



**RECEIVED**

March 25, 2014

*Commission on  
State Mandates*

March 24, 2014

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

Re: Request for Continuance of Agenda Item and Comments  
*Post-Election Manual Tally (PEMT), 10-TC-08*

Dear Ms. Halsey:

The Department of Finance has had the opportunity to review and consider the Commission's Final Staff Analysis and Proposed Statement of Decision (Proposed Decision) dated March 14, 2014, and requests that the Commission consider the below.

First, the Proposed Decision states that the test claim regulation (California Code of Regulations, title 2, section 20121) imposes "a new requirement to document and disclose to the public any variances between the semifinal official canvass results and the manual tally results for *nine percent* of the precincts." (Proposed Decision, p. 34, emphasis in original.) But as staff acknowledges, pre-existing law has always imposed a duty on counties to perform post-election manual tallies in certain limited circumstances. (Proposed Decision, p. 33.) Here, while the subject regulation has increased the size of the actual manual tally from 1 percent to 10 percent in specific circumstances, this increase is not "new" or "a higher level of service." Rather, this increase results in additional costs (i.e., increased sample size). (See *Lucia Mar Unified Sch. Dist. v. Honig* (1988) 44 Cal. 3d 830.) Moreover, the Proposed Decision mistakenly concludes that the requirement is new because it increases "public confidence in the accuracy of election results." (Proposed Decision, p. 12.) As noted above, post-election manual tallies have always existed. The mere increase in the number of ballots counted by counties does not correspond with increased duties or increased "public confidence." Accordingly, Finance respectfully asks the Commission to reconsider this determination and find no mandate.

Second, the Proposed Decision seems to suggest that HAVA (Help America Vote Act) requires locals to have at least one "direct recording electronic voting system or other voting system" to assist the visually impaired. (42 U.S.C § 15481 (a)(3).) While it is true that most voting systems have an electronic or mechanical component, the relied on HAVA provision is an "access" statute, requiring that individuals with disabilities, including the visually impaired, have the opportunity to vote independently and in private. It does not mandate a mechanical or electronic system. HAVA states that while a voter must be able to verify his or her selection in a private and independent manner, the term "'verify' may not be defined in a manner that makes it impossible for a paper ballot voting system. . ." (42 U.S.C § 15481 (c)(2).) And HAVA

specifically states that the methods of complying with this relied on section is left to the discretion of the state. (42 U.S.C § 15485.) Last, other sources, including the Secretary of State's State Plan (2008) show that the relied on provision of HAVA is about access and not a specific type of voting system. Thus, Finance asks that the Commission reconsider its determination of federal law in the Proposed Decision.

Finance also requests this item be continued to a future hearing so that Commission members and staff have sufficient time to review and, if necessary, seek additional comment to the above concerns.

If you have any questions regarding this letter, please contact Michael Byrne, Principal Program Budget Analyst at (916) 445-3274, Ext. 3093.

Sincerely,



for  
Tom Dyer  
Assistant Program Budget Manager

Enclosure

Enclosure A

DECLARATION OF MICHAEL BYRNE  
DEPARTMENT OF FINANCE  
TEST CLAIM NO. 10-TC-08

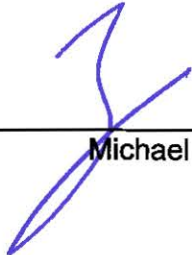
1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

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.

3/24/2014

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at Sacramento, CA



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Michael Byrne

**DECLARATION OF SERVICE BY EMAIL**

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 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 26, 2014, I served the:

**Department of Finance Comments and Request Postponement of Hearing; and  
Notice of Postponement Approval and Request for Comment from Claimant and the  
Secretary of State on the Requirements Imposed by HAVA**

*Post Election Manual Tally (PEMT), 10-TC-08  
Former California Code of Regulations, Title 2, Sections 20120, 20121, 20122,  
20123, 20124, 20125, 20126 and 20127; Register 2008, No.43  
County of Santa Barbara, Claimant*

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 March 26, 2014 at Sacramento, California.



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Heidi J. Palchik  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 1/22/14

**Claim Number:** 10-TC-08

**Matter:** Post Election Manual Tally (PEMT)

**Claimant:** County of Santa Barbara

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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