

**ITEM 12**  
**PROPOSED ORDER TO SET ASIDE**  
**PARAMETERS AND GUIDELINES**

Statutes 1979, Chapter 494

*Physically Handicapped Voter Accessibility*  
05-PGA-14 (SB90-2712)

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**EXECUTIVE SUMMARY**

**Background**

On June 18, 1980, the Board of Control (the agency that preceded the Commission on State Mandates (Commission)) determined that the *Physically Handicapped Voter Accessibility* program imposed a reimbursable state-mandated program. Under this program, Elections Code section 12280 (formerly Elections Code section 1638.5) required counties to conduct a survey of polling places in existence on January 1, 1980 to ensure that polling places meet the requirements specified by the State Architect for accessibility to physically handicapped persons. In addition, Elections Code section 13304 (formerly Elections Code section 10010.2) required counties, when notifying voters of polling place locations, to also notify the voter whether the polling place is accessible to physically handicapped persons. The Board of Control adopted parameters and guidelines for this program on January 20, 1982. The parameters and guidelines clarified that conducting a survey of polling places was a one-time activity and notifying voters of accessibility to polling places was an ongoing activity.

Statutes 2005, chapter 72 (Assem. Bill No. (AB) 138, eff. July 19, 2005) was enacted to amend section 13304 to make it permissive, stating that notices of polling place locations *may, at the option of the local elections official*, inform the voter of accessibility to the physically handicapped. AB 138 also declared the Legislature's intent in amending this section that since other state and federal laws have been enacted to provide expanded rights to disabled voters, requiring notification to voters of polling place accessibility may no longer be necessary. However, local elections officials may elect continue to provide this notification.

**Discussion**

Notification to Voters (Elections Code Section 13304)

The *Physically Handicapped Voter Accessibility* program was enacted 27 years ago to ensure that physically handicapped voters had adequate access to polling place locations, and were properly notified of that access. Since that time, state and federal laws have significantly increased access requirements to physically handicapped persons, and voters are well aware that all polling places are accessible to physically handicapped persons. Therefore, last year the Legislature enacted AB 138 to modify the mandate so that county

elections officials were no longer *required* to provide notice regarding access to voters, but could choose to continue to provide the notice.

Article XIII B, section 6 of the California Constitution states that “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.” (Emphasis added.) This constitutional provision was specifically intended to prevent the state from forcing programs on local government that *require* expenditure by local governments of their tax revenues.<sup>1</sup> To implement article XIII B, section 6, the Legislature enacted Government Code section 17500 et seq. Government Code section 17514 defines “costs mandated by the state” as “any increased costs which a local agency or school district is *required* to incur . . . as a result of any statute . . . which *mandates* a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.” (Emphasis added.)

Thus, in order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must order or command that local governmental agencies perform an activity or task. If the statutory language does not mandate local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state-mandated program does not exist.

Elections Code section 13304 does not mandate local agencies to perform an activity or task. As amended, there is no express requirement for the county elections officials to notify voters of accessibility for physically handicapped persons to polling places. Rather, the plain language of Elections Code section 13304 now states that notices of polling place locations “*may, at the option of the local elections official,*” inform the voter of accessibility to the physically handicapped.

Under the rules of statutory construction, the Commission may not disregard or enlarge the plain provisions of a statute, nor may it go beyond the meaning of the words used when the words are clear and unambiguous. Thus, the Commission, like the court, is prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute.<sup>2</sup> This prohibition is based on the fact that the California Constitution vests the Legislature with policymaking authority. As a result, the Commission has been instructed by the courts to construe the meaning and effect of statutes analyzed under article XIII B, section 6 strictly.<sup>3</sup>

Thus, elections officials are no longer required to notify voters of polling place accessibility for the physically handicapped and compliance with the test claim statute is within the discretion of the local agency and is not subject to reimbursement under article XIII B, section 6 of the California Constitution and Government Code section 17514.

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<sup>1</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Los Angeles, supra*, 43 Cal.3d 46, 56; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-1284.

<sup>2</sup> *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757; *In re Rudy L.* (1994) 29 Cal.App.4th 1007, 1011.

<sup>3</sup> *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816-1817.

### Surveying Polling Places

The remaining portion of the test claim statutes (Elec. Code, § 12280) required counties to conduct a survey of polling places in existence on January 1, 1980 to ensure that polling places meet the requirements specified by the State Architect for accessibility to physically handicapped persons. The Board of Control adopted parameters and guidelines for this program that clarified that conducting a survey of polling places was a one-time activity.

The Legislature did not amend this section of the program. However, since the Board of Control determined that the surveys would be conducted on a one-time basis, and since the surveys were completed during the 1980s, this section of the mandate is also no longer required.

Therefore, staff concludes that the Commission should set aside the parameters and guidelines, effective July 19, 2005, when the mandate was made optional.

### **Staff Recommendation**

Staff recommends that the Commission adopt the proposed Order to Set Aside the Parameters and Guidelines for the *Physically Handicapped Voter Accessibility* program.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:  Statutes 1979, Chapter 494  Filed on February 28, 1980 with the Board  of Control;  By the County of Alameda, Claimant	Nos. 05-PGA-14 (SB 90-2712)  <i>Physically Handicapped Voter Accessibility</i>  PROPOSED ORDER TO SET ASIDE PARAMETERS AND GUIDELINES  (Proposed for Adoption on January 26, 2006)
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**ORDER TO SET ASIDE PARAMETERS AND GUIDELINES**

On June 18, 1980, the Board of Control (the agency that preceded the Commission on State Mandates (Commission)) determined that the *Physically Handicapped Voter Accessibility* program imposed a reimbursable state-mandated program. Under this program, Elections Code section 12280 (formerly Elections Code section 1638.5) required counties to conduct a survey of polling places in existence on January 1, 1980 to ensure that polling places meet the requirements specified by the State Architect for accessibility to physically handicapped persons. In addition, Elections Code section 13304 (formerly Elections Code section 10010.2) required counties, when notifying voters of polling place locations, to also notify the voter whether the polling place is accessible to physically handicapped persons. The Board of Control adopted parameters and guidelines for this program on January 20, 1982. The parameters and guidelines clarified that that conducting a survey of polling places was a one-time activity and notifying voters of accessibility to polling places was an ongoing activity.

Statutes 2005, chapter 72 (Assem. Bill No. (AB) 138, eff. July 19, 2005) was enacted to amend section 13304 to make it permissive, stating that notices of polling place locations *may, at the option of the local elections official*, inform the voter of accessibility to the physically handicapped. AB 138 also declared the Legislature's intent in amending this section that since other state and federal laws have been enacted to provide expanded rights to disabled voters, requiring notification to voters of polling place accessibility may no longer be necessary. However, local elections officials may elect continue to provide this notification.

Notification to Voters (Elections Code Section 13304)

The *Physically Handicapped Voter Accessibility* program was enacted 27 years ago to ensure that physically handicapped voters had adequate access to polling place locations, and were properly notified of that access. Since that time, state and federal laws have significantly increased access requirements to physically handicapped persons, and voters

are well aware that all polling places are accessible to physically handicapped persons. Therefore, last year the Legislature enacted AB 138 to modify the mandate so that county elections officials were no longer *required* to provide notice regarding access to voters, but could choose to continue to provide the notice.

Article XIII B, section 6 of the California Constitution states that “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.” (Emphasis added.) This constitutional provision was specifically intended to prevent the state from forcing programs on local government that *require* expenditure by local governments of their tax revenues.<sup>4</sup> To implement article XIII B, section 6, the Legislature enacted Government Code section 17500 et seq. Government Code section 17514 defines “costs mandated by the state” as “any increased costs which a local agency or school district is *required* to incur . . . as a result of any statute . . . which *mandates* a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.” (Emphasis added.)

Thus, in order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must order or command that local governmental agencies perform an activity or task. If the statutory language does not mandate local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state-mandated program does not exist.

Elections Code section 13304 does not mandate local agencies to perform an activity or task. As amended, there is no express requirement for the county elections officials to notify voters of accessibility for physically handicapped persons to polling places. Rather, the plain language of Elections Code section 13304 now states that notices of polling place locations “*may, at the option of the local elections official,*” inform the voter of accessibility to the physically handicapped.

Under the rules of statutory construction, the Commission may not disregard or enlarge the plain provisions of a statute, nor may it go beyond the meaning of the words used when the words are clear and unambiguous. Thus, the Commission, like the court, is prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute.<sup>5</sup> This prohibition is based on the fact that the California Constitution vests the Legislature with policymaking authority. As a result, the Commission has been instructed by the courts to construe the meaning and effect of statutes analyzed under article XIII B, section 6 strictly.<sup>6</sup>

Thus, elections officials are no longer required to notify voters of polling place accessibility for the physically handicapped and compliance with the test claim statute is

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<sup>4</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Los Angeles, supra*, 43 Cal.3d 46, 56; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-1284.

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within the discretion of the local agency and is not subject to reimbursement under article XIII B, section 6 of the California Constitution and Government Code section 17514.

Surveying Polling Places

The remaining portion of the test claim statutes (Elec. Code, § 12280) required counties to conduct a survey of polling places in existence on January 1, 1980 to ensure that polling places meet the requirements specified by the State Architect for accessibility to physically handicapped persons. The Board of Control adopted parameters and guidelines for this program that clarified that conducting a survey of polling places was a one-time activity.

The Legislature did not amend this section of the program. However, since the Board of Control determined that the surveys would be conducted on a one-time basis, and since the surveys were completed during the 1980s, this section of the mandate is also no longer required.

Therefore, the Commission finds that the parameters and guidelines, should be set aside effective July 19, 2005, when the mandate was made optional.

In accordance with this finding, the Commission sets aside the attached parameters and guidelines for the *Physically Handicapped Voter Accessibility* program.

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Paula Higashi, Executive Director

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Date

Attachment: Parameters and Guidelines

Set Aside on 1/26/06

Amended and Adopted on 1/20/82

Parameters and Guidelines  
for Reimbursement of  
Voter Accessibility  
(Chapter 494, Statutes of 1979)

Summary of Mandate

Chapter 494, Statutes of 1979 requires county clerks to inform each voter as to whether his/her designated polling place is accessible to the physically handicapped and to advise each voter of the right to assistance in marking the ballot. This statute required counties to survey each polling place and send required notices to voters regarding polling place accessibility.

Board of Control Decision

On June 18, 1980, the Board determined that counties incurred “costs mandated by the state” as a result of the county requirement to conduct surveys of polling places.

Period of Claim

The first eligible fiscal year is 1979-80. Claimants must file a separate claim for each fiscal year. Claims shall be filed according to procedures issued by the State Controller.

Reimbursable Costs

Counties will be reimbursed for increased costs associated with those activities required by Chapter 494/79. There are two major categories of costs, 1) one-time costs and 2) on-going costs.

1. One-Time Reimbursable costs as a result of conducting a survey of polling places in existence on January 1, 1980.
  - a. Salaries and employee benefits. Show the classification of the employee involved, the hourly wage and benefits, the function performed relative to the mandate, and the amount of time spent.
  - b. Necessary and reasonable travel and related expenses for staff.
  - c. Related Data Processing Costs. Show the computer time required and cost per hour.
  - d. Allowable Overhead Costs.

Counties, cities and special districts may claim an indirect cost through an indirect cost rate proposal prepared in accordance with the provisions

of Federal Regulation OASC-10 (used in conjunction with FMC 74-4) as a percentage of, generally, direct salaries and wages. Indirect costs may include costs of space, equipment, utilities, insurance, administration, etc. (i.e., those elements of indirect cost incurred as the result of the mandate originating in the performing unit and the costs of central government services distributed through the central services cost allocation plan and not otherwise treated as direct cost). Computation of the indirect cost rate must accompany the claim showing how it was derived.

e. Contract Services.

Any contractual services with private vendors for the services listed in item one. In addition, reasonable administrator services fees charged by consultants for handling vocational rehabilitation-related activities are reimbursable.

2. On-Going Costs

It is anticipated that any on-going costs for counties will be minimal. The types of on-going functions required may include resolution of complaints and/or any additional surveys. The costs reimbursable to complete these functions include the items listed in part 1 above. Moreover, on-going costs shall be limited to the reimbursement for the selection of polling places after January 1, 1980.

CERTIFICATION

The following certification must accompany all claims:

I DO HEREBY CERTIFY:

THAT Sections 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with, and

THAT I am the person authorized by the local agency to file claims for funds with the State of California.

Signature of Authorized Representative	Date
Title	Telephone Number ( )