

COMMISSION ON STATE MANDATES

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November 15, 2011

Ms. Juliana Gmur
MAXIMUS
2380 Houston Ave
Clovis, CA 93611

And Affected State Agencies and Interested Parties (See Mailing List)

Re: **Final Staff Analysis, Proposed Parameters and Guidelines and Amendment, and Hearing Date**

Proposed Parameters and Guidelines

Permanent Absent Voter II, 03-TC-11

Elections Code Sections 3201 and 3203(b)(2)

Statutes 2001, Chapters 922; Statutes 2002, Chapter 664;

and Statutes 2003, Chapter 347

And

Proposed Amendment to Parameters and Guidelines

Permanent Absent Voters, CSM-4358

Former Elections Code Sections 1450 through 1456

Statutes 1982, Chapter 1422

County of Sacramento, Claimant

Dear Ms. Gmur:

The final staff analysis, proposed parameters and guidelines, and amendment to existing parameters and guidelines for this matter are enclosed.

Hearing

This matter is set for hearing on **Thursday, December 1, 2011**, at 9:30 a.m., in the State Capitol, Room 447, Sacramento, California. This matter is proposed for the consent calendar. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2) of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Camille Shelton at (916) 323-3562 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy Patton".

Nancy Patton
Acting Executive Director

ITEM 5
FINAL STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES

Permanent Absent Voters II
03-TC-11

Elections Code Sections 3201 through 3206

Statutes 2001, Chapter 922
Statutes 2002, Chapter 664
Statutes 2003, Chapter 347

PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

Permanent Absent Voters
CSM-4358

Former Elections Code Sections 1450 through 1456

Statutes 1982, Chapter 1422
County of Sacramento, Claimant

EXECUTIVE SUMMARY

Background

The test claim on *Permanent Absent Voters II* (03-TC-11) was filed to reflect changes in the election law pertaining to Permanent Absent Voters. In 1989, the Commission originally determined that Elections Code sections 1450 through 1456 imposed a reimbursable state-mandated program in *Permanent Absent Voters* (CSM-4358). Elections Code sections 1450 through 1456 provided that only voters with specified disabilities could apply for permanent absent voter status.

Statutes 1994, chapter 920 reorganized the entire Elections Code, including the repeal of Elections Code sections 1450 through 1456, and reenactment of those provisions as Elections Code sections 3200 through 3206. The other statutes claimed in *Permanent Absent Voters II*, further amended the Elections Code, including substantive changes in 2001 allowing *all* registered voters to apply for permanent absent voter status, rather than limiting eligibility to those voters with specific disabilities or conditions, as was the case under prior law.

In *Permanent Absent Voters II*, the Commission concluded that Elections Code sections 3201 and 3203(b)(2) mandate a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- County elections officials shall make an application for permanent absent voter status available to any voter. (Elec. Code, § 3201, as amended by Stats. 2001, ch. 922, Stats. 2002, ch. 664, and Stats. 2003, ch. 347.)

The above activity replaces the activity in *Permanent Absent Voters I* which was limited to those voters who provided evidence of certain physical disabilities.

- Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206. (Elec. Code, § 3203(b)(2), as amended by Stats. 2001, ch. 922.)

The Commission further concluded that Elections Code sections 3200, 3202, 3203(a) and (b)(1) and (b)(3), 3204, 3205(a) and 3206, as renumbered and reenacted by Statutes 1994, chapter 920 do not mandate *new* reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514, but remain a part of the Permanent Absent Voter program as it now exists.

This item proposes that the Commission adopt parameters and guidelines for *Permanent Absent Voters II* (03-TC-11) for reimbursement beginning July 1, 2002. In addition, staff recommends that the parameters and guidelines for *Permanent Absent Voter I* (CSM-4358) be amended to end reimbursement under that program on June 30, 2010, so that the costs for all permanent absent voters, beginning with the 2010-2011 fiscal year costs, can be claimed under *Permanent Absent Voter II*.¹

Claimant's Proposal and Responses from State Agencies

The claimant and the State Controller's Office filed comments agreeing with the draft staff analysis and proposed parameters and guidelines.

The Department of Finance filed comments expressing a concern with one of the activities proposed for reimbursement in *Permanent Absent Voter II* and further suggested language to clarify the issues.

Staff's Proposed Parameters and Guidelines for *Permanent Absent Voter II* (03-TC-11)

Staff recommends that the Commission deny the claimant's request for reimbursement for computer costs. The parameters and guidelines for *Permanent Absent Voter I* authorize reimbursement, on a one-time basis, for computer costs necessary to allow voters with specified disabilities or conditions to vote by absentee ballot. Although the program has been expanded by the test claim statutes in *Permanent Absent Voter II* to allow any voter to become a permanent absent voter, there is no evidence in the record to support a finding that additional computer costs are necessary to carry out the mandated program. Thus, staff recommends that the Commission deny this request.

Staff also recommends that the Commission deny the request to reimburse the activity of providing notice to non-partisan permanent absent voters before a primary election "advising as to their cross-over options and requesting they send back their choice of party's ballot." Elections Code section 3205(b) requires that before each primary election, county elections

¹ Costs incurred through and including the 2009-2010 fiscal year have already been filed with the State Controller's Office pursuant to Government Code section 17560(a). Reimbursement claims for the 2010-2011 fiscal year are due on February 15, 2012.

officials shall mail to every voter not affiliated with a political party whose name appears on the permanent absent voter list a notice and application regarding voting in the primary election. The notice shall inform the voter that he or she may request an absentee ballot for a particular political party for the primary election, if that political party adopted a party rule, duly noticed to the Secretary of State, authorizing these voters to vote in their primary. Section 3205 was addressed in *Permanent Absentee Voters II*, but the Commission determined that it was not properly pled in that test claim and did not reach any conclusions on that statute. Moreover, this activity implements the *Modified Primary Elections* program (01-TC-13) and, thus, goes beyond the scope of the mandate here.

Staff recommends that the Commission adopt parameters and guidelines that include all the activities approved by the Commission in the statement of decision, using language that conforms to the statutes. Thus, Section IV, Reimbursable Activities, would authorize reimbursement as follows:

- A. One-Time Activity – add information to all absentee ballot mailings explaining the absentee voting procedure in Elections Code sections 3200 et seq. and the requirements of Elections Code section 3206 when a voter fails to return an executed absent voter ballot for any statewide direct primary or general election.
- B. Ongoing Activities
 - 1. Make an application for permanent absent voter status available to any voter.
 - 2. Upon receipt of an application or request for permanent absent voter status:
 - a) Determine: (1) whether the applicant is a registered voter; and (2) whether the signature of the applicant and residence address on the application or request appears to be the same as that on the original affidavit of registration.
 - b) Mark the permanent absent voter affidavit for identification.
 - 3. For each application or request for permanent absent voter status received and verified for registration, place the voter’s name on a list of those whom an absentee ballot is sent each time there is an election within the voter’s precinct.
 - 4. Maintain a copy of the list on file open to public inspection for election and governmental purposes.
 - 5. Send a copy of the list of all voters who qualify as permanent absent voters to each city elections official or district elections official charged with the duty of conducting an election within the county on the sixth day before an election.
 - 6. Process and count ballots received from voters on the permanent absent voter list in the same manner as all other absent voter ballots.
 - 7. If the permanent absent voter fails to return an executed absent voter ballot for any statewide direct primary or general election, delete the voter’s name from the list of permanent absent voters.

If costs to perform the activities identified above have been claimed under the Absentee Ballots program (CSM 3713), the Permanent Absent Voter I program

(CSM 4358), or any other program the costs are not eligible for reimbursement under these parameters and guidelines.

The Department of Finance questions the reimbursement of activity 6 (to process and count ballots received from voters on the permanent absent voter list in the same manner as all other absent voter ballots) and argues that the activity is not reasonably related to the mandate to make an application for permanent absent voter status available to any voter.

The Department of Finance, however, is misunderstanding the Commission's finding in the statement of decision for this claim. The Commission found that the requirement in Elections Code section 3205(a) is not new, but has been continually mandated since the Commission addressed the issue in the *Permanent Absent Voter I* program. The Commission further found that this activity continues to be eligible for reimbursement and, since the code section was renumbered to section 3205, adopted a staff recommendation that the renumbering be reflected in the parameters and guidelines.² Thus, staff finds that the activity to process and count ballots received from voters on the permanent absent voter list in the same manner as all other absent voter ballots continues to be eligible for reimbursement and is consistent with the Commission's statement of decision in *Permanent Absent Voter II*.

Section V of the proposed parameters and guidelines governing "Direct Costs" incorporates the boilerplate language most recently adopted by the Commission and deletes reimbursement for training. The claimant has not requested reimbursement for training, and there is no evidence in the record that counties incurred costs for training as a result of this mandate.

Proposed Amendment to the Parameters and Guidelines in *Permanent Absent Voter I* (CSM 4358) to End Reimbursement

The test claim statutes for *Permanent Absent Voter II* allow *all* registered voters to apply for permanent absent voter status, and removed the limitations on eligibility that were imposed by the statutes in the *Permanent Absent Voter I* program to allow only those voters with specific disabilities or conditions to vote by absentee ballot. Since the limitations have been removed on who can apply for permanent absentee voter status, staff recommends that the parameters and guidelines for *Permanent Absent Voter I* (CSM 4358) be amended to end reimbursement under that program on June 30, 2010. Costs incurred through and including the 2009-2010 fiscal year for *Permanent Absent Voter I* (CSM 4358) have already been filed with the State Controller's Office pursuant to Government Code section 17560(a). Reimbursement claims for the 2010-2011 fiscal year are due on February 15, 2012. Thus, under this proposal, the costs for all permanent absent voters, beginning with the 2010-2011 fiscal year costs, can be claimed under *Permanent Absent Voter II*.

Conclusion and Staff Recommendation

Staff recommends that the Commission:

- Adopt the proposed parameters and guidelines for *Permanent Absent Voter II* (03-TC-11), for costs incurred beginning July 1, 2002 (page 19);

² Statement of decision, *Permanent Absent Voter II* (03-TC-11), page 10.

- Amend the parameters and guidelines for *Permanent Absent Voter I* (CSM 4358) to end reimbursement on June 30, 2010 (page 25); and
- Authorize staff to make any non-substantive, technical corrections to these parameters and guidelines following the hearing.

STAFF ANALYSIS

Claimant

County of Sacramento

Chronology

07/28/2006	Commission adopts statement of decision
08/07/2006	Statement of decision issued
08/23/2006	Claimant files proposed parameters and guidelines (03-TC-11) and proposed consolidation with <i>Permanent Absent Voter I</i> (CSM 4328)
10/12/2006	Department of Finance files comments
11/02/2006	Claimant files reply
03/16/2007	Claimant files revised proposed parameters and guidelines consolidating <i>Permanent Absent Voter II</i> (03-TC-11) with <i>Permanent Absent Voter I</i> (CSM 4328)
05/04/2007	Department of Finance files comments on proposed amended parameters and guidelines
02/13/2008	State Controller's Office files comments on proposed amended parameters and guidelines
03/27/2008	Prehearing conference held
08/14/2008	Claimant requests that the Commission amend the existing parameters and guidelines for <i>Permanent Absent Voter I</i> (CSM 4328) to be consistent with the statement of decision adopted for <i>Permanent Absent Voter II</i> (03-TC-11)
08/06/2009	Claimant requests that proposed parameters and guidelines be placed on inactive status while claimant pursues joint reasonable reimbursement methodology with Department of Finance.
01/__/2010	Claimant informs Commission staff that it is no longer negotiating an RRM with Department of Finance, and parameters and guidelines may proceed
07/11/2011	Claimant files revised proposed parameters and guidelines for <i>Permanent Absent Voter II</i> (03-TC-11) only
08/04/2011	State Controller's Office files comments on the revised proposed parameters and guidelines

- 10/03/11 Draft staff analysis, proposed parameters and guidelines for *Permanent Absent Voter II* (03-TC-11), and proposed amendment to *Permanent Absent Voter I* parameter and guidelines (CSM 4328) issued
- 10/18/11 Claimant files comments agreeing with draft staff analysis and proposed parameters and guidelines
- 10/21/11 State Controller's Office files comments agreeing with draft staff analysis and proposed parameters and guidelines
- 10/24/11 Department of Finance files comments on the draft staff analysis and proposed parameters and guidelines

I. Background and Summary of the Mandate

This test claim was filed to reflect changes in the election law pertaining to Permanent Absent Voters. In 1989, the Commission originally determined that Elections Code sections 1450 through 1456 imposed a reimbursable state-mandated program in *Permanent Absent Voters* (CSM-4358). Elections Code sections 1450 through 1456 provided that only voters with specified disabilities could apply for permanent absent voter status.

Statutes 1994, chapter 920 reorganized the entire Elections Code, including the repeal of Elections Code sections 1450 through 1456, and reenactment of those provisions as Elections Code sections 3200 through 3206. The other statutes claimed in *Permanent Absent Voters II*, further amended the Elections Code, including substantive changes in 2001 allowing *all* registered voters to apply for permanent absent voter status, rather than limiting eligibility to those voters with specific disabilities or conditions, as was the case under prior law.

The Commission concluded that Elections Code sections 3201 and 3203(b)(2) mandate a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- County elections officials shall make an application for permanent absent voter status available to any voter. (Elec. Code, § 3201, as amended by Stats. 2001, ch. 922, Stats. 2002, ch. 664, and Stats. 2003, ch. 347.)

The above activity replaces the activity in *Permanent Absent Voters I* which was limited to those voters who provided evidence of certain physical disabilities.

- Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206. (Elec. Code, § 3203(b)(2), as amended by Stats. 2001, ch. 922.)

The Commission further concluded that Elections Code sections 3200, 3202, 3203(a) and (b)(1) and (b)(3), 3204, 3205(a), and 3206, as renumbered and reenacted by Statutes 1994, chapter 920 do not mandate *new* reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514, but remain a part of the *Permanent Absent Voter* program, as it now exists.

In addition, the Commission concluded that Statutes 2003, chapter 347, as it amended Elections Code sections 3100, 3101 and 3103, does not mandate a new program or higher level of service.

II. Commission's Responsibility for Adopting Parameters and Guidelines

If the Commission approves a test claim, the Commission is required by Government Code section 17557 to adopt parameters and guidelines for the reimbursement of any claims. The successful test claimant is required to submit proposed parameters and guidelines to the Commission for review. The parameters and guidelines shall include the following information: a summary of the mandate; a description of the eligible claimants; a description of the period of reimbursement; a description of the specific costs and types of costs that are reimbursable, including activities that are not specified in the test claim statute or executive order, but are determined to be reasonably necessary for the performance of the state-mandated program; instructions on claim preparation, including instructions for the direct or indirect reporting of the actual costs of the program or the application of an RRM; and any offsetting revenue or savings that may apply.³

As of January 1, 2011, Commission hearings on the adoption of proposed parameters and guidelines are conducted under Article 7 of the Commission's regulations.⁴ Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is based on substantial evidence in the record, and oral or written testimony is offered under oath or affirmation.⁵ Each party has the right to present witnesses, introduce exhibits, and submit declarations. However, the hearing is not conducted according to the technical rules of evidence. Any relevant non-repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence may be used to supplement or explain, but is not sufficient in itself to support a finding unless the hearsay evidence would be admissible in civil actions.⁶

Should the Commission adopt this analysis and proposed parameters and guidelines, a cover sheet would be attached indicating that the Commission adopted the analysis as its decision. The decision and adopted parameters and guidelines are then submitted to the State Controller's Office to issue claiming instructions to local governments, and to pay and audit reimbursement claims. Issuance of the claiming instructions constitutes the notice of the right of local governments to file reimbursement claims with the State Controller's Office based on the parameters and guidelines.

III. Party Positions

Proposed Parameters and Guidelines filed by the Claimant

The claimant has filed several proposed parameters and guidelines for the *Permanent Absent Voter II* program, and has requested that the parameters and guidelines be consolidated with *Permanent Absent Voter I* for future claiming. On July 11, 2011, the claimant filed revised proposed parameters and guidelines for *Permanent Absent Voter II*, requesting reimbursement for the following activities:

³ Government Code section 17557; California Code of Regulations, Title 2, section 1183.1.

⁴ California Code of Regulations, Title 2, section 1187.

⁵ Government Code section 17559(b); California Code of Regulations, Title 2, section 1187.5.

⁶ California Code of Regulations, Title 2, section 1187.5.

A. One-Time Activities

- Computer costs as necessary to perform the mandated activities

B. Ongoing Activities

- Maintenance of permanent absentee file which includes cancelling and reinstating voters
- Increased postage for:
 - Notice to Non-partisan permanent absent voters before a primary election advising as to their cross-over options and requesting they send back their choice of party's ballot.
 - Prior to purging, notice to permanent absentee voters who have not returned the permanent absentee ballot in the required time-frame needed to remain in the permanent absentee voter file.
- Cancellation of voters who do not vote.
- Reinstatement of cancelled voters upon request.
- Marking of permanent absentee voter affidavit for identification.

These activities can be claimed only to the extent that they are not claimable under any other mandated program.

The requested activities are similar to those approved by the Commission in *Permanent Absent Voter I*, which authorizes reimbursement for the following activities:

Election Planning and Preparation Costs

Increased costs associated with preparation costs, to include, but not limited to:

Initial one-time costs:

- Computer costs
- Sample Ballots (change format)
- Creating initial absentee file

Ongoing costs:

- Cancellation of voters who do not vote; then reinstatement upon request
- Marking of permanent absentee voter affidavit for identification

On October 18, 2011, the claimant filed comments agreeing with the draft staff analysis and staff's proposed parameters and guidelines.

Comments from the State Controller's Office

The State Controller's Office filed comments on the revised proposed parameters and guidelines for *Permanent Absent Voter II* as follows:

- The Period of Reimbursement section should be amended to add the boilerplate language typically included in parameters and guidelines.
- The one-time cost for computers should be deleted. The State Controller's Office "does not feel that additional computer costs are eligible for reimbursement."

- The following proposed language should be amended by adding the following underlined language: “These activities can be claimed only to the extent that they are not claimable under any other mandated program. This would mean that activities claimed in the Permanent Absent Voter II program are not claimable under the existing Permanent Absent Voters program.”
- Revise Section V, Claim Preparation and Submission, for “Contracted Services” to reflect recently adopted boilerplate as follows:

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. 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 dates when services were performed and itemize all costs for those services during the period covered by the reimbursement claim. If the contract services ~~are~~were also used for purposes other than the reimbursable activities, only the pro rata portion of the services used to implement the reimbursable activities can be claimed. Submit consultant contract and ~~attorney~~ invoices with the claim and a description of the contract scope of services.

- Section V, Claim Preparation and Submission, should be amended to delete eligibility for reimbursement of equipment costs.

On October 21, 2011, the State Controller’s Office filed comments agreeing with the draft staff analysis and staff’s proposed parameters and guidelines.

Department of Finance

The Department of Finance has not filed comments on the revised proposed parameters and guidelines submitted in July 2011. However, the Department of Finance filed comments in May 2007 on an earlier proposed version submitted by the claimant, and some of those comments are applicable to the revised proposal as follows:

- Notifying non-partisan absent voters about primary voting options should not be reimbursed under these parameters and guidelines, but should be considered for reimbursement through *Modified Primary Election* (01-TC-13).
- Delete “travel” from the list of direct costs since there is no travel required for this mandate.

On October 24, 2011, the Department of Finance filed comments on the draft staff analysis and staff’s proposed parameters and guidelines, stating the following:

Finance has a concern about the inclusion of ongoing activity six in the proposed Ps & Gs for the Permanent Absent Voter II mandate. “Process and count ballots received from voters on the permanent absent voter list in the same manner as all other absent voter ballots.” It is not clear that this activity is reasonably necessary for the performance of the state-mandated program, which is limited to making an application for permanent absent voter status available to any voter. In addition, it would be inappropriate to include this activity because permanent absent voters

are a subset of the absent voter population, which already allows them to file reimbursement claims under the Absentee Ballots program.

IV. Discussion

Staff reviewed the claimant's revised proposed parameters and guidelines, and comments from the parties. As described below, staff recommends that the Commission adopt parameters and guidelines for *Permanent Absent Voters II* (03-TC-11) for reimbursement beginning July 1, 2002.

Staff further recommends that the parameters and guidelines for *Permanent Absent Voter I* (CSM 4358) be amended to end reimbursement under that program on June 30, 2010, so that the costs for all permanent absent voters, beginning with the 2010-2011 fiscal year costs, can be claimed under *Permanent Absent Voter II*.⁷ The test claim statutes for *Permanent Absent Voter II* allow *all* registered voters to apply for permanent absent voter status, and removed the limitations on eligibility that were imposed by the statutes in the *Permanent Absent Voter I* program to allow only those voters with specific disabilities or conditions to vote by absentee ballot.

A. Adoption of Parameters and Guidelines for *Permanent Absent Voters II*

1. Reimbursable Activities

The Commission approved this test claim for the following activities:

- County elections officials shall make an application for permanent absent voter status available to any voter. (Elec. Code, § 3201, as amended by Stats. 2001, ch. 922, Stats. 2002, ch. 664, and Stats. 2003, ch. 347.)
- Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206. (Elec. Code, § 3203, subd. (b)(2), as amended by Stats. 2001, ch. 922.)

Although the claimant did not include these activities in its revised proposed parameters and guidelines, the Commission is required to identify all costs mandated by the state in the parameters and guidelines.⁸ The second activity to include in all absentee ballot mailings an explanation of the absentee voting procedure and an explanation of Elections Code section 3206 is proposed as a one-time activity to add boilerplate language to the mailings.

The Commission also found that Elections Code sections 3200, 3202, 3203(a) and (b)(1) and (b)(3), 3204, 3205(a) and 3206, as renumbered and reenacted by Statutes 1994, chapter 920 do not mandate *new* reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514, but remain a part of the *Permanent Absent Voter* program, as it now exists and continue to be eligible for reimbursement. Most of the activities required by these code sections have been requested by the claimant and are discussed further below.

⁷ Costs incurred through and including the 2009-2010 fiscal year have already been filed with the State Controller's Office pursuant to Government Code section 17560(a). Reimbursement claims for the 2010-2011 fiscal year are due on February 15, 2012.

⁸ Government Code sections 17514 and 17557.

However, Elections Code section 3205(a), which requires that “[a]bsent voter ballots mailed to, and received from, voters on the permanent absent voter list are subject to the same deadlines and shall be processed and counted in the same manner as all other absent voter ballots,” was not identified by the claimant in its proposed parameters and guidelines as a reimbursable activity. Staff recommends that the activity be identified in these parameters and guidelines as determined in the statement of decision as follows:

- Process and count ballots received from voters on the permanent absent voter list in the same manner as all other absent voter ballots.

In comments to the draft staff analysis, the Department of Finance states it has a concern with the reimbursement of this activity and argues that the activity is not reasonably necessary to comply with the mandate to make the application for permanent absent voter status available. The Department of Finance, however, is misunderstanding the Commission’s finding in the statement of decision for this claim. On page 10 of the statement of decision, the Commission finds that the requirement in Elections Code section 3205(a) is not new, but has been continually mandated since the Commission addressed the issue in the *Permanent Absent Voter I* program. The Commission further found that this activity continues to be eligible for reimbursement and, since the code section was renumbered to section 3205, recommended that the renumbering be reflected in the parameters and guidelines. The statement of decision states the following:

Subdivision (a) [of Elections Code section 3205] is substantively identical to prior law, which was already determined in *Permanent Absent Voters I*. The Commission finds that when a statute is renumbered or reenacted, only substantive changes to the law creating new duties or activities meets the criteria for finding a reimbursable state mandate. Thus, the Commission finds that Elections Code section 3205, subdivision (a), as reenacted and renumbered by Statutes 1994, chapter 920, does not mandate a new program or higher level of service. However, any references to former Elections Code section 1455 in the *Permanent Absent Voters I* parameters and guidelines should be designated by the new numbers when the parameters and guidelines are amended.

Thus, staff finds that the activity to process and count ballots received from voters on the permanent absent voter list in the same manner as all other absent voter ballots continues to be eligible for reimbursement and is consistent with the Commission’s statement of decision in *Permanent Absent Voter II*.

Reimbursement for this activity, however, needs clarification. Counties are currently eligible for reimbursement for counting and processing absentee voter ballots under the *Absentee Ballots* program (CSM 3713), a legislatively determined mandate based on Elections Code sections 3000 et seq. Under the *Absentee Ballots* program, any voter can request to vote absentee for any particular election, but not on a permanent basis, as long as a request or application is received by the county within a specified number of days before the election. The parameters and guidelines, originally adopted by the Board of Control and later amended by the Commission, authorize reimbursement based on several formulas for the costs associated with increased filings of absentee ballots. Such costs would include processing and counting the absentee ballots for the election. The *Absentee Ballots* program, however, does not expressly authorize reimbursement for ballots received from *permanent* absent voters under Elections Code sections 3200 et seq. Thus, to the extent counties have been claiming reimbursement to process

and count ballots from permanent absentee voters under the *Absentee Ballots* program (CSM 3713), they would not be eligible to claim those same costs under the *Permanent Absent Voter II* program.

Similarly, to the extent counties have been claiming reimbursement for the costs of the *Permanent Absent Voter II* program under the parameters and guidelines for *Permanent Absent Voter I* (CSM 4358), they would not be eligible to claim those same costs under *Permanent Absent Voter II*.

The following clarifying language is proposed for inclusion in the parameters and guidelines for *Permanent Absent Voter II*. This language has been amended to address the concerns of the Department of Finance.

If costs to perform the activities identified above have been claimed under ~~either~~ the *Absentee Ballots* program (CSM 3713), ~~or~~ the *Permanent Absent Voter I* program (CSM 4358), or any other program, the costs are not eligible for reimbursement under these parameters and guidelines.

The remaining activities requested by the claimant are analyzed below.

One-time computer costs necessary to perform the mandated activities

The claimant requests reimbursement for “computer costs as necessary to perform the mandated activities.” The State Controller’s Office contends that additional computer costs are not eligible for reimbursement.

The Commission may authorize reimbursement for activities that are “the most reasonable methods of complying with the mandate” pursuant to section 1183.1(a)(4) of the Commission’s regulations. Section 1183.1(a)(4) states the following:

Reimbursable Activities. A description of the specific costs and types of costs that are reimbursable, including one-time costs and on-going costs, and a description of the most reasonable methods of complying with the mandate. “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.

Approval of the most reasonable methods of complying with the mandate requires substantial evidence in the record, provided through oral or written testimony offered under oath or affirmation, to support the finding that the requested activity is necessary to carry out the mandated program.⁹

The parameters and guidelines for *Permanent Absent Voter I* authorize reimbursement, on a one-time basis, for computer costs necessary to allow voters with specified disabilities or conditions to vote by absentee ballot. Although the program has been expanded by the test claim statutes in *Permanent Absent Voter II* to allow any voter to become a permanent absent voter, there is no evidence in the record to support a finding that additional computer costs are necessary to carry out the mandated program. Thus, staff recommends that the Commission deny this request.

⁹ Government Code section 17559(b); California Code of Regulations, Title 2, section 1187.5.

Marking the permanent absentee voter affidavit for identification

The claimant requests reimbursement for “marking of permanent absentee voter affidavit for identification.” This activity was included in the parameters and guidelines for *Permanent Absent Voter I*, and the claimant requests that reimbursement continue for the expanded program.

Elections Code section 3203 requires counties to process the application or request¹⁰ for permanent absent voter status in the same manner as an application for regular absent voter’s ballot (commencing with Elections Code section 3000). Under this process, the application for permanent absent voter status shall contain the applicant’s name, residence address, the address where ballots are to be mailed, and the signature of the applicant.¹¹ Upon receipt, the county is required to determine whether the applicant is a registered voter and determines if the signature and residence address on the application for permanent absent voter status appears to be the same as that on the original affidavit of registration.¹² Once it is determined that the applicant is a registered voter, the voter’s name goes on a list of those to whom an absentee ballot is sent each time there is an election in their precinct.¹³

Although the Commission determined that this portion of Elections Code section 3203 did not mandate a new program or higher level of service, the Commission found that the process still remained a part of the Permanent Absent Voter program as it now exists and continues to be eligible for reimbursement.

Thus, staff recommends that the Commission approve the activity for ongoing reimbursement, but also adopt language that conforms to the statutes as follows:

- Upon receipt of an application or request for permanent absent voter status:
 - a. Determine: (1) whether the applicant is a registered voter ;and (2) whether the signature of the applicant and residence address on the application or request appears to be the same as that on the original affidavit of registration.
 - b. Mark the permanent absent voter affidavit for identification.

Maintenance of permanent absentee file which includes cancelling and reinstating voters

The claimant requests reimbursement for:

- Maintenance of permanent absentee file which includes cancelling and reinstating voters;
- Cancellation of voters who do not vote;

¹⁰ Elections Code section 3202 allows any voter, in lieu of executing an application, to execute a request for permanent absent voter status by making a written request to the county elections official requesting the status. If a written request is received and it contains the information set forth in section 3201 (the applicant’s name, residence address, the address where ballots are to be mailed, and a signature of the voter), then the county processes the request in the same manner as an application.

¹¹ Elections Code sections 3001 and 3201(a).

¹² Elections Code sections 3009 and 3201(b).

¹³ Elections Code section 3203(b)(1).

- Reinstatement of cancelled voters upon request; and
- Prior to purging, providing notice to permanent absentee voters who have not returned the permanent absentee ballot in the required time-frame needed to remain in the permanent absentee voter file.

Once it is determined that an applicant for permanent absent voter status is a registered voter, the county is required by Elections Code section 3203 to place the voter's name on a list of those to whom an absentee ballot is sent each time there is an election within their precinct, and maintain a copy of the list on file open to the public inspection for election and governmental purposes. Elections Code section 3204 requires the county elections official, on the sixth day before an election, to send a copy of the list of all voters who qualify as permanent absent voters to each city elections official or district elections official charged with the duty of conducting an election within the county. Elections Code section 3206 then provides that a voter whose name appears on the permanent absent voter list shall remain on the list and be mailed an absentee ballot for each election conducted within his or her precinct. If the voter fails to return an executed absent voter ballot for any statewide direct primary or general election, however, the voter's name shall be deleted from the list.

Although the Commission determined that Elections Code sections 3203, 3204, and 3206 did not mandate a new program or higher level of service, the Commission found that the process still remained a part of the Permanent Absent Voter program as it now exists and continues to be eligible for reimbursement.

Thus, staff recommends that the Commission approve these activities required by Elections Code sections 3203, 3204, and 3206 for reimbursement, but adopt language that conforms to the statutes as follows:

- For each application or request for permanent absent voter status received and verified for registration, place the voter's name on a list of those whom an absentee ballot is sent each time there is an election within the voter's precinct.
- Maintain a copy of the list on file open to the public inspection for election and governmental purposes.
- Send a copy of the list of all voters who qualify as permanent absent voters to each city elections official or district elections official charged with the duty of conducting an election within the county on the sixth day before an election.
- If the permanent absent voter fails to return an executed absent voter ballot for any statewide direct primary or general election, delete the voter's name from the list of permanent absent voters.

Staff further recommends that the Commission deny the claimant's request for reimbursement to provide individual notice to voters who fail to return an absent voter ballot prior to deleting their names from the list of permanent absent voters. The Elections Code does not require this activity. The only notice requirement in statute is to include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206, and that activity is included in the proposed parameters and guidelines.¹⁴ Thus, the

¹⁴ Elections Code section 3203(b)(2).

claimant's request for reimbursement of providing individual notice goes beyond the scope of the mandate.

Providing notice to non-partisan permanent absent voters before a primary election advising as to their cross-over options (under the *Modified Primary* program) and requesting they send back their choice of party's ballot.

The claimant requests reimbursement for the increased postage for providing notice to non-partisan permanent absent voters before a primary election "advising as to their cross-over options and requesting they send back their choice of party's ballot."

Staff recommends that the claimant's request be denied. Elections Code section 3205(b) requires that before each primary election, county elections officials shall mail to every voter not affiliated with a political party whose name appears on the permanent absent voter list a notice and application regarding voting in the primary election. The notice shall inform the voter that he or she may request an absentee ballot for a particular political party for the primary election, if that political party adopted a party rule, duly noticed to the Secretary of State, authorizing these voters to vote in their primary. Elections Code section 3205(b) provides notice of the *Modified Primary Elections* program (01-TC-13). The Commission denied the proposed activity in Modified Primary Elections because the claimant did not properly plead section 3205 and the activity went beyond the scope of the mandate determined by the Commission.

Section 3205 was also addressed in this claim, *Permanent Absentee Voters II*, but the Commission determined that it was not properly pled in that test claim and did not reach any conclusions on that statute.¹⁵

Staff further finds that the proposed activity to provide notice to absentee voters about the *Modified Primary* program goes beyond the scope of the mandate here. The only notice provision determined by the Commission to be reimbursable in *Permanent Absent Voter II* is the activity to "include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206. (Elec. Code, § 3203(b)(2), as amended by Stats. 2001, ch. 922.) That activity is recommended for reimbursement on a one-time basis.

Accordingly, staff recommends that the Commission deny the request to include the activity of providing notice to nonpartisan permanent absentee voters the rules under the Modified Primary program.

Summary of proposed reimbursable activities

Based on the above analysis, staff recommends that Section IV of the parameters and guidelines state the following:

- A. One-Time Activity – add information to all absentee ballot mailings explaining the absentee voting procedure in Elections Code sections 3200 et seq. and the requirements of Elections Code section 3206 when a voter fails to return an executed absent voter ballot for any statewide direct primary or general election.

¹⁵ Statement of decision, pages 10-11.

B. Ongoing Activities

1. Make an application for permanent absent voter status available to any voter.
2. Upon receipt of an application or request for permanent absent voter status:
 - a. Determine (1) whether the applicant is a registered voter and, (2) whether the signature of the applicant and residence address on the application or request appears to be the same as that on the original affidavit of registration.
 - b. Mark the permanent absent voter affidavit for identification.
3. For each application or request for permanent absent voter status received and verified for registration, place the voter's name on a list of those whom an absentee ballot is sent each time there is an election within the voter's precinct.
4. Maintain a copy of the list on file open to public inspection for election and governmental purposes.
5. Send a copy of the list of all voters who qualify as permanent absent voters to each city elections official or district elections official charged with the duty of conducting an election within the county on the sixth day before an election.
6. Process and count ballots received from voters on the permanent absent voter list in the same manner as all other absent voter ballots.
7. If the permanent absent voter fails to return an executed absent voter ballot for any statewide direct primary or general election, delete the voter's name from the list of permanent absent voters.

If costs to perform the activities identified above have been claimed under the Absentee Ballots program (CSM 3713), the Permanent Absent Voter I program (CSM 4358), or any other program, the costs are not eligible for reimbursement under these parameters and guidelines.

2. Boilerplate Language and Section V, Direct Costs

The State Controller's Office requests that the proposed parameters and guidelines be revised to reflect current boilerplate language in the "Period of Reimbursement" and "Direct Costs, Contract Services" sections. Staff agrees and has incorporated current boilerplate language in these sections.

In addition, the State Controller's Office and the Department of Finance request that the "Direct Costs" section be revised to delete reimbursement for equipment and travel. There is no evidence in the record that counties have incurred increased costs for equipment or travel as a result of the *Permanent Absent Voter II* program, and thus these costs have been deleted from the proposed parameters and guidelines.

Finally, staff has deleted training from Section V, Direct Costs. The claimant has not requested reimbursement for training, and there is no evidence in the record that counties incurred costs for training as a result of this mandate.

Thus, Section V of the proposed parameters and guidelines states the following:

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. 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 dates when services were performed and itemize all costs for those services during the period covered by the reimbursement claim. If the contract services were also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and invoices with the claim and a description of the contract scope of services.

4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset 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.

B. Amend the Parameters and Guidelines in Permanent Absent Voter I (CSM 4358) to End Reimbursement

The test claim statutes for *Permanent Absent Voter II* allowed *all* registered voters to apply for permanent absent voter status, and removed the limitations on eligibility that were imposed by the statutes in the *Permanent Absent Voter I* program to allow only those voters with specific disabilities or conditions to vote by absentee ballot. Since the limitations have been removed on who can apply for permanent absentee voter status, staff recommends that the parameters and guidelines for *Permanent Absent Voter I* (CSM 4358) be amended to end reimbursement under that program on June 30, 2010. Costs incurred through and including the 2009-2010 fiscal year for *Permanent Absent Voter I* (CSM 4358) have already been filed with the State Controller's

Office pursuant to Government Code section 17560(a). Reimbursement claims for the 2010-2011 fiscal year are due on February 15, 2012. Thus, under this proposal, the costs for all permanent absent voters, beginning with the 2010-2011 fiscal year costs, can be claimed under *Permanent Absent Voter II*.

V. Conclusion and Staff Recommendation

Staff recommends that the Commission:

- Adopt the proposed parameters and guidelines for *Permanent Absent Voter II* (03-TC-11), for costs incurred beginning July 1, 2002 (page 19);
- Amend the parameters and guidelines for *Permanent Absent Voter I* (CSM 4358) to end reimbursement on June 30, 2010 (page 25); and
- Authorize staff to make any non-substantive, technical corrections to these parameters and guidelines following the hearing.

STAFF'S PROPOSED PARAMETERS AND GUIDELINES

Elections Code Sections 3201 through 3206

Statutes 2001, Chapter 922

Statutes 2002, Chapter 664

Statutes 2003, Chapter 347

Permanent Absent Voters II

03-TC-11

I. SUMMARY OF THE MANDATE

The test claim on *Permanent Absent Voters II* (03-TC-11) was filed to reflect changes in the election law pertaining to Permanent Absent Voters. In 1989, the Commission originally determined that Elections Code sections 1450 through 1456 imposed a reimbursable state-mandated program in *Permanent Absent Voters* (CSM-4358). Elections Code sections 1450 through 1456 provided that only voters with specified disabilities could apply for permanent absent voter status.

Statutes 1994, chapter 920 reorganized the entire Elections Code, including the repeal of Elections Code sections 1450 through 1456, and reenactment of those provisions as Elections Code sections 3200 through 3206. The other statutes claimed in *Permanent Absent Voters II*, further amended the Elections Code, including substantive changes in 2001 allowing *all* registered voters to apply for permanent absent voter status, rather than limiting eligibility to those voters with specific disabilities or conditions, as was the case under prior law.

In *Permanent Absent Voters II*, the Commission concluded that Elections Code sections 3201 and 3203, subdivision (b)(2) mandate a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- County elections officials shall make an application for permanent absent voter status available to any voter. (Elec. Code, § 3201, as amended by Stats. 2001, ch. 922, Stats. 2002, ch. 664, and Stats. 2003, ch. 347.)

The above activity replaces the activity in *Permanent Absent Voters I* which was limited to those voters who provided evidence of certain physical disabilities.

- Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206. (Elec. Code, § 3203(b)(2), as amended by Stats. 2001, ch. 922.)

The Commission further concluded that Elections Code sections 3200, 3202, 3203(a) and (b)(1) and (b)(3), 3204, 3205(a) and 3206, as renumbered and reenacted by Statutes 1994, chapter 920 do not mandate *new* reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514, but remain a part of the Permanent Absent Voter program as it now exists.

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.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The County of Sacramento filed the test claim on September 26, 2003, establishing eligibility for reimbursement beginning July 1, 2002.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(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.
3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. In the event revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any given fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable to 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, time sheets, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, calendars, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for the increased costs of the reimbursable activities identified below.

- A. One-Time Activity – add information to all absentee ballot mailings explaining the absentee voting procedure in Elections Code sections 3200 et seq. and the requirements of Elections Code section 3206 when a voter fails to return an executed absent voter ballot for any statewide direct primary or general election.
- B. Ongoing Activities
 - 1. Make an application for permanent absent voter status available to any voter.
 - 2. Upon receipt of an application or request for permanent absent voter status:
 - a. Determine (1) whether the applicant is a registered voter and, (2) whether the signature of the applicant and residence address on the application or request appears to be the same as that on the original affidavit of registration.
 - b. Mark the permanent absent voter affidavit for identification.
 - 3. For each application or request for permanent absent voter status received and verified for registration, place the voter’s name on a list of those whom an absentee ballot is sent each time there is an election within the voter’s precinct.
 - 4. Maintain a copy of the list on file open to public inspection for election and governmental purposes.
 - 5. Send a copy of the list of all voters who qualify as permanent absent voters to each city elections official or district elections official charged with the duty of conducting an election within the county on the sixth day before an election.
 - 6. Process and count ballots received from voters on the permanent absent voter list in the same manner as all other absent voter ballots.
 - 7. If the permanent absent voter fails to return an executed absent voter ballot for any statewide direct primary or general election, delete the voter’s name from the list of permanent absent voters.

If costs to perform the activities identified above have been claimed under the Absentee Ballots program (CSM 3713), the Permanent Absent Voter I program (CSM 4358), or any other program, the costs are not eligible for reimbursement under these parameters and guidelines.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for the reimbursable activities identified in section IV of this document. Each reimbursable cost must be supported by source documentation as described in section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. 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 dates when services were performed and itemize all costs for those services during the period covered by the reimbursement claim. If the contract services were also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and invoices with the claim and a description of the contract scope of services.

4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset 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.

B. Indirect Cost Rates

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

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10% of labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (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 distributions base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

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

1. the allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (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 of allowable indirect costs bears to the base selected; or
2. the allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (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 of allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹⁶ is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

¹⁶ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

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

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(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(d)(1)(A), 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 the request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d)(1), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

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

Adopted: 3/27/90

WPO549s

Proposed Amendment: December 1, 2011

PARAMETERS AND GUIDELINES

Election Code Sections 1450 through 1456

Chapter 1422, Statutes of 1982

Permanent Absent Voters

CSM-4358

Reimbursement for this program ends June 30, 2010

I. SUMMARY OF MANDATES

Chapter 1422, Statutes of 1982, added Chapter 7, commencing with Section 1450 to the Elections Code, to establish a permanent absent voter program. Prior to the enactment of Chapter 1422, an absent voter ballot was not mailed to a voter unless a written request for an absent voter ballot was received before each election. With the enactment of Chapter 1422, counties were required to establish and maintain a list of permanent absent voters and delete from the list if that person fails to return an executed absent voter ballot for any statewide primary or general election.

II. COMMISSION ON STATE MANDATES DECISION

On September 21, 1989 the Commission determined that Chapter 1422, Statutes of 1982, in adding Sections 1450 through 1456 to the Elections Code resulted in reimbursable costs mandated by the state.

III. ELIGIBLE CLAIMANTS

All counties that incurred increased costs as the result of the mandate.

IV. PERIOD OF CLAIM

Chapter 1422, Statutes of 1982 became effective January 1, 1983. The test claim was filed with the Commission on May 11, 1989. Section 17557 of the Government Code (GC) states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that fiscal year. Therefore, all costs incurred on or after July 1, 1988 are reimbursable. Reimbursement for this program ends on June 30, 2010.

~~One fiscal year shall be included in each claim. Pursuant to section 17561(d)(3) of the Government Code, all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of enactment of the claims bill. If the total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.~~

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(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.

3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. In the event revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

V. REIMBURSABLE COSTS

A. Scope of Mandate

Elections Code sections 1450 through 1456, as added by Chapter 1422/82, require county clerks to implement a new program by performing the following:

- (1) Establish and maintain a list of permanent absent voters who provide evidence of physical disability.
- (2) Mail absent voter ballots to such voters for each election in which they are eligible to vote.
- (3) Delete from the permanent absent voter list any person who fails to return an executed absent voter ballot for any statewide direct primary or general election.

B. Reimbursable Activities

Counties shall be reimbursed for the increased costs associated with complying with Elections Code sections 1450 through 1456 in the following cost categories:

Election Planning and Preparation Costs

Increased costs associated with preparation costs, to include, but not limited to:

Initial one-time costs:

- Computer costs
- Sample Ballot (change format)
- Creating initial absentee file

Ongoing costs:

- Maintenance of permanent absentee file
- Increased postage
- Cancellation of voters who do not vote; then reinstatement upon request
- Marking of permanent absentee voter affidavit for identification

C. Justification of Purchases

If an entity claims for increased costs resulting from the purchase or modification of voting equipment or additional secrecy envelopes, an explanation of how these costs are a direct

result of the mandate must be provided with the claim. The increase for these costs during the fiscal year being claimed must be shown separately. Also, documents which indicate the cost and purchase dates of the above items, must be submitted with ,the claim.

VI. CLAIM PREPARATION

A. Description of Activity

B. Supporting Documentation

Claimed costs should be supported by the following information

1. Employee Salaries and Benefits

Identify the employee(s), show the classification of the employee(s) involved, describe the mandated functions performed and specify the actual number of hours devoted to each function, the productive hourly rate, and the related benefits. The average number of hours devoted to each function may be claimed if supported by a documented time study.

2 . Services and Supplies

Only expenditures which can be identified as a direct cost as a result of the mandate can be claimed. List cost of materials acquired which have been consumed or expended specifically for the purposes of this mandate.

3 Allowable Overhead Costs

Indirect costs may be claimed in the manner prescribed by the State Controller in his claiming instruction.

VII. SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence of and the validity of such costs. These documents must be kept on file by the agency submitting the claim for a period of no less than three years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller or his agent.

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimants experience as a direct result of this statute must be deducted from the costs claims. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

Commission on State Mandates

Original List Date: 10/1/2003
Last Updated: 11/3/2011
List Print Date: 11/14/2011
Claim Number: 03-TC-11
Issue: Permanent Absent Voters II

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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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