

ITEM 4
TEST CLAIM
SUPPLEMENTAL INFORMATION

Statutes 2009, Chapter 2 (SCA 4), adopted June 8, 2010 (Proposition 14);
Elections Code Sections 13, 300.5, 325, 332.5, 334, 337, 359.5, 9083.5, 13102,
13105, 13110, 13206, 13230, 13302, 14105.1, as added or amended by
Statutes 2009, Chapter 1 (SB 6);
Elections Code Sections 8002.5, 8040, 8062, 9083.5, 13105, 13206, 13206.5,
13302, as added or amended by Statutes 2012, Chapter 3 (AB 1413);
Secretary of State County Clerk/Registrar of Voters Memoranda Nos. 11005,
effective 1/26/11; 11125, effective 11/23/11; 11126, effective 11/23/11; 12059,
effective 2/10/12.

12-TC-02

Top Two Candidates Open Primary Act

County of Sacramento, Claimant

SUPPLEMENTAL INFORMATION

This supplemental report has been prepared to highlight the chronology, facts, and circumstances relevant to late comments filed by the County of Sacramento (claimant) and the California State Association of Counties (CSAC).

On September 10, 2014, Commission staff received late comments from Ms. Jean Kinney Hurst of CSAC, urging the Commission to “direct staff to prepare an analysis and initiate proceedings for the ‘Top Two Candidates Open Primary Act’ as lawfully amended by the claimant, Sacramento County.”¹ The proposed amendment to which this letter refers was rejected by the executive director as untimely filed on November 4, 2013.² The claimant and now CSAC have filed late comments that the executive director’s action was unwarranted and inconsistent with the applicable law and regulations. However, neither claimant nor any interested party timely appealed the executive director’s rejection of the proposed amendment and, as a result; there is no jurisdiction to consider an appeal of that decision.³

¹ CSAC, Late Comments on the Draft Proposed Decision filed September 10, 2014. The letter itself was addressed to the Commission Chair. However, on the Commission Dropbox transmittal it was addressed “*Letter to Commissioners*”. Given that the letter was sent to the Commission office and that the members act as a body and in public under Bagley-Keene, Commission staff is treating this letter as late comments on the Draft Proposed Decision.

² Exhibit F, Notice of Rejected Proposed Test Claim Amendment, issued November 4, 2013.

³ California Code of Regulations, Title 2, section 1181.1.

Chronology of Relevant Events

On June 11, 2013, the claimant filed this test claim.⁴

After a telephone conversation with the claimant, on October 9, 2013, Commission staff e-mailed claimant to advise the requirements for a test claim amendment in the Government Code and Commission's Regulations.⁵

On October 28, 2013, claimant submitted rebuttal comments,⁶ along with a proposed amendment to the test claim, which included new code sections alleged to result in state-mandated reimbursable costs.⁷ On November 4, 2013, Commission staff informed claimant that the proposed amendment was not timely, and therefore must be rejected for lack of jurisdiction.⁸ On December 13, 2013, Commission staff e-mailed claimant, in response to a telephone inquiry regarding the rejection of the proposed amendment, to highlight the Commission's regulations regarding amendment of a test claim and the statute of limitations, and to clarify the reasons for the rejection.⁹

On January 17, 2014, claimant e-mailed Commission staff to inquire about "the status of the letter I [the claimant] sent through the Commission's drop box process." Commission staff responded by e-mail that staff had not received any letter or other submittal, and that an automatic confirmation from the electronic submission service, as well as a follow-up confirmation e-mail from staff, would follow receipt of any electronic filing. Claimant e-mailed again, stating that claimant would resubmit the letter. Commission staff responded by e-mail, citing Code of Regulations, title 2, section 1181.2, which describes the Commission's electronic filing process, the automatic confirmation, and the responsibility of a party to confirm receipt, in the absence of e-mail confirmation from staff within two business days.¹⁰

On January 21, 2014, claimant submitted a challenge to the executive director's November 4, 2013 return of the proposed test claim amendment.¹¹ On January 28, 2014, claimant e-mailed to confirm receipt of the letter and Commission staff confirmed that it was received and would be uploaded to the Commission's web site on that day.¹² Since the letter was well past the date for an appeal of an executive director decision and was not clearly indicated as such, Commission staff added the January 21, 2014 letter to record for the original test claim, which is located at Exhibit F to Item 4.

⁴ Exhibit A, Test Claim.

⁵ October 9, 2013 e-mail from Jason Hone to Alice Jarboe, attached.

⁶ Exhibit C, Claimant Rebuttal Comments, filed October 28, 2013.

⁷ Exhibit F, Proposed Test Claim Amendment Filing, filed October 28, 2013.

⁸ Exhibit F, Notice of Rejected Proposed Test Claim Amendment, issued November 4, 2013.

⁹ December 13, 2013 e-mail from Jason Hone to Alice Jarboe, attached.

¹⁰ January 17, 2014 e-mails between Jason Hone and Alice Jarboe, attached.

¹¹ Exhibit F, Claimant's Challenge to Rejection of Test Claim Amendment.

¹² January 28, 2014 e-mail from Jason Hone to Alice Jarboe, attached.

Section 1181 of the Commission's regulations (since renumbered at section 1181.1) states that any party may appeal to the Commission for review of an action or decision of the executive director within ten days of first being served notice of the decision. The rejection of the claimant's proposed amendment for lack of jurisdiction was served on November 4, 2013; claimant had until November 14, 2013 to appeal the executive director's decision; the claimant's "challenge" to the executive director's decision to not take jurisdiction of the amendment was received on January 21, 2014.

On May 19, 2014, Commission staff issued a draft proposed decision on the test claim.¹³ On July 10, 2014 Commission staff, in response to a telephone inquiry, e-mailed claimant, noting that the executive director rejected the proposed amendment because the statute of limitations pertaining to the newly added code sections had passed prior to the submission of the proposed amendment. In addition, Commission staff noted that pursuant to Code of Regulations, title 2, section 1181.1, a party has ten days after first being served notice to appeal a decision or action of the executive director, which time had expired before claimant submitted its written challenge to the decision.¹⁴

On July 11, 2014, claimant submitted written comments on the draft proposed decision, in which claimant continues to discuss the rejected test claim amendment.¹⁵

¹³ Exhibit D, Draft Proposed Decision.

¹⁴ July 10, 2014 e-mail from Jason Hone to Alice Jarboe, attached.

¹⁵ Exhibit E, Claimant's Comments on the Draft Proposed Decision, filed July 11, 2014.

RECEIVED
September 10, 2014
Commission on
State Mandates

LATE FILING



September 10, 2014

1100 K Street
Suite 701
Sacramento
California
95814

Telephone
916.327-7500

Facsimile
916.441.5507

Ms. Eraina Ortega, Chair
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

Re: **Top Two Candidates Open Primary Act**

Dear Ms. Ortega:

I am writing today on behalf of the California State Association of Counties to respectfully request that the Commission direct its staff to prepare an analysis and initiate proceedings for the "Top Two Candidates Open Primary Act" as lawfully amended by the claimant, Sacramento County.

Sacramento County filed a test claim in June of 2013 and received acknowledgement on July 3 that the claim was complete.

On October 28, 2013, the claimant filed an amendment. A week later, Commission staff rejected the amended test claim. The letter declaring the rejection cites Section 1183(c) of the Commission's regulations, which, the letter says, "requires that all test claims or amendments be filed within the statute of limitations."

However, this regulation directly conflicts with state law, which explicitly allows amendments like the one Sacramento County filed.

The letter declaring the rejection gives a related reason for the action, noting that "the amendment newly identifies specific sections of statutes not pled in the initial test claim filing." Again, state law addresses this issue.

The section of law relevant to this discussion is Government Code Section 17557 (e), which states in its entirety:

A test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. The claimant may thereafter amend the test claim at any time, but before the test claim is set for a hearing, without affecting the original filing date as long as the amendment substantially relates to the original test claim.

The meaning of this code section is plain and unambiguous. It places only two restrictions on the filing of amendments. First, the claimant must amend the claim before it is set for hearing. Second, the amendment must substantially relate to the original test claim. Outside of those two limitations, the language is very accommodating, saying that the claimant may amend a claim "at any time" and, importantly, "without affecting the original filing date."

Sacramento County's amendment meets all of the requirements of law. The county filed it before the test claim was set for a hearing, and the amendment substantially relates to the original test claim by virtue of being amended by the same bills as the other included code sections (SB 6 of 2009 and AB 1413 of 2012).

Furthermore, the original claim already detailed the activities and costs that the code sections listed in the amended claim required. In fact, the original claim already listed several of the code sections listed in the amended claim, but it did so in a slightly different part of the document. The only difference between the original claim and the amended claim is the actual listing of code sections, yet the current staff analysis avoids any mention of them.

Sacramento County responded to staff's rejection in a January letter asserting their right to file the amended claim, but there is no response from the Commission included in the record. Likewise, the staff analysis does not address why the amended claim that was lawfully filed is not the one before the Commission for consideration.

Therefore, we request that the Commission on State Mandates direct its staff to prepare a new analysis of this claim as lawfully amended by Sacramento County and to bring that amended claim before the Commission for consideration.

Respectfully,



Jean Kinney Hurst
Senior Legislative Representative

Cc: Sacramento County

DECLARATION OF SERVICE BY EMAIL

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

On September 12, 2014, I served the:

California State Association of Counties (CSAC)

Late Comments filed September 10, 2014

Top Two Candidates Open Primary Act, 12-TC-02

Elections Code Sections 13 et al.,

Statutes 2009, Chapter 2 (SCA 4); Statutes 2009, Chapter 1 (SB 6);

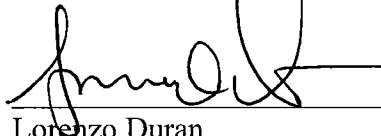
Statutes 2012, Chapter 3 (AB 1413)

Secretary of State's CC/ROV Memorandums #11005, #11125, #11126, and #12059

County of Sacramento, Claimant

State Controller's Office, Requester 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 September 12, 2014 at Sacramento, California.



Lorenzo Duran

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/27/14

Claim Number: 12-TC-02

Matter: Top Two Candidates Open Primary Act

Claimant: County of Sacramento

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, § 1181.3.)

Socorro Aquino, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-7522

SAquino@sco.ca.gov

Harmeet Barkschat, *Mandate Resource Services, LLC*

5325 Elkhorn Blvd. #307, Sacramento, CA 95842

Phone: (916) 727-1350

harmeet@calsdrc.com

Lacey Baysinger, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0254

lbaysinger@sco.ca.gov

Allan Burdick,

7525 Myrtle Vista Avenue, Sacramento, CA 95831

Phone: (916) 203-3608

allanburdick@gmail.com

J. Bradley Burgess, *MGT of America*

895 La Sierra Drive, Sacramento, CA 95864

Phone: (916) 595-2646

Bburgess@mgtamer.com

Michael Byrne, *Department of Finance*

915 L Street, 8th Floor, Sacramento, CA 95814

Phone: (916) 445-3274

michael.byrne@dof.ca.gov

Gwendolyn Carlos, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 323-0706

gcarlos@sco.ca.gov

Annette Chinn, *Cost Recovery Systems, Inc.*

705-2 East Bidwell Street, #294, Folsom, CA 95630

Phone: (916) 939-7901

achinners@aol.com

Marieta Delfin, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-4320

mdelfin@sco.ca.gov

Tom Dyer, *Department of Finance (A-15)*

915 L Street, Sacramento, CA 95814

Phone: (916) 445-3274

tom.dyer@dof.ca.gov

Donna Ferebee, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

donna.ferebee@dof.ca.gov

Susan Geanacou, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

susan.geanacou@dof.ca.gov

Dorothy Holzem, *California Special Districts Association*

1112 I Street, Suite 200, Sacramento, CA 95814

Phone: (916) 442-7887

dorothyh@csda.net

Mark Ibele, *Senate Budget & Fiscal Review Committee*

California State Senate, State Capitol Room 5019, Sacramento, CA 95814

Phone: (916) 651-4103

Mark.Ibele@sen.ca.gov

Alice Jarboe, *County of Sacramento*

Claimant Representative

Countywide Services Agency, 7000 65th Street, Suite A, Sacramento, CA 95823

Phone: (916) 875-6255

JarboeA@saccounty.net

Edward Jewik, *County of Los Angeles*

Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012

Phone: (213) 974-8564

ejewik@auditor.lacounty.gov

Matt Jones, *Commission on State Mandates*

980 9th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 323-3562
matt.jones@csm.ca.gov

Ferlyn Junio, *Nimbus Consulting Group, LLC*
2386 Fair Oaks Boulevard, Suite 104, Sacramento, CA 95825
Phone: (916) 480-9444
fjunio@nimbusconsultinggroup.com

Jill Kanemasu, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-9891
jkanemasu@sco.ca.gov

Anita Kerezsi, *AK & Company*
3531 Kersey Lane, Sacramento, CA 95864
Phone: (916) 972-1666
akcompany@um.att.com

Jean Kinney Hurst, Senior Legislative Representative, Revenue & Taxation, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814-3941
Phone: (916) 327-7500
jhurst@counties.org

Jay Lal, *State Controller's Office (B-08)*
Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0256
JLal@sco.ca.gov

Kathleen Lynch, *Department of Finance (A-15)*
915 L Street, Suite 1280, 17th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
kathleen.lynch@dof.ca.gov

Hortensia Mato, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3000
hmato@newportbeachca.gov

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Meredith Miller, Director of SB90 Services, *MAXIMUS*
3130 Kilgore Road, Suite 400, Rancho Cordova, CA 95670
Phone: (972) 490-9990
meredithcmiller@maximus.com

Geoffrey Neill, Senior Legislative Analyst, Revenue & Taxation, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
gneill@counties.org

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Marianne O'Malley, *Legislative Analyst's Office (B-29)*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8315
marianne.O'malley@lao.ca.gov

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA
92415-0018
Phone: (909) 386-8854
jai.prasad@atc.sbcounty.gov

Mark Rewolinski, *MAXIMUS*
625 Coolidge Drive, Suite 100, Folsom, CA 95630
Phone: (949) 440-0845
markrewolinski@maximus.com

Kathy Rios, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-5919
krios@sco.ca.gov

Lee Scott, *Department of Finance*
15 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
lee.scott@dof.ca.gov

Jim Spano, Chief, Mandated Cost Audits Bureau, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-5849
jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov

Meg Svoboda, *Senate Office of Research*
1020 N Street, Suite 200, Sacramento, CA
Phone: (916) 651-1500
meg.svoboda@sen.ca.gov

Jolene Tollenaar, *MGT of America*
2001 P Street, Suite 200, Suite 200, Sacramento, CA 95811
Phone: (916) 443-9136
jolene_tollenaar@mgtamer.com

Evelyn Tseng, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3127

etseng@newportbeachca.gov

Brian Uhler, *Legislative Analyst's Office*

925 L Street, Suite 1000, Sacramento, CA 95814

Phone: (916) 319-8328

brian.uhler@lao.ca.gov

David Wellhouse, *David Wellhouse & Associates, Inc.*

3609 Bradshaw Road, Suite 121, Sacramento, CA 95927

Phone: (916) 368-9244

dwa-david@surewest.net

Hasmik Yaghobyan, *County of Los Angeles*

Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012

Phone: (213) 974-9653

hyaghobyan@auditor.lacounty.gov

From: Jason Hone
To: "[Jarboe, Alice](#)"
Subject: Test Claim Amendment
Date: Wednesday, October 09, 2013 11:21:00 AM

Hi Alice,

You would submit the same form (<http://www.csm.ca.gov/forms.shtml>) to amend a test claim as you to file a new one. The form can be submitted with just the new information and an explanation of how this would amend your initial filing. If you are adding/pleading additional statutes or regulations, please note the advisory language under the second bullet on the front of the form: *Test claims may not be amended after the draft staff analysis is issued and the matter is set for hearing, or if the statute of limitations on the statute or executive order being added has expired, (Gov. Code, § 17557(e); Cal. Code Regs., tit. 2, § 1183.)*

Also, for your reference I've included the entire §1183 of our regulations concerning test claim filing:

§ 1183. Test Claim Filing.

- (a) A local agency or school district shall file a test claim with the commission to obtain a mandate determination.
- (b) Any test claim filed with the commission must allege increased costs as a result of the statute or executive order that exceed the amount set in Government Code section 17564.
- (c) Except as provided in Government Code sections 17573 and 17574, any test claim or amendment filed with the commission must be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later. For purposes of this subsection, "within 12 months" means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant.
- (d) All test claims, or amendments thereto, shall be filed on a form developed by the executive director and shall contain all of the elements and supplemental documents required by the form and statute. When an omnibus bill is pled, claimant shall file only the relevant pages of the statute, including the Legislative Counsel's Digest and the specific statutory changes at issue.
- (e) The claimant shall file one original test claim, or amendment thereto, and accompanying documents with the commission. An "original" is either a signed hard copy or an Adobe PDF electronic copy thereof submitted through the e-filing system on the commission's web site. If the document is e-filed with the commission, the claimant is responsible for maintaining the paper document with original signature(s) for the duration of the test claim process, including any period of appeal. If a hard copy is submitted the original shall be unbound and single-sided, without tabs, and include a table of contents. If the original is filed in Adobe PDF format, the accompanying documents shall also be filed in Adobe PDF format.
- (f) The claimant shall also file seven (7) copies of the test claim, or amendment thereto, and accompanying documents with the commission, if the original is filed in hard copy. The copies shall be double-sided and shall not include tabs. If the test claim, or amendment thereto is e-filed, no copies shall be filed.
- (g) Within ten (10) days of receipt of a test claim, or amendment thereto, commission staff shall notify the claimant if the test claim is complete or incomplete and send a copy of these regulations

unless a correct copy was previously provided. Test claims will be considered incomplete if any of the elements required in subsections (d), (e), or (f) of this section are illegible or are not included. If a complete test claim is not received within thirty (30) calendar days from the date the incomplete test claim was returned, the executive director may disallow the original test claim filing date. A new test claim(s) may be accepted on the same statute or executive order alleged to impose a mandate.

(h) Test claims may be prepared as a joint effort between two or more claimants and filed with the commission if the claimants attest to all of the following in the test claim filing:

- (1) The claimants allege state-mandated costs result from the same statute or executive order;
- (2) The claimants agree on all issues of the test claim; and,
- (3) The claimants have designated one contact person to act as the resource for information regarding the test claim.

(i) Any test claim, or portion of a test claim, that the commission lacks jurisdiction to hear for any reason may be dismissed by the executive director with a written notice stating the reason for dismissal.

(j) Any party may appeal to the commission for review of the actions and decisions of the executive director under this section pursuant to section 1181 of these regulations.

Note: Authority cited: Sections 17527(g) and 17553, Government Code. Reference: Sections 17521, 17530, 17551, 17553, 17557(e), 17564, 17573 and 17574, Government Code.

Jason Hone

Assistant Executive Director

Commission on State Mandates

916.323.3562 | 916.445.0278 fax

980 9th Street, Suite 300 | Sacramento, CA 95814

www.csm.ca.gov

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Please consider the environment before printing this e-mail

From: Jason Hone
To: "[Jarboe, Alice](#)"
Subject: RE: Phone Call
Date: Friday, December 13, 2013 11:09:00 AM

Hi Alice – again, sorry I missed you. I'd be happy to discuss your question via e-mail.

As it was relayed to me, you had questioned the executive director's denial of the amendment because Government Code (GC) 17557(e) states:

"A test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. The claimant may thereafter amend the test claim at any time, but before the test claim is set for a hearing, without affecting the original filing date as long as the amendment substantially relates to the original test claim."

It is true that this claim has not yet been set for hearing, however, GC 17551(c) states that:
"Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later."

If an amendment is filed to add new statutes or executive orders, then those newly identified statutes and executive orders are subject to the statute of limitations in GC 17551. Our regulations (2 CCR 1183(c)), as cited in the letter rejecting the amendment, serve to clarify and reconcile these two sections of the code as they pertain to a test claim amendment which adds new statutes or executive orders. If the amendment were to add new evidence to the record, revise the narrative, or add supporting documentation then the amendment would not be subject to the statute of limitations in GC 17551.

I hope this helps clarify.

Jason Hone

Commission on State Mandates

(916) 323-3562

From: Jarboe, Alice [mailto:JarboeA@saccounty.net]
Sent: Thursday, December 12, 2013 6:51 PM
To: Jason Hone
Subject: Phone Call

Hi Jason,

I am monitoring my email while I'm out of the office, so perhaps we could 'chat' via email. Otherwise, I will give you a call towards the end of next week.

Thanks,
Alice Jarboe

County of Sacramento Email Disclaimer: This email and any attachments thereto may contain private, confidential, and privileged material for the sole use of the intended recipient. Any review, copying, or distribution of this email (or any attachments thereto) by other than the County of Sacramento or the intended recipient is strictly prohibited. If you are not the intended recipient, please contact the sender immediately and permanently delete the original and any copies of this email and any attachments thereto.

From: Jason Hone
To: ["Jarboe, Alice"](#)
Bcc: [Heather Halsey](#)
Subject: RE: Letter submitted
Date: Friday, January 17, 2014 4:19:00 PM
Attachments: [dropbox auto confirmation.png](#)
[RE Top Two Candidates Open Primary Act 12-TC-02.msg](#)

Hi Alice,

I've carefully double checked our records and we have not received a drop box submittal on 12-TC-02 since the rebuttal comments and proposed amendment you submitted on 10/28/13. Do you have the automatic confirmation email from the "YouSendIt" software system? It would look like the attached picture. Commission regulations require our staff to send a confirmation email (example attached from your 10/28 submittal) within two days of receipt of an e-filing, although we usually send that e-mail within only a couple hours after a drop box submittal is received.

Please let me know if you have either of those confirmations.

Thanks,

Jason Hone

Commission on State Mandates
(916) 323-3562

From: Jarboe, Alice [mailto:JarboeA@saccounty.net]
Sent: Friday, January 17, 2014 3:27 PM
To: Jason Hone
Subject: Letter submitted

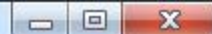
Hi Jason,

I'm just checking in to find out about the status of the letter I sent through the Commission's drop box process. The letter was for 12-TC-02 and addressed the issue of the Staff's rejection of the Claimants amendment to the test claim. This was submitted about a month ago and I haven't seen it posted to the web yet. Can you let me know if I need to resubmit?

Thanks,

Alice Jarboe

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Message

Add-Ins

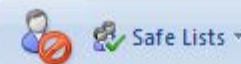
Adobe PDF

Reply
Reply to All
Forward

Respond

Delete
Move to Folder
Create Rule
Other Actions

Actions

Block Sender
Not Junk

Junk E-mail

Categorize
Follow Up
Mark as Unread

Options

Find

Related

Select

Find

From: YouSendIt [delivery@yousendit.com]

Sent: Fri 1/17/2014 4:02 PM

To: Jason Hone

Cc:

Subject: Commission on State Mandates Upload Complete: 2014 Jan 17 16:01 upload

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From: [Heidi Palchik](#)
To: jarboea@saccounty.net
Cc: [Jason Hone](#); [Lorenzo Duran](#)
Subject: RE: Top Two Candidates Open Primary Act 12-TC-02
Date: Monday, October 28, 2013 1:57:46 PM

Good Afternoon:

The documents you sent have been successfully received by the Commission and are in legible format.

Thank you,

Heidi

Heidi Palchik

Program Analyst
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
www.csm.ca.gov
Phone: (916) 323-8218
Fax: (916) 445-0278

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From: YouSendIt [mailto:delivery@yousendit.com]
Sent: Monday, October 28, 2013 9:38 AM
To: YouSendItGroup
Subject: Top Two Candidates Open Primary Act 12-TC-02

Attached is Sacramento County's (Claimant) rebuttal comments to the DOF's response. Also attached is the minor amendment to the original test claim filing.
Submitted by: Alice Jarboe, Sacramento County Voter Registration and Elections, phone 916 875 6255, fax 916 875 6516.

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Sent by: jarboea@saccounty.net
File to pick up: 2013 Oct 28 9:37 upload
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From: Jason Hone
To: ["Jarboe, Alice"](#)
Bcc: [Heather Halsey](#); [Camille Shelton](#); [Matt Jones](#)
Subject: RE: Letter submitted
Date: Friday, January 17, 2014 4:52:00 PM

Hi Alice,

I will be sure to look for it and we will confirm its receipt. The filing date on this letter will be the date it is received by the Commission. I've included below the relevant section of our regulations (Cal. Code Regs., tit. 2, § 1181.2.):

§ 1181.2. Filing and Service of Written Materials.

§1181.2(c)(1)(C)

An automated notice that the document was successfully sent is immediately available to the person tendering the document to the commission's e-filing system. Commission staff shall reply by e-mail confirming actual receipt of the document by the commission within two business days of receipt. In the absence of a confirmation e-mail from commission staff, it is the responsibility of the person tendering the document to obtain confirmation that the commission actually received it. E-mail service is complete upon successful transmission to the commission.

Have a good holiday weekend.

Thanks,

Jason Hone

Commission on State Mandates
(916) 323-3562

From: Jarboe, Alice [<mailto:JarboeA@saccounty.net>]
Sent: Friday, January 17, 2014 4:42 PM
To: Jason Hone
Subject: RE: Letter submitted

Hi Jason,

I didn't see the Commission email come through so there must have been some kind of hang-up in the system. I'll resubmit.

Thanks for checking on this for me.

Alice

From: Jason Hone [<mailto:jason.hone@csm.ca.gov>]
Sent: Friday, January 17, 2014 4:21 PM
To: Jarboe, Alice
Subject: RE: Letter submitted

Hi Alice,

I've carefully double checked our records and we have not received a drop box submittal on 12-TC-02 since the rebuttal comments and proposed amendment you submitted on 10/28/13. Do you have the automatic confirmation email from the "YouSendIt" software system? It would look like the attached picture. Commission regulations require our staff to send a confirmation email (example attached from your 10/28 submittal) within two days of receipt of an e-filing, although we usually send that e-mail within only a couple hours after a drop box submittal is received.

Please let me know if you have either of those confirmations.

Thanks,

Jason Hone

Commission on State Mandates

(916) 323-3562

From: Jarboe, Alice [<mailto:JarboeA@saccounty.net>]

Sent: Friday, January 17, 2014 3:27 PM

To: Jason Hone

Subject: Letter submitted

Hi Jason,

I'm just checking in to find out about the status of the letter I sent through the Commission's drop box process. The letter was for 12-TC-02 and addressed the issue of the Staff's rejection of the Claimants amendment to the test claim. This was submitted about a month ago and I haven't seen it posted to the web yet. Can you let me know if I need to resubmit?

Thanks,

Alice Jarboe

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From: Jason Hone
To: ["Jarboe, Alice"](#)
Cc: [Lorenzo Duran](#)
Subject: RE: Claimants Challenge to Rejection of Test Claim (12-TC-02) Top Two Candidates Open Primary Act
Date: Tuesday, January 28, 2014 12:09:00 PM

Hi Alice,

This document is being uploaded to our website today.

Thanks,

Jason Hone

Commission on State Mandates

(916) 323-3562

From: Jarboe, Alice [mailto:JarboeA@saccounty.net]
Sent: Tuesday, January 28, 2014 11:49 AM
To: Lorenzo Duran
Cc: Jason Hone
Subject: RE: Claimants Challenge to Rejection of Test Claim (12-TC-02) Top Two Candidates Open Primary Act

Hello Mr. Duran,

I don't see that this has been posted to the Pending Caseload link for the Test Claim 12-TC-02.
When will this be uploaded to that site?

Thanks,

Alice Jarboe

From: Lorenzo Duran [mailto:Lorenzo.Duran@csm.ca.gov]
Sent: Tuesday, January 21, 2014 12:27 PM
To: Jarboe, Alice
Cc: Jason Hone
Subject: Claimants Challenge to Rejection of Test Claim (12-TC-02) Top Two Candidates Open Primary Act

The document you sent has been successfully received by the Commission and is in a legible

format.

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From: Jason Hone
To: ["Alice Jarboe"](#)
Subject: Rejected Test Claim Amendment
Date: Thursday, July 10, 2014 11:52:00 AM
Attachments: [Test Claim Amendment.msg](#)
[RE Phone Call.msg](#)

Hi Alice,

I've attached two previous emails I sent you concerning the issue of filing a test claim amendment within the statute of limitations pertaining to new statutes or regulations alleged to impose a mandate. Also note the discussion of this point in the November 4, 2013 letter rejecting the proposed amendment - <http://csm.ca.gov/pendingclaims/docs/ttcopa/doc20.pdf>

The Commission cannot take jurisdiction on any statutes (or sections thereof) pled after the statute of limitations has passed. (Gov. Code section 17551(c); 2 CCR 1183.1(b).) So while the proposed amendment adding new code sections may "relate" to the general subject of the original filing, and was submitted prior to this matter being set for hearing, the statute of limitations on the newly identified code sections had passed. The amendment process cannot be used to circumvent the statute of limitations. If the Commission were to adopt a decision on the proposed amendment without jurisdiction, the action would be void. (Please see explanation in the attached emails of October 9, 2013 and December 13, 2013.)

The executive director has the authority to dismiss a proposed amendment to a test claim that the Commission lacks jurisdiction to hear. (2 CCR 1183.1(g).) The executive director's rejection of the proposed amendment was issued on November 4, 2013. Per Commission regulations (2 CCR § 1181.1) an appeal of an executive director's action or decision may be filed within 10 days of first being served written notice of the executive director's action or decision. The Commission did not receive an appeal on this issue by the regulatory deadline. That is why the letter you submitted in January was not treated as an appeal of the executive director's decision, but rather added to the record as additional comments.

The comment deadline for the draft proposed decision is July 14, 2014. Any comments timely filed will be addressed in the proposed decision provided to the Commission members at the September hearing of this matter. There is also opportunity to provide oral testimony at the hearing to make your position known to the Commission members.

I hope this helps clarify the questions that came up in our phone conversation yesterday.

Thank you,

Jason Hone

Assistant Executive Director

Commission on State Mandates

916.323.3562 | 916.445.0278 fax

980 9th Street, Suite 300 | Sacramento, CA 95814

www.csm.ca.gov

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