters.
6. Inform and train poll workers regarding the options for the decline to state voter.
7. Provide specialized official ballots for the decline to state voter at each poll site.

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.

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

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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.

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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.

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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 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.

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B. Indirect Cost Rates

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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 shall exclude capital expenditures and unallowable costs (as defined and described in OMB 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.

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## **VI. RECORDS RETENTION**

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>2</sup> 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.

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Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any of the following sources shall be identified and deducted from this claim:

1. Fees authorized to be charged and collected by the Legislature. Presently, the fees that are authorized to be collected are: 1) \$0 for facilities which serve six or fewer persons; 2) \$50 for facilities with a capacity to serve seven to 25 persons; and 3) \$100 for facilities with a capacity to serve 26 or more persons. In the event that the Legislature shall enact legislation which either increases or decreases the fee authority, such legislation shall control and will not necessitate an amendment to these parameters and guidelines unless the activities to be performed are amended as well.
2. Any other reimbursement received from the federal or state government, or other non-local source.

Pursuant to Government Code section 17558, subdivision (c), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the parameters and guidelines from the Commission, to assist local agencies 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)(2), issuance of the claiming instructions shall constitute a notice of the right of local agencies to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

## **IX. REMEDIES BEFORE THE COMMISSION**

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<sup>2</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (a), 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.

PROOF OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Solano, and I am over the age of 18 years and not a party to the within action. My place of employment is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841.

On January 18, 2007, I served Amended Proposed Parameters and Guidelines, *15 Day Close of Voter Registration*, by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list attached hereto, and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed this 18<sup>th</sup> day of January, 2007, at Sacramento, California.

  
\_\_\_\_\_  
Declarant

Mr. Leonard Kaye, Esq.  
County of Los Angeles  
Auditor-Controller's Office  
500 W. Temple Street, Room 603  
Los Angeles, CA 90012

Mr. Glen Everroad, Revenue Manager  
City of Newport Beach  
P. O. Box 1768  
Newport Beach, CA 92659-1768

Mr. Neal Kelley  
Acting Registrar of Voters  
1300 South Grand Ave.  
Santa Ana, CA 92705

Mr. Jim Jagers  
PO Box 1993  
Carmichael, CA 95609

Mr. John Mott-Smith  
Secretary of State's Office (D-15)  
1500 11<sup>th</sup> St.  
Sacramento, CA 95814

Ms. Carla Castaneda  
Department of Finance (A-15)  
915 L Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814

Ms. Susan Genacou  
Department of Finance (A-15)  
915 L Street, Suite 1190  
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Mr. David Wellhouse  
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Ms. Ginny Brummels  
State Controller's Office (B-08)  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

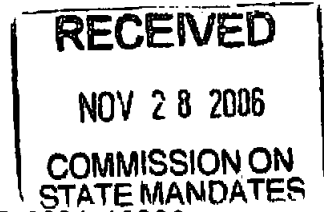
Mr. J. Bradley Burgess  
Public Resource Management Group  
1380 Lead Hill Boulevard, Suite 106  
Roseville, CA 95661

Ms. Bonnie Ter Keurst  
County of San Bernardino  
Office of the Auditor/Controller-Recorder  
222 West Hospitality Lane  
San Bernardino, CA 92415-0018

Mr. Jm Spano  
State Controller's Office (B-08)  
Division of Audits  
300 Capitol Mall, Suite 518  
Sacramento, CA 95814

## PROPOSED PARAMETERS AND GUIDELINES

*Fifteen Day Close of Voter Registration*  
(01-TC-15)



Elections Code Sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13300  
13303 and 13306  
Statutes 2000, Chapter 899 (AB 1094)

County of Orange, Claimant

### I. SUMMARY OF THE MANDATE

This test claim deals with changes in the deadline for voter registration prior to an election in California. Prior law allowed voters to newly register to vote, reregister, or change their address with county elections officials until the 29<sup>th</sup> day prior to an election. After that time, the voter registration closed until the conclusion of the upcoming election. Statutes 2000, chapter 899 was chaptered on September 29, 2000, and amended Elections Code Sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13300 13303 and 13306. These amendments allow new registrations or changes to voter registrations through the 15<sup>th</sup> day prior to an election.

On October 4, 2006, the Commission on State Mandates found that the above referenced test claim constituted a partially reimbursable mandate for the following one time new activities:

- Amend the polling place notice sent to each voter who registered after the 29<sup>th</sup> day prior to the election, to include the following": information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed. (Elec. Code, § 13303, subd. (c).)

### 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 of those costs.

### III. PERIOD OF REIMBURSEMENT

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that

fiscal year. The test claim for this mandate was filed by the test claimant, County of Orange, on April 18, 2002. Therefore, the period of reimbursement begins September 29, 2000, the date of enactment.

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 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 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 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, 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 increased costs for reimbursable activities identified below.

For each eligible claimant, the following activities are eligible for reimbursement on a one time basis:

1. Redesign and republish the sample ballot and absentee voter application
2. Redesign and implement new election software
3. Notify every voter who registered from 28 days prior to the election through 15 days prior to the election via a post card, the location of their polling place and where they can obtain a sample ballot.
4. Provide all sample ballots for each ballot type and the poll site locations
5. Hire additional staff to process registration forms and absentee ballot requests due to the fact that the time period for close of registration was reduced by

fourteen days and increased overtime to process all registration forms between the original cut off of 28 days prior to the election to 15 days prior to the election.

6. Modification of Registrar of Voters website.
7. Provide an increased amount of official and sample ballots.

## 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.

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#### 3. Contracted Services

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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.

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

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2. Had meetings with the elections department in order to ascertain what activities were necessary to implement the legislation.
3. Developed new internal policies and procedures.
4. Redesigned and republished the sample ballot and absentee voter application.
5. Redesigned and implemented new election software.
6. Informed and trained poll workers regarding the voting options for the decline to state voter.
7. Provided specialized official ballots for the decline to state voter at each poll site.

B. On-Going Activities

1. Notify every permanent voter who is registered as a decline to state voter that they have an option to vote a partisan ballot as long as that political party has agreed.
2. Hand process absentee voter requests.
3. Provide postage paid post card for the permanent absent voter decline to state voter to indicate which partisan absentee ballot they would like sent to them.
4. Enter the requested partisan ballot information from the post card into the computer software database.
5. Send to each voter a sample ballot containing the information regarding the options available to the decline to state voters.
6. Inform and train poll workers regarding the options for the decline to state voter.
7. Provide specialized official ballots for the decline to state voter at each poll site.

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.

B. Direct Cost Reporting

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



6. 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.

7. 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.

8. 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 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.

9. 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.

10. 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.

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 the 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 OMB Circular A-87 Attachments A and B) and the indirect shall exclude capital expenditures and unallowable costs (as defined and described in OMB 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 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) separate 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. RECORDS RETENTION**

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>2</sup> 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 SAVINGS AND REIMBURSEMENTS**

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any of the following sources shall be identified and deducted from this claim:

3. Fees authorized to be charged and collected by the Legislature. Presently, the fees that are authorized to be collected are: 1) \$0 for facilities which serve six or fewer persons; 2) \$50 for facilities with a capacity to serve seven to 25 persons; and 3) \$100 for facilities with a capacity to serve 26 or more persons. In the event that the Legislature shall enact legislation which either increases or decreases the fee authority, such legislation shall control and will not necessitate an amendment to these parameters and guidelines unless the activities to be performed are amended as well.
4. Any other reimbursement received from the federal or state government, or other non-local source.

Pursuant to Government Code section 17558, subdivision (c), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the parameters and guidelines from the Commission, to assist local agencies 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)(2), issuance of the claiming instructions shall constitute a notice of the right of local agencies to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

## **IX. REMEDIES BEFORE THE COMMISSION**

<sup>2</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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, subdivision (a), 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.

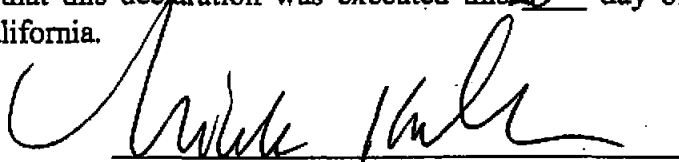
PROOF OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento, and I am over the age of 18 years and not a party to the within action. My place of employment is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841.

On November 28, 2006, I served Proposed Parameters and Guidelines, *15 Day Close of Voter Registration*, by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list attached hereto, and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed this 28<sup>th</sup> day of November, 2006, at Sacramento, California.



Declarant

Mr. Leonard Kaye, Esq.  
County of Los Angeles  
Auditor-Controller's Office  
500 W. Temple Street, Room 603  
Los Angeles, CA 90012

Mr. Glen Everroad, Revenue Manager  
City of Newport Beach  
P. O. Box 1768  
Newport Beach, CA 92659-1768

Mr. Neal Kelley  
Acting Registrar of Voters  
1300 South Grand Ave.  
Santa Ana, CA 92705

Mr. Jim Jagers  
PO Box 1993  
Carmichael, CA 95609

Mr. John Mott-Smith  
Secretary of State's Office (D-15)  
1500 11<sup>th</sup> St.  
Sacramento, CA 95814

Ms. Carla Castaneda  
Department of Finance (A-15)  
915 L Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814

Ms. Susan Genacou  
Department of Finance (A-15)  
915 L Street, Suite 1190  
Sacramento, CA 95814

Mr. David Wellhouse  
Wellhouse & Associates  
9175 Kiefer Blvd., Suite 121  
Sacramento, CA 95826

Ms. Ginny Brummels  
State Controller's Office (B-08)  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

Mr. J. Bradley Burgess  
Public Resource Management Group  
1380 Lead Hill Boulevard, Suite 106  
Roseville, CA 95661

Ms. Bonnie Ter Keurst  
County of San Bernardino  
Office of the Auditor/Controller-Recorder  
222 West Hospitality Lane  
San Bernardino, CA 92415-0018

Mr. Jm Spano  
State Controller's Office (B-08)  
Division of Audits  
300 Capitol Mall, Suite 518  
Sacramento, CA 95814



DEPARTMENT OF  
**FINANCE**  
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR

STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

July 15, 2008

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of July 2, 2008, the Department of Finance (Finance) has reviewed the draft staff analysis and the proposed parameters and guidelines for Claim No. CSM-01-TC-15, "Fifteen Day Close of Voter Registration."

As a result of our review, Finance concurs with the staff recommendations with one exception. Finance recommends deleting the following item from the list of reimbursable one-time activities:

- Modify the Registrar of Voters website to reflect the Amendment to Section 13303 of the Elections Code, Chapter 899 of the Statutes of 2000, Subdivision (c) that allows voters to register through the 15<sup>th</sup> day prior to an election.

The test claim statutes did not require maintenance of a website. The approved test claim statute only required the amendment of the polling place notice sent to voters who register after the 29<sup>th</sup> day prior to the election.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied your July 2, 2008 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Diana L. Ducay  
Program Budget Manager

Enclosure



Attachment A

DECLARATION OF CARLA CASTAÑEDA  
DEPARTMENT OF FINANCE  
CLAIM NO. CSM-01-TC-15

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.

July 15, 2008  
at Sacramento, CA

Carla Castañeda  
Carla Castañeda

PROOF OF SERVICE

Test Claim Name: Fifteen Day Close of Voter Registration  
Test Claim Number: CSM-01-TC-15

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12 Floor, Sacramento, CA 95814.

On July 15, 2007, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12 Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

B-08

Mr. Jim Spano  
State Controller's Office  
Division of Audits  
300 Capitol Mall, Suite 518  
Sacramento, CA 95814

Mr. David Wellhouse  
David Wellhouse & Associates, Inc.  
9175 Klefer Boulevard, Suite 121  
Sacramento, CA 95826

Ms. Jolene Tollenaar  
MGT of America  
455 Capitol Mall, Suite 600  
Sacramento, CA 95814

D-15

Mr. John Mott-Smith  
Secretary of State's Office  
1500 11<sup>th</sup> Street  
Sacramento, CA 95814

A-15

Ms. Carla Castaneda  
Department of Finance  
916 L Street, 11<sup>th</sup> Floor  
Sacramento, CA 95814

Ms. Annette Chinn  
Cost Recovery Systems, Inc.  
705-2 East Bidwell Street #294  
Folsom, CA 95630

A-15

Ms. Donna Ferebee  
Department of Finance  
915 L Street, 11<sup>th</sup> Floor  
Sacramento, CA 95814

Mr. Neal Kelley  
County of Orange – Registrar of Voters  
1300 South Grand Avenue, Building C  
Santa Ana, CA 92705

Ms. Deborah Seller  
County of Solano – Registrar of Voters  
675 Texas Street, Suite 2600  
Fairfield, CA 94533

Mr. Allan Burdick  
MAXIMUS  
4320 Auburn Blvd, Suite 2000  
Sacramento, CA 95841

Mr. Leonard Kaye, Esq.  
County of Los Angeles  
Auditor – Controller's Office  
500 W. Temple Street, Room 603  
Los Angeles, CA 90012

A-15

Ms. Susan Geanacou  
Department of Finance  
915 L Street, Suite 1190  
Sacramento, CA 95814

Mr. Glen Everroad  
City of Newport Beach  
3300 Newport Boulevard  
P.O. Box 1768  
Newport Beach, CA 92659-1768

Ms. Beth Hunter  
Centration, Inc.  
8570 Utica Avenue, Suite 100  
Rancho Cucamonga, CA 91730

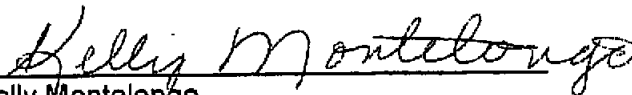
B-08

Ms. Ginny Brummels  
State Controller's Office  
Division of Accounting and Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

Ms. Bonnie Ter Keurst  
County of San Bernardino  
Office of the Auditor/Controller-Recorder  
222 West Hospitality Lane  
San Bernardino, CA 92415-0018

Ms. Juliana F. Gmur  
MAXIMUS  
2380 Houston Avenue  
Clovis, CA 93611

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 15, 2007 at Sacramento, California.

  
Kelly Montelongo