

**STATEWIDE COST ESTIMATE**  
**\$625,288**

(This mandate ended effective November 28, 2008, however, late initial claims may be filed until April 28, 2016 which may result in additional statewide costs)

Former California Code of Regulations, Title 2, Division 7, Chapter 3, Sections 20121, 20122, 20123, 20124, 20125, and 20126

Register 2008, No. 43

*Post Election Manual Tally (PEMT)*

10-TC-08

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**STAFF ANALYSIS**

**Background and Summary of the Mandate**

The test claim regulations require new standards and procedures to conduct post election manual tallies of votes for those races with very narrow margins of victory during elections conducted in whole or in part on a mechanical, electromechanical, or electronic voting system. The activities include determining the margin of victory and whether a ten percent manual tally is required for each contest. For races with less than a one-half percent margin of victory, counties select and manually tally nine percent of the precincts in the contest, and perform related duties. The test claim regulations were effective only from October 20, 2008 until April 12, 2009, coinciding with the November 2008 Presidential General Election, and the Commission found that the required activities had to be performed between October 28, 2008 and November 28, 2009. Therefore this mandate ended November 28, 2008.

On July 25, 2014, the Commission on State Mandates (Commission) adopted a decision<sup>1</sup> on the *Post Election Manual Tally (PEMT)* test claim, 10-TC-08 finding that the test claim regulations imposed a partially reimbursable state-mandated program on counties within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514. Parameters and guidelines<sup>2</sup> were adopted on September 26, 2014, and corrected December 19, 2014 approving the reimbursable activities described below under the *Reimbursable Activities* section.

Eligible claimants were required to file initial reimbursement claims, for costs incurred for the period October 20, 2008 through November 28, 2008 by April 28, 2015 with the State Controller's Office (SCO). Late initial reimbursement claims may be filed until April 28, 2016.

Eligible Claimants and Period of Reimbursement

Any county or city and county that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

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<sup>1</sup> Exhibit A. Test Claim Decision.

<sup>2</sup> Exhibit B. Parameters and Guidelines.

Generally, Government Code section 17557(e) provides that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. However, Under Government Code section 17573(b), the statute of limitations in section 17551 for filing a test claim is tolled during negotiations to establish a legislatively determined mandate (LDM), from the date a local agency contacts of Finance or responds to a Finance request to initiate a joint request for an LDM - to the date that the Budget Act for the subsequent fiscal year is adopted if a joint request is submitted to the Legislature, or to the date on which one of the parties notifies the other of its decision to not submit a joint request to the Legislature for an LDM. In this case the County of Santa Barbara and Finance attempted to establish an LDM, but did not succeed in doing so. However, on November 12, 2009, the California State Associations of Counties (CSAC) notified the Commission of its intent to pursue an LDM, thus tolling the statute of limitations.

After the negotiations failed, the County filed its test claim on March 28, 2011 establishing eligibility for reimbursement for the 2008-2009 fiscal year. However, the effective date of the test claim statute was October 20, 2008 and the reimbursable activities were required to be performed from October 20, 2008 through November 28, 2008. As a result, any costs incurred for the activities in these parameters and guidelines, from October 20, 2008 through November 28, 2008, are reimbursable.

### **Reimbursable Activities**

The parameters and guidelines authorize reimbursement for the following activities:

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

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant that incurs increased costs, the following activities are reimbursable from October 20, 2008, through November 28, 2008:

1. After each election, determine the margin of victory as defined for single winner elections, multi-winner elections, and ballot measure contests in each contest based upon the semifinal official canvass results.<sup>3</sup>

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<sup>3</sup> Former California Code of Regulations, title 2, section 20121(a).

2. For contests voted upon in more than one jurisdiction:
  - a) In any contest voted upon in more than one jurisdiction, the elections official in each jurisdiction in which votes were cast in the contest shall determine whether a 10 percent manual tally is required by former California Code of Regulations, title 2, section 20121(b), by calculating the overall margin of victory in all jurisdictions in which votes were cast in the contest.<sup>4</sup>
  - b) For a legislative or statewide contest, the elections official shall determine whether a ten percent manual tally is required by former California Code of Regulations, title 2, section 20121(b), based upon the semifinal official canvass results and margin of victory for the entire district for a legislative contest or the entire state for a state contest posted on the canvass website of the Secretary of State.<sup>5</sup>
3. For any contest in which the margin of victory is *less than* one-half of one percent,
  - a) Randomly select precincts, using a random number generator, until *nine percent* of the precincts in the contest have been selected.
  - b) Manually tally the results for that contest from the precincts selected for the *nine percent* sample. The manual tally shall begin as soon as practicable after the random selection of precincts for the manual tally. The manual tally shall be conducted in public view by hand without the use of electronic scanning equipment.<sup>6</sup>
  - c) When manually tallying the results, take appropriate measures to ensure that direct recording electronic ballots that were cancelled before being cast and ballots that are damaged or defective are not inadvertently tallied as valid ballots in the manual tally process.<sup>7</sup>
4. Document and disclose to the public any variances between the semifinal official canvass results and the manual tally results for *nine percent* of the precincts.<sup>8</sup>
5. For any contest with one or more variances, calculate the variance percentage by dividing the total number of variances found in the manual tally sample for the contest by the total number of votes cast for that contest in the manual tally sample. For single winner contests, only variances that narrow the margin between the winner and any of the losers shall be included in the total number of variances. For multi-winner contests, only variances that narrow the margin of victory between any of the winners and any of the losers shall be included in the total number of variances.<sup>9</sup>
6. If the variance percentage represents at least one-tenth of the margin of victory for that contest based on the semifinal official canvass results, then additional precincts must be

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<sup>4</sup> Former California Code of Regulations, title 2, section 20122(a).

<sup>5</sup> Former California Code of Regulations, title 2, section 20122(b).

<sup>6</sup> Former California Code of Regulations, title 2, section 20121(b)(e)(f).

<sup>7</sup> Former California Code of Regulations, title 2, section 20121(i)(j).

<sup>8</sup> Former California Code of Regulations, title 2, section 20123(b).

<sup>9</sup> Former California Code of Regulations, title 2, section 20124(a).

manually tallied for that contest.<sup>10</sup> Additional precincts shall be tallied in randomly selected blocks of five percent until the total number of variances presumed to exist – re-calculated pursuant to California Code of Regulations, title 2, section 20124(a) – is smaller than 10 percent of the overall margin of victory in that contest, based on the semifinal official canvass results, or until all ballots have been manually tallied, whichever occurs first.<sup>11</sup>

7. Preserve the voter verifiable paper audit trail (VVPAT) records, memory cards and devices, and direct recording electronic voting machines and notify the Secretary of State if any variance is found between the manually tallied VVPAT and corresponding electronic vote results that cannot be accounted for by some obvious mechanical problem.<sup>12</sup>
8. Keep and make available to the public a log to record the manual tally process for all precincts selected, including the results of each round of manual tallying for each precinct included in the sample, how variances were resolved, and details of any actions taken that are contrary to California Code of Regulations, title 2, sections 20120 et seq.<sup>13</sup>
9. Track, record in the log, and report to the public by each precinct, the number of undervotes and overvotes discovered in the manual tally of a contest.<sup>14</sup>
10. Revise the notice prepared pursuant to Elections Code section 15360(d), to include the time and place of the initial selection of precincts for the additional *nine percent* manual tally and any additional random selection of precincts which may become necessary to comply with escalation requirements.<sup>15</sup>

*The costs to prepare the notice for the one percent manual tally required by Elections Code section 15360(d), and to issue and post the combined notice are not new and are not reimbursable.*

11. Permit the public to observe all parts of the manual tally process, including the random selection of precincts, in a manner that allows the public to verify the tally.

## **Offsetting Revenues and Reimbursements**

The parameters and guidelines<sup>16</sup> provide:

Any offsetting revenue 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

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<sup>10</sup> Former California Code of Regulations, title 2, section 20124(a).

<sup>11</sup> Former California Code of Regulations, title 2, section 20124(b).

<sup>12</sup> Former California Code of Regulations, title 2, section 20124(c).

<sup>13</sup> Former California Code of Regulations, title 2, section 20125(a).

<sup>14</sup> Former California Code of Regulations, title 2, section 20125(b).

<sup>15</sup> Former California Code of Regulations, title 2, section 20126(b).

<sup>16</sup> Exhibit B. Parameters and Guidelines.

from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

To the extent that the claimant has used fees or any funds provided by the state or federal government, as opposed to proceeds of local taxes, to pay for the cost of the program, those costs are not reimbursable.

## **Statewide Cost Estimate**

### Assumptions

Staff reviewed the reimbursement claims data submitted by the 14 counties that submitted initial claims, which was compiled by the SCO.<sup>17</sup> Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program:

- *The actual amount claimed for reimbursement may increase and exceed the statewide cost estimate.*
  - *Additional counties are likely to file late initial reimbursement claims.*

There are currently 58 counties in California. Of those combined, only 14 counties filed initial reimbursement claims totaling \$625,288. The reimbursable activities of this program are based on the number of counties who incurred costs during the 2008 November General Election for those races with very narrow margins of victory and conducted in whole or in part on a mechanical, electromechanical, or electronic voting system. If eligible claimants file late initial claims, the cost of reimbursing those claims may exceed the statewide cost estimate. Late initial reimbursement claims for this program for the period October 20, 2008 through November 28, 2008 may be filed until April 28, 2016.

- *There are reasons why a county that has incurred costs might not file a claim.*

There also may be several reasons that non-claiming counties did not file reimbursement claims, including but not limited to, (1) they did not incur more than \$1,000 in increased costs for this program and (2) they did not have supporting documentation to file a reimbursement claim.

- *The total amount of reimbursement for this program may be lower than the statewide cost estimate because the SCO may reduce any reimbursement claim for this program.*

The SCO may conduct audits and reduce any claims it deems to be excessive or unreasonable.

### Methodology

#### *October 20, 2008 through November 28, 2008*

The statewide cost estimate for the period October 20, 2008 through November 28, 2008 was developed by totaling the 14 initial reimbursement claims filed with the SCO for this period. All activities cease to be reimbursable after November 28, 2008.

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<sup>17</sup> Claims data reported as of May 5, 2015.

Following is a breakdown of estimated total costs per fiscal year:

<b>Fiscal Year</b>	<b>Number of Initial Claims Filed with SCO</b>	<b>Estimated Cost</b>
2008-2009	14	\$625,288
<b>TOTAL</b>	<b>14</b>	<b>\$625,288</b>

**Draft Proposed Statewide Cost Estimate**

On June 15, 2015, Commission staff issued the draft proposed statewide cost estimate.<sup>18</sup> No comments were filed on the draft proposed statewide cost estimate.

**Staff Recommendation**

Staff recommends the Commission adopt the proposed statewide cost estimate of **\$625,288** for costs incurred in complying with the *Post Election Manual Tally* program.

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<sup>18</sup> Exhibit C. Draft Proposed Statewide Cost Estimate.