

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

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, 2006,¹ 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, 2007.² No comments were filed on

¹ Exhibit A.

² 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 29th 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 29th and 15th 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 15th 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.³ 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.

³ 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

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| 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, 2006,⁴ 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.

⁴ Exhibit A.

Discussion

The claimant submitted proposed parameters and guidelines on November 28, 2006, and amended proposed parameters and guidelines on January 18, 2007.⁵ 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.⁶ 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.

⁵ Exhibit B.

⁶ 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 29th 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 29th and 15th 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 29th and 15th 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 15th 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.⁷ 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.

⁷ 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.

Adopted: August 1, 2008

**AMENDED PROPOSED PARAMETERS AND GUIDELINES,
AS MODIFIED BY STAFF**

Fifteen Day Close of Voter Registration

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

Fifteen Day Close of Voter Registration
01-TC-15

County of Orange, Claimant

I. SUMMARY OF THE MANDATE

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, 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.

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 29th 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, 2187, 9094, 13300, 13303 and 13306. These amendments allow new registrations or changes to voter registrations through the 15th day prior to an election.~~

~~On October 4, 2006, the Commission on State Mandates founds 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 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).)~~

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, establishing eligibility for fiscal year 2000-2001. However, the operative date of Statutes 2000, chapter 899, is January 1, 2002-2001. Therefore, costs incurred pursuant to Statutes 2000, chapter 899 are reimbursable on or after January 1, 2001. Therefore, the period of reimbursement begins September 29, 2000, the date of enactment.~~

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

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

IV. REIMBURSABLE ACTIVITIES

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

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts,

agendas, 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 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 reimbursable ~~on a one-time basis~~:

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), Stats. 2000, ch. 899.)
- ~~1. Redesign and republish the sample ballot and absentee voter application.~~
 - Redesign and implement new election software used to amend the polling place notice sent to each voter who registered between the 29th and 15th day prior to the election pursuant to Elections Code section 13303, subdivision (c), as amended by Statutes 2000, chapter 899. Actually sending the notices is not reimbursable.
 - ~~3. 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~~
 - ~~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.~~
 - 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 15th day prior to an election..
 - ~~7. Provide an increase 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 the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

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

4. Fixed Assets and Equipment

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

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel

time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

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

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

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

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

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

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

VI. RECORD RETENTION

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

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

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

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

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

Pursuant to Government Code section 17561, subdivision (d)(~~12~~), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

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

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

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

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

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