

**ITEM 5**  
**TEST CLAIM**  
**SUPPLEMENTAL STAFF ANALYSIS**

Elections Code Sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094,  
13300, 13303 and 13306

Statutes 2000, Chapter 899 (AB 1094)

*Fifteen Day Close of Voter Registration*  
(01-TC-15)

County of Orange, Claimant

---

The draft staff analysis for this test claim was issued on July 24, 2006, with a deadline for comments of August 21, 2006. The final staff analysis was issued on September 7, 2006. The claimant, County of Orange, filed comments on September 15, 2006, and the County of Sacramento, interested party, filed comments received on September 18, 2006. The following discussion is a supplemental analysis to address these late filings, and is to be considered in addition to the final staff analysis, not in substitution.

Prior law allowed voters to newly register to vote, reregister, or change their address with county elections officials, until the 29th day before an election. After that date, voter registration closed until the conclusion of the upcoming election. Statutes 2000, chapter 899 amended the Elections Code to allow new registrations or changes to voter registrations through the 15th day prior to an election. The claimant seeks mandate reimbursement for costs incurred to register voters from the 28th through the 15th day before elections, such as for: implementation planning meetings; revising training programs; holding an informational media campaign; responding to additional inquiries about the new law; and providing additional personnel to accommodate the increased workload.

As discussed in the final staff analysis, staff recommends that the Commission approve a one-time reimbursable activity from Statutes 2000, chapter 899, as it amended Elections Code section 13303, subdivision (c), as follows:

- Amend the polling place notice sent to each voter who registered after the 29th day prior to the election, to include the following: information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed.

In the written comments received September 15, 2006, County of Orange asserts that "This shows how little Staff is aware of the necessities of the County Registrar of Voters, and what elections entail." The claimant continues:

First of all this particular provision is not applicable just to one election: it is applicable to all elections held. Any voter can register to vote, or change their address for voting purposes up until the 15th day before any election. Thus, to provide this as an activity on a one time basis ignores the fact that elections are continually held, and this legislation was not just applicable to one election. Thus, this is an ongoing activity which is conducted before each election.

Staff is aware that elections are held throughout the state semi-annually to biennially, but the act of amending a pre-existing polling place notice is not one that reoccurs at every election. Once the text of the notice is amended to include the material required by Statutes 2000, chapter 899, there are no additional activities required that were not already required under prior law.

The prior law of Elections Code section 13303, subdivision (b), already required that an "elections official shall send notice of the polling place to each voter with the sample ballot." In addition, Elections Code section 13306, has long provided that "*Notwithstanding Sections 13300, 13301, 13303, and 13307, sample ballots and candidates' statements need not be mailed to voters who registered after the 54th day before an election, but all of these voters shall receive polling place notices ...*" [Emphasis added.] Therefore under prior law, elections official were required to send polling place notices to voters who registered after the 54th day prior to an election. Elections Code section 13303, subdivision (c), as added by Statutes 2000, chapter 899, added information to the polling place notice, which provides a higher level of service to the public within an existing program.

The claimant's only allegations that can be clearly attributed to Elections Code section 13303 are at page 4 in the test claim filing, where the claimant alleged that "Those who registered late were entitled to notification, and an additional mailing was required." Elections Code section 13306 demonstrates that an *additional* mailing is not required as polling place notices were already required for voters who registered anytime after the 54th day before an election. The claimant has not shown what ongoing activities are *newly* required by the amended Elections Code section 13303, subdivision (c) after the boilerplate text of a polling place notice is amended; therefore staff maintains its recommendation to approve this activity on a one-time basis.

The remainder of the September 15, 2006 filing from County of Orange, and the text of the September 18, 2006 filing from County of Sacramento, describe the impact that changing the timeframe for registration prior to an election has had on county registrars and argue that this change has mandated an increased level of service resulting in a reimbursable state-mandated program. These filings are printed in yellow and can be found immediately following this supplemental analysis.

A representative argument from these filings is found on the first page of the County of Sacramento comments:

This shortened time frame clearly provides for a higher level of service from that previously required, in that the deadline to register to vote for any election was shortened from E-29 days prior to any election to E-15 days prior to the election. This creates a new window of time in which eligible citizens can qualify to vote for any specific election. And, in order to implement this legislation, county election offices have had to drastically increase the level of service provided to the public in order to provide the legally required voting material to both the voter and the polling place on election day.

Staff's legal analysis responding to this contention can be found on pages 9 through 12 of the final staff analysis, but in brief, staff finds that the Elections Code, as amended, does not mandate a new program or higher level of service on elections officials within the meaning of article XIII B, section 6 because processing and accepting voter registration affidavits and changes of address are not newly required under the Elections Code. Elections officials have been required to perform these activities long before the enactment of Statutes 2000, chapter 899.<sup>1</sup> The test claim allegations generally request reimbursement for increased staffing expenses, developing and conducting training, and holding planning meetings; these are not new *activities* directly required by the test claim legislation, but instead are *costs* that the claimant is associating with the changed timeframes. Staff does not dispute the claimant's allegations that the changed timeframes impose a burden on the way business is conducted by elections officials during the weeks before an election, and that there are likely associated costs; but the test claim legislation itself did not require the activities alleged in the manner required for reimbursement under mandates law.

Staff recommends that the Commission follow the analysis and recommendation in the final staff analysis, and partially approve the *Fifteen Day Close of Voter Registration* test claim for the activity described in the Conclusion at page 16.

---

---

<sup>1</sup> The voter registration timelines were last substantively amended following the decision in *Young v. Gnos* (1972) 7 Cal.3d 18, in which the California Supreme Court found the 54-day residency requirement and corresponding voter registration deadlines unconstitutional and declared 30 days to be the *maximum* voter registration restriction permissible under a reasonableness standard.

Countywide Services Agency

Voter Registration and Elections

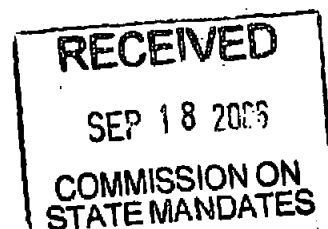


## County of Sacramento

Terry Schutten, County Executive  
Penelope Clarke, Agency Administrator

Jill LaVine, Registrar of Voters

September 15, 2006

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300RE: Fifteen Day Close of Voter Registration (01-TC-15)  
Comments on Staff Analysis

I have read through staff's analysis of the Fifteen Day Close of Voter Registration test claim and have concerns with their interpretation of the workflow related to the changes implemented as an outcome of the related legislation. Staff has noted that there is no validity to the claim as registering voters is a basic requirement of this office. To be clear, I agree with the staff analysis that the requirement to register voters has not changed. What is disagreed upon is the level of service mandated in the legislation in order to include people who register late (between E-28 and E-15) are included in the upcoming election. It is clear that the legislation wanted these late registrants to be included in the upcoming election. Further, this legislation requires on-going work that is not one-time in nature.

This shortened time frame clearly provides for a higher level of service from that previously required, in that the deadline to register to vote for any election was shortened from E-29 days prior to any election to E-15 days prior to the election. This creates a new window of time in which eligible citizens can qualify to vote for any specific election. And, in order to implement this legislation, county election offices have had to drastically increase the level of service provided to the public in order to provide the legally required voting material to both the voter and the polling place on election day.

As an example of the increased level of service to voters required by this legislation, Sacramento County alone received over 30,000 valid registration cards during this 14 day period for the November 2004 general election. These were registration cards that this legislation required to be processed so that these late registrants would be eligible to vote at the November 2004 election. Prior to this legislation, there was no mandate to process these cards until after the election. If any registration cards were received after the E-29 date, they would be held until after the election for processing.

7000 65th Street, Suite A • Sacramento, California 95823-2315 • Phone (916) 875-6451 • FAX (916) 875-6516  
Toll-Free (800) 762-8019 • Speech and Hearing Impaired • (TTY) 1-800-735-2929 • [www.saccounty.net](http://www.saccounty.net)

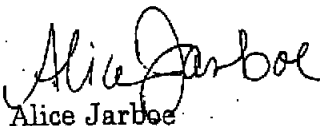
Extending the registration period is clearly a modification to an existing program that creates a higher level of service to those wishing to vote at a specific election. As stated in item 6 of the original test claim ('It was necessary to change the method by which rosters are delivered to the polls, including express delivery and dispatch.') the roster of voters now has to be either express mailed or a supplemental printing done to accommodate these late registrants. Sacramento County must print both a main and a supplemental roster: one that is part of the regular distribution to the lead precinct officer, and the supplemental that includes all the late registrants and is rush delivered to the lead precinct officer.

Another impact of the mandate is the shortened timeframe in which to provide this increase level of service. Logistically, it takes 7 to 10 days to process the registrations that come into the office at E-29. However, at E-15 the elections offices would be past the printing and shipping deadlines if we allowed this same 7 to 10 days to complete processing of the registration cards. Election offices are therefore mandated to complete the work in a timely fashion which requires the hiring of extra staff and even the addition of a second shift. Without this increased level of work, late registrants will be disenfranchised for the upcoming election, which is in direct conflict with this legislation.

This legislation also requires that voter notification cards be sent to those citizens who register between E-29 and E-15. This has created an increase level of service to late registrants to inform them of their voting location and where voting information can be found. It is clear that the election code allowed this process before this legislation; however the legislation created a higher level of service for those late registrants who now must be sent their specific election information. County election offices must hire extra staff to process these notification cards in time for the voter to receive them, locate their polling place and their voting material. This again usually requires significant amounts of overtime and occasionally separate shift work to accomplish in order to not disenfranchise the voter from the upcoming election.

I hope this additional information helps clarify the burden this mandate has placed on the county election offices. Everyone that works in the election field values the public's right to vote and works tirelessly to ensure every eligible voter has the opportunity to vote. However, periodically legislation is implemented that creates a mandate which results in a fiscal burden on the local government. This is one of those instances - mandating the increased level of service to voters by requiring the county election office to process their registration in a significantly shorted timeframe for the upcoming election.

Very truly yours,



Alice Jarboe  
Assistant Registrar of Voters  
County of Sacramento

PROOF OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento, and I am over the age of 18 years and not a party to the within action. My place of employment is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841.

On September 18, 2006, I served Comments to Draft Staff Analysis, *15 Day Close of Voter Registration*, by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list attached hereto, and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed this 18<sup>th</sup> day of September, 2006, at Sacramento, California.

  
Declarant

Mr. Leonard Kaye, Esq.  
County of Los Angeles  
Auditor-Controller's Office  
500 W. Temple Street, Room 603  
Los Angeles, CA 90012

Mr. Glen Everroad, Revenue Manager  
City of Newport Beach  
P. O. Box 1768  
Newport Beach, CA 92659-1768

Mr. Neal Kelley  
Acting Registrar of Voters  
1300 South Grand Ave.  
Santa Ana, CA 92705

Mr. Jim Jagers  
PO Box 1993  
Carmichael, CA 95609

Mr. John Mott-Smith  
Secretary of State's Office (D-15)  
1500 11<sup>th</sup> St.  
Sacramento, CA 95814

Ms. Carla Castaneda  
Department of Finance (A-15)  
915 L Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814

Ms. Susan Genacou  
Department of Finance (A-15)  
915 L Street, Suite 1190  
Sacramento, CA 95814

Mr. David Wellhouse  
Wellhouse & Associates  
9175 Kiefer Blvd., Suite 121  
Sacramento, CA 95826

Ms. Ginny Brummels  
State Controller's Office (B-08)  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

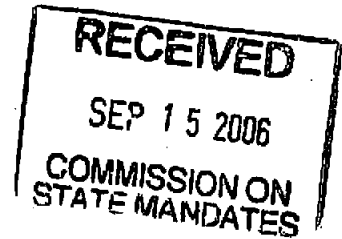
Mr. J. Bradley Burgess  
Public Resource Management Group  
1380 Lead Hill Boulevard, Suite 106  
Roseville, CA 95661

Ms. Bonnie Ter Keurst  
County of San Bernardino  
Office of the Auditor/Controller-Recorder  
222 West Hospitality Lane  
San Bernardino, CA 92415-0018

Mr. Jm Spano  
State Controller's Office (B-08)  
Division of Audits  
300 Capitol Mall, Suite 518  
Sacramento, CA 95814



## COMMENTS ON DRAFT STAFF ANALYSIS



*Fifteen Day Close of Voter Registration*  
(01-TC-15)

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

County of Orange, Claimant

The Draft Staff Analysis herein finds that there is only one reimbursable component, to wit: Amend the polling place notice sent to each voter who registered after the 29<sup>th</sup> day prior to the election, to include the following: information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed. This reimbursable component was allowed as a one time cost only.

This shows how little Staff is aware of the necessities of the County Registrar of Voters, and what elections entail.

First of all, this particular provision is not applicable just to one election: it is applicable to all elections held. Any voter can register to vote, or change their address for voting purposes up until the 15<sup>th</sup> day before any election. Thus, to provide this as an activity on a one time basis ignores the fact that elections are continually held, and this legislation was not just applicable to one election. Thus, this is an ongoing activity which is conducted before each election.

Secondly, the fact that the period for registration has been substantially shortened, during a period of time when the Registrar of Voter's Office is undertaking substantial activities in order to conduct the election in a proper and timely basis ignores the impact that this new program has on local registrar of voters offices.

First of all, if a new voter registers, that name must be on the roster of eligible voters. An increased amount of sample ballots must be made available to voters who register after the 29<sup>th</sup> day prior to the election who do not have access to an electronic version of the sample ballot. This results in substantial additional costs for printing sample ballots.

The fact that the time for registration has been shortened does not result, as contended by the Department of Finance, in no new costs ignores the reality of the impact of this

legislation. Prior to the test claim legislation, the voters had until the 29<sup>th</sup> day prior to the day of the election to register. The shortening of the period means that individuals who have moved, desire to register, or change their political party particularly in light of the increased campaigning towards day of the election, will now be eligible to register when they otherwise wouldn't.

Every voter who registers from the 29<sup>th</sup> day to the 15<sup>th</sup> day is one more voter who otherwise would not have been eligible to vote in the upcoming election. The Registrar of Voters previously would have knowledge, on the 29<sup>th</sup> day, of how many voters there would be eligible to vote, and thus how many sample ballots and ballots need to be made available. Given the lead time for printing, and the shortened period of time, additional ballots must be ordered to take in to account those persons who would now be voting.

The fact that this legislation did not increase those who are eligible to vote does not mean that there is not an increased level of service in an existing program. Although the 29% who the Department of Finance contends were eligible to vote and had not chosen to register could have registered before the 29<sup>th</sup> day does not mean that there are no increased activities. It is maintaining the same level of service from the 29<sup>th</sup> day to the 15<sup>th</sup> day close, which has resulted in an increased level of service due to the loss of 14 days, which must be, accommodated results in the claimed costs.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed this 13<sup>th</sup> day of September, 2006, at Santa Ana, California.



---

Neal Kelley  
Orange County Registrar of Voters

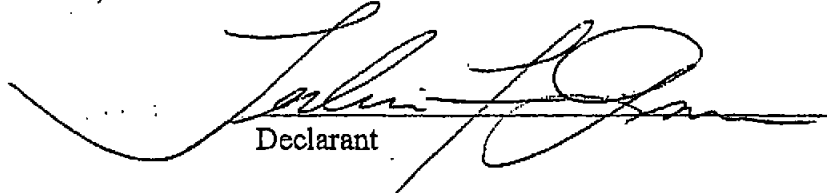
PROOF OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento, and I am over the age of 18 years and not a party to the within action. My place of employment is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841.

On September 15, 2006, I served Comments to Draft Staff Analysis, *15 Day Close of Voter Registration*, by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list attached hereto, and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed this 15 day of September, 2006, at Sacramento, California.

  
Declarant

Mr. Leonard Kaye, Esq.  
County of Los Angeles  
Auditor-Controller's Office  
500 W. Temple Street, Room 603  
Los Angeles, CA 90012

Mr. Glen Everroad, Revenue Manager  
City of Newport Beach  
P. O. Box 1768  
Newport Beach, CA 92659-1768

Mr. Neal Kelley  
Acting Registrar of Voters  
1300 South Grand Ave.  
Santa Ana, CA 92705

Mr. Jim Jagers  
PO Box 1993  
Carmichael, CA 95609

Mr. John Mott-Smith  
Secretary of State's Office (D-15)  
1500 11<sup>th</sup> St.  
Sacramento, CA 95814

Ms. Carla Castaneda  
Department of Finance (A-15)  
915 L Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814

Ms. Susan Genacou  
Department of Finance (A-15)  
915 L Street, Suite 1190  
Sacramento, CA 95814

Mr. David Wellhouse  
Wellhouse & Associates  
9175 Kiefer Blvd., Suite 121  
Sacramento, CA 95826

Ms. Ginny Brummels  
State Controller's Office (B-08)  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

Mr. J. Bradley Burgess  
Public Resource Management Group  
1380 Lead Hill Boulevard, Suite 106  
Roseville, CA 95661

Ms. Bonnie Ter Keurst  
County of San Bernardino  
Office of the Auditor/Controller-Recorder  
222 West Hospitality Lane  
San Bernardino, CA 92415-0018

Mr. Jm Spano  
State Controller's Office (B-08)  
Division of Audits  
300 Capitol Mall, Suite 518  
Sacramento, CA 95814

**ITEM 5**  
**TEST CLAIM**  
**FINAL STAFF ANALYSIS**

Elections Code Sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094,  
13300, 13303 and 13306

Statutes 2000, Chapter 899 (AB 1094)

*Fifteen Day Close of Voter Registration*  
(01-TC-15)

County of Orange, Claimant

---

**Table of Contents**

<b>Executive Summary and Staff Analysis</b> .....	001
<b>Exhibit A</b>	
Test Claim Filing and Exhibits, Filed May 17, 2002.....	101
<b>Exhibit B</b>	
Department of Finance Comments on Test Claim, Dated July 3, 2002 .....	121
<b>Exhibit C</b>	
Secretary of State's Office Comments on Test Claim, Received July 15, 2002 .....	127
<b>Exhibit D</b>	
Claimant's Response to Department of Finance Comments, Filed July 29, 2002.....	129
<b>Exhibit E</b>	
Draft Staff Analysis and Attachments, Dated July 24, 2006 .....	135
<b>Exhibit F</b>	
Department of Finance Comments on the Draft Staff Analysis, Dated August 7, 2006 .....	153

**ITEM 5**  
**TEST CLAIM**  
**FINAL STAFF ANALYSIS**

Elections Code Sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094,  
13300, 13303 and 13306

Statutes 2000, Chapter 899 (AB 1094)

*Fifteen Day Close of Voter Registration*  
**(01-TC-15)**

County of Orange, Claimant

---

**EXECUTIVE SUMMARY**

**Background**

Claimant, County of Orange, filed this test claim on changes to the deadline for voter registration prior to an election. Prior law allowed voters to newly register to vote, reregister, or change their address with county elections officials, until the 29th day before an election. After that date, voter registration closed until the conclusion of the upcoming election. Statutes 2000, chapter 899 amended Elections Code sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13303 and 13306, and repealed and reenacted Elections Code section 13300, allowing new registrations or changes to voter registrations through the 15th day prior to an election. The claimant seeks mandate reimbursement for costs incurred to register voters from the 28th through the 15th day before elections, such as for: implementation planning meetings; revising training programs; holding an informational media campaign; responding to additional inquiries about the new law; and providing additional personnel to accommodate the increased workload.

Department of Finance (DOF) filed comments on July 3, 2002, addressing the allegations stated in the test claim. The comments state: "we do not concur with all of the activities identified by the claimant. ... we note our concern with what appears to be a fundamental assumption asserted by the claimants that there was an increase in the number of voters as a result of the test claim legislation, ... ."

First, there is no evidence that the test claim legislation resulted in an increase of persons registering to vote. The test claim legislation could have merely shifted the cost from before the 29th day until after the 29th and before the 14th day prior to an election, as people may have waited longer to register. This would not constitute new costs since local agencies would have had to incur those costs already under prior law.

DOF lists several claimant-identified activities that should either be designated as "one-time" activities, or denied altogether on the grounds that they are not required by the test claim legislation, if the test claim is approved by the Commission.

The Secretary of State's office filed comments on the test claim, received July 15, 2002, agreeing that Statutes 2000, chapter 899 "imposed significant new responsibilities on county elections officials and that the costs of these additional responsibilities should be borne by the state."

Generally, staff finds that most of the statutory amendments by Statutes 2000, chapter 899, do not mandate a new program or higher level of service on county elections officials within the meaning of article XIII B, section 6. Processing and accepting voter registration affidavits and changes of address are not newly required under the Elections Code. County elections officials have been required to perform these activities long before the enactment of Statutes 2000, chapter 899. The test claim allegations generally request reimbursement for increased staffing expenses, developing and conducting training, and holding planning meetings; these are not new *activities* directly required by the test claim legislation, but instead are *costs* that the claimant is associating with the changed timeframes. Counties are required to perform the same activities they have long performed – accepting new voter registrations and changes of address. The courts have consistently held that increases in the *cost of an existing program*, are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of article XIII B, section 6.

Staff finds that Elections Code section 13303, subdivision (c), as added by Statutes 2000, chapter 899, added information to the polling place notice, which provides a higher level of service to the public within an existing program, as described in the conclusion below.

In comments on the draft staff analysis, dated August 7, 2006, DOF concurs with staff's identification of a one-time reimbursable activity for amending the polling place notice, but reiterates opposition to any reimbursement for the other test claim activities alleged, "such as training, public education and addressing public complaints."

### **Conclusion**

Staff concludes that Statutes 2000, chapter 899, as it amended Elections Code section 13303, subdivision (c), mandates a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and imposes costs mandated by the state pursuant to Government Code section 17514, for the following one-time activity:

- Amend the polling place notice sent to each voter who registered after the 29th day prior to the election, to include the following: information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed. (Elec. Code, § 13303, subd. (c).)

The other amendments by Statutes 2000, chapter 899, are not subject to article XIII B, section 6 of the California Constitution, or do not mandate a new program or higher level of service, and are denied.

### **Recommendation**

Staff recommends that the Commission adopt this analysis and partially approve the test claim.



## STAFF ANALYSIS

### Claimant

County of Orange

### Chronology

05/17/02 Claimant files test claim with the Commission  
06/04/02 Commission staff issues completeness review letter  
07/03/02 Department of Finance (DOF) files comments on the test claim  
07/15/02 Commission receives comments on the test claim filing from the Secretary of State's office  
07/29/02 Claimant files rebuttal to state agency comments  
07/24/06 Commission staff issues the draft staff analysis  
08/09/06 DOF files comments on the draft staff analysis

### Background

This test claim deals with changes to the deadline for voter registration prior to an election. Prior law allowed voters to newly register to vote, reregister, or change their address with county elections officials, until the 29th day before an election. After that date, voter registration closed until the conclusion of the upcoming election. Statutes 2000, chapter 899 was chaptered on September 29, 2000; it amended Elections Code sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13303 and 13306, and repealed and reenacted Elections Code section 13300. These amendments allow new registrations or changes to voter registrations through the 15th day prior to an election. The claimant is seeking mandate reimbursement for costs incurred to register voters from the 28th through the 15th day before elections.

### Claimant's Position

Claimant, County of Orange, filed this test claim on May 17, 2002.<sup>1</sup> Claimant contends that "The specific sections which contain the mandated activities are Elections Code, Sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13300, 13303 and 13306." Claimant asserts that these code sections, as amended by Statutes 2000, chapter 899, constitute a reimbursable state-mandated program. Following are some of the reimbursable activities or costs asserted by the claimant:

- have internal planning meetings, as well as meetings with the Secretary of State, in order to make sure the changes were implemented properly;
- printing, processing and mailing of postcards and additional sample ballot pamphlets for voters registering between the 28th day and up to and including the 15th day prior to the election;

---

<sup>1</sup> Potential reimbursement period for this claim begins no earlier than July 1, 2000, based on the filing date of the test claim. (Gov. Code, § 17557, subd. (e).)

- retrain personnel on new program, including revising training program, videos, and manuals;
- hold a media campaign to inform the public of the additional time to register and vote;
- respond to additional media and public inquiries about the new law;
- redesign and republish the sample ballot and absentee voter materials;
- redesign and implement voter election software;
- provide additional personnel to accommodate the increased workload;
- change the method of delivery rosters to the polls, including express delivery and dispatch;
- notify those who registered too late;
- complete additional steps in order to conduct the election.

In response to DOF's July 2002 comments on the test claim filing, described below, claimant disputes DOF's disagreements with the reimbursable activities identified, with the exception of agreeing that software redesign is a one-time activity, and reasserts that all of activities identified are necessary to implement the test claim legislation, or are the most reasonable method to comply. To date, no written comments on the draft staff analysis have been received.

#### **Department of Finance's Position**

DOF filed comments on July 3, 2002, addressing the allegations stated in the test claim. The comments state: "we do not concur with all of the activities identified by the claimant. ... we note our concern with what appears to be a fundamental assumption asserted by the claimants that there was an increase in the number of voters as a result of the test claim legislation, ... ."

Specifically, claimants cite costs related to an increase in the number of voters needing assistance, and costs for voters who registered between the 28th day and the 15th day prior to the election, necessitating additional staff, printing, processing and mailing costs. We have two objections with this assumption: First, there is no evidence that the test claim legislation resulted in an increase of persons registering to vote. The test claim legislation could have merely shifted the cost from before the 29th day until after the 29th and before the 14th day prior to an election, as people may have waited longer to register. This would not constitute new costs since local agencies would have had to incur those costs already under prior law.

In addition, we note that even if there were an increase in the number of registrants subsequent to the test claim legislation, this legislation did not increase the number of persons eligible to register. The Secretary of State's Website indicates that approximately 71 percent of the eligible voters were registered during the 2002 Primary Election. To the extent that the remaining 29 percent chose to register, it would be incumbent upon the local agencies to accommodate those persons, regardless of the test claim legislation. Accordingly, there does not appear to be a correlation between the test claim legislation and an increase in the number of registrants and there should be no reimbursement for those costs.

DOF then describes several claimant-identified activities that should either be designated as “one-time” activities, or denied altogether on the grounds that they are not required by the test claim legislation, if the test claim is approved by the Commission.

In comments on the draft staff analysis, dated August 7, 2006, DOF concurs with staff’s identification of a one-time reimbursable activity for amending the polling place notice, but reiterates opposition to any reimbursement for the other test claim activities alleged, “such as training, public education and addressing public complaints.”

### Secretary of State’s Position

The Secretary of State’s office filed comments on the test claim filing, received July 15, 2002, agreeing with the claimant that Statutes 2000, chapter 899 “imposed significant new responsibilities on county elections officials and that the costs of these additional responsibilities should be borne by the state.”

### Discussion

The courts have found that article XIII B, section 6, of the California Constitution<sup>2</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>3</sup> “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”<sup>4</sup> A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.<sup>5</sup> In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.<sup>6</sup>

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state

---

<sup>2</sup> Article XIII B, section 6, subdivision (a), provides: (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

<sup>3</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

<sup>4</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>5</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

<sup>6</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.*); *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 (*Lucia Mar*).

policy, but does not apply generally to all residents and entities in the state.<sup>7</sup> To determine if the program is new or mandates a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.<sup>8</sup> A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."<sup>9</sup>

Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>10</sup>

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>11</sup> In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."<sup>12</sup>

**Issue 1: Is the test claim legislation subject to article XIII B, section 6, of the California Constitution?**

Elections Code Sections 2187 and 9094:

As a preliminary matter, the claimant alleges Elections Code section 2187, as amended by Statutes 2000, chapter 899, imposes a reimbursable state-mandated program. This code section addresses long-standing county reporting requirements on the numbers of registered voters to the Secretary of State. The amendment to Elections Code section 2187 by Statutes 2000, chapter 899 was never operative upon the subsequent adoption of Statutes 2000, chapter 1081 in the same session.<sup>13</sup> The amendments made by Statutes 2000, chapter 1081 are entirely different from the amendments in Statutes 2000, chapter 899, and were not pled as part of this test claim.<sup>14</sup> Thus,

---

<sup>7</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.)

<sup>8</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>9</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

<sup>10</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

<sup>11</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

<sup>12</sup> *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>13</sup> Affected by two or more acts at the same session of the Legislature. (See Gov. Code, § 9605.)

<sup>14</sup> The changes made by Statutes 2000, chapter 1081 included the deletion of two commas, and the deletion of one of seven regular reporting dates to the Secretary of State.

Elections Code section 2187, as pled, is not subject to article XIII B, section 6 of the California Constitution.

Elections Code section 9094, as amended by Statutes 2000, chapter 899, addresses the duties of the Secretary of State to provide ballot pamphlets. The amendment to this code section is in subdivision (a), which is specific to the Secretary of State and does not mandate any requirements on local government. Thus, Elections Code section 9094, as amended by the test claim statute, is not subject to article XIII B, section 6 of the California Constitution.

Therefore, any future references to "test claim legislation" do not include Elections Code sections 2187 or 9094.

Remaining Test Claim Legislation:

In order for the remaining test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program." In *County of Los Angeles v. State of California*, the California Supreme Court defined the word "program" within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.<sup>15</sup> The court has held that only one of these findings is necessary.<sup>16</sup>

Staff finds that registering voters imposes a program within the meaning of article XIII B, section 6 of the California Constitution under both tests. County elections officials provide a service to the members of the public who register to vote. The test claim legislation also requires local elections officials to engage in administrative activities solely applicable to local government, thereby imposing unique requirements upon counties that do not apply generally to all residents and entities of the state.

Accordingly, staff finds that the test claim legislation constitutes a "program" and, thus, may be subject to subvention pursuant to article XIII B, section 6 of the California Constitution *if* the legislation also mandates a new program or higher level of service, and costs mandated by the state.

**Issue 2: Does the test claim legislation mandate a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution?**

Test claim legislation mandates a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not previously required.<sup>17</sup> The courts have defined a "higher level of service" in conjunction with the phrase "new program" to give the subvention requirement of article XIII B, section 6 meaning. Accordingly, "it is apparent that the subvention requirement for increased or higher level of service is directed to state-mandated increases in the services provided by local agencies in

---

<sup>15</sup> *County of Los Angeles, supra*, 43 Cal.3d at page 56.

<sup>16</sup> *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

<sup>17</sup> *Lucia Mar Unified School Dist., supra*, 44 Cal.3d 830, 836.

existing programs.”<sup>18</sup> A statute or executive order mandates a reimbursable “higher level of service” when the statute or executive order, as compared to the legal requirements in effect immediately before the enactment of the test claim legislation, increases the actual level of governmental service to the public provided in the existing program.<sup>19</sup>

Elections Code Sections 2035, 2102, 2107, 2119, and 2154:

Elections Code section 2035 formerly provided that a voter registered in California who moves during the last 28 days before an election shall be entitled to vote in the precinct where they were last properly registered. The amendment by Statutes 2000, chapter 899 changed that period to the last 14 days before an election.

Elections Code sections 2102 and 2107 describe what constitutes an effective new voter registration affidavit. The amendment by Statutes 2000, chapter 899, changed the received date, postmarked date, or alternative delivery deadlines from on or before the 29th day prior to an election, to on or before the 15th day prior to an election. The amendment to Elections Code section 2119 made similar changes to the deadlines for accepting notices of change of address for voters who have moved.

Elections Code section 2154 states a number of presumptions that county elections officials shall apply if there is missing information on a voter registration affidavit, in order to hold the registration valid. If the affidavit is not dated, the amendment by Statutes 2000, chapter 899 requires the elections official to presume the registration affidavit was signed on or before the 15th day prior to the election, instead of on or before the 29th day, if the document is received or postmarked by the 15th day prior to the election:

The amendments to numbers of days before an election are the only changes made to these Elections Code sections by the test claim statute. As an example, the complete text of Elections Code section 2107, as amended by Statutes 2000, chapter 899 follows, with changes indicated in underline and strikethrough:

(a) Except as provided in subdivision (b), the county elections official shall accept affidavits of registration at all times except during the ~~28~~14 days immediately preceding any election, when registration shall cease for that election as to electors residing in the territory within which the election is to be held. Transfers of registration for an election may be made from one precinct to another precinct in the same county at any time when registration is in progress in the precinct to which the elector seeks to transfer.

(b) The county elections official shall accept an affidavit of registration executed as part of a voter registration card in the forthcoming election if the affidavit is executed on or before the ~~29~~15th day prior to the election, and if any of the following apply:

---

<sup>18</sup> *County of Los Angeles, supra*, 43 Cal.3d 46, 56; *San Diego Unified School District, supra*, 33 Cal.4th 859, 874.

<sup>19</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

- (1) The affidavit is postmarked on or before the 2915th day prior to the election and received by mail by the county elections official.
- (2) The affidavit is submitted to the Department of Motor Vehicles or accepted by any other public agency designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg) prior to the election.
- (3) The affidavit is delivered to the county elections official by means other than those described in paragraphs (2) and (3) on or before the 2915th day prior to the election.

At page two of the test claim filing, claimant alleges that these statutory amendments, lengthening the period prior to an election that voter registrations must be processed, "has substantial repercussions on the management and operation of the county elections office. Staffed during elections season with temporary employees, the increased workload and shortened time line to perform the work results in an increase in the number of employees needed to staff the election."

In response to the test claim allegations, DOF argues:

[C]laimants cite ... costs for voters who registered between the 28th day and the 15th day prior to the election, necessitating additional staff, printing, processing and mailing costs. We have two objections with this assumption: First, there is no evidence that the test claim legislation resulted in an increase of persons registering to vote. The test claim legislation could have merely shifted the cost from before the 29th day until after the 29th and before the 14th day prior to an election, as people may have waited longer to register. This would not constitute new costs since local agencies would have had to incur those costs already under prior law.

Staff finds that the code sections as amended do not mandate a new program or higher level of service on county elections officials within the meaning of article XIII B, section 6 as determined by the courts. Processing and accepting voter registration affidavits and changes of address are not newly required under the Elections Code. County elections officials have been required to perform these activities long before the enactment of Statutes 2000, chapter 899.<sup>20</sup> The test claim allegations generally request reimbursement for increased staffing expenses, developing and conducting training, and holding planning meetings; these are not new *activities* directly required by the test claim legislation, but instead are *costs* that the claimant is associating with the changed timeframes. Staff does not dispute the claimant's allegations that the changed timeframes impose a burden on the way business is conducted by elections officials during the weeks before an election, and that there are likely associated costs; but the test claim legislation

---

<sup>20</sup> The voter registration timelines were last substantively amended following the decision in *Young v. Gnos* (1972) 7 Cal.3d 18, in which the California Supreme Court found the 54-day residency requirement and corresponding voter registration deadlines unconstitutional and declared 30 days to be the maximum voter registration restriction permissible under a reasonableness standard.

itself did not require the activities alleged in the manner required for reimbursement under mandates law.

The courts have consistently held that increases in the *cost of an existing program*, are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of article XIII B, section 6.

In 1987, the California Supreme Court decided *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d 46, and, for the first time, defined a "new program or higher level of service" within the meaning of article XIII B, section 6. Counties were seeking the costs incurred as a result of legislation that required local agencies to provide the same increased level of workers' compensation benefits to their employees as private individuals or organizations. The Supreme Court recognized that workers' compensation is not a new program and, thus, determined whether the legislation imposed a higher level of service on local agencies. Although the court defined a "program" to include "laws which, to implement a state policy, impose unique requirements on local governments," the court emphasized that a new program or higher level of service requires "state mandated increases in the services provided by local agencies in existing programs."<sup>21</sup>

Looking at the language of article XIII B, section 6 then, it seems clear that by itself the term "higher level of service" is meaningless. It must be read in conjunction with the predecessor phrase "new program" to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing "programs."<sup>22</sup>

Applying these principles, the court held that reimbursement for the increased costs of providing workers' compensation benefits to employees was not required by the California Constitution. The court stated the following:

Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of section 6.<sup>23</sup>

In 1998, the Third District Court of Appeal decided *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1196 and found:

Increasing the cost of providing services cannot be equated with requiring an increased level of service under a[n] [article XIII B,] section 6 analysis.

Seventeen years later, the Supreme Court summarized and maintained its earlier holding in *County of Los Angeles* and stated that although "[t]he law increased the cost of employing public servants, ... it did not in any tangible manner increase the level of service provided by those

---

<sup>21</sup> *County of Los Angeles, supra*, 43 Cal.3d 46, 56-57.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Id.* at 57-58.



employees to the public.”<sup>24</sup> Thus, the courts have found that a new program or higher level of service requires something more than increased costs experienced uniquely by local government.

Claimant alleges the following new activities were required by the test claim statute, and seeks reimbursement for “[holding] planning meetings with both its own staff, as well as other elections officials and the Secretary of State, to make sure that the new changes were implemented properly. These meetings resulted in the implementation of the following new procedures, as well as redesign and publication of forms and other voting materials[:.]”

1. To accommodate the change in dates, the elections software had to be redesigned.
2. Staffing needs to address the increased workload as a result of this legislation were evaluated, and additional staff had to be hired.
3. For voters who registered between the 28th day and up to and including the 15th day prior to the election, the legislation necessitated the printing, processing and mailing of postcards; and/or printing, processing and mailing of additional sample ballot pamphlets.<sup>25</sup>
4. An increase number of voters needed assistance either in person or on the telephone.
5. A methodology was developed for addressing voter complaints concerning registration.
6. It was necessary to change the method by which rosters are delivered to the polls, including express delivery and dispatch.
7. Because of the substantial changes, regular, temporary permanent employees, and poll workers had to be retrained. This resulted in the coordination and planning for the training, training instruction for the trainers, conducting the training classes, revising training videos, producing training aids, and revising the training manual.
8. In order that voters not be confused about the changes, press releases were prepared, development of educational material for the sample ballot pamphlet and audio visual instructions to both voters and staff.

The plain language<sup>26</sup> of Elections Code sections 2035, 2102, 2107, 2119, and 2154, as amended by the test claim statute, do not require counties to carry out any of the new activities as alleged.<sup>27</sup> Instead, counties are required to perform the same activities they have long performed

---

<sup>24</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 875.

<sup>25</sup> This activity appears to be connected to Elections Code sections 2155, 13303, and 13306, which are discussed separately below.

<sup>26</sup> “If the terms of the statute are unambiguous, the court presumes the lawmakers meant what they said, and the plain meaning of the language governs.” (*Estate of Griswold* (2001) 25 Cal.4th 904, 911.)

<sup>27</sup> *County of Los Angeles*, *supra*, 110 Cal.App.4th 1176, 1189.

– accepting new voter registrations and changes of address. If the test claim legislation explicitly required any *new* activities to be performed on the part of county elections officials, alleged activities such as training, preparing press releases, and hiring additional employees could be examined at the parameters and guidelines phase of the test claim process to determine whether they are a reasonable method of complying with the mandate.<sup>28</sup> However, there must *first* be a finding of a reimbursable state-mandated activity based on the statutory language of the test claim legislation in order to reach the other issues in the parameters and guidelines. Staff finds that the amendments by Statutes 2000, chapter 899 to Elections Code sections 2035, 2102, 2107, 2119, and 2154 do not mandate a new program or higher level of service on counties.

Elections Code Section 2155:

Elections Code section 2155 requires county elections officials to send voter notification forms to the voter “[u]pon receipt of a properly executed affidavit of registration or address correction notice.” One sentence on this form was changed by Statutes 2000, chapter 899 to read “you may vote in any election held 15 or more days after the date shown on the reverse side of this card.” If county elections officials had to change these cards in response to the test claim legislation, this would have met the legal standards for finding a new program or higher level of service, at least for a one-time activity of amending and reprinting the cards.

However, the very next section in the code, Elections Code section 2156, requires that:

The Secretary of State shall print, or cause to be printed, the blank forms of the voter notification prescribed by Section 2155. The Secretary of State shall supply the forms to the county elections official in quantities and at times requested by the county elections official.

Therefore staff finds that Elections Code section 2155, as amended by the test claim statute, does not mandate a new program or higher of service, because the only activity required of the county is the same as required by prior law – sending a newly registered or re-registered voter a notification form.

Elections Code Section 13300:

Elections Code section 13300, subdivision (a), as repealed and reenacted<sup>29</sup> by Statutes 2000, chapter 899, requires that “at least 29 days before the primary, each county elections official shall prepare separate sample ballots for each political party and a separate sample nonpartisan ballot.” This is unchanged from prior law following the United States Supreme Court decision in *California Democratic Party v. Jones* (2000) 530 U.S. 567, which found the 1996 amendments to the code section by Proposition 198, the “Open Primary Act,” unconstitutional, and therefore

---

<sup>28</sup> California Code of regulations, title 2, section 1183.1, subdivision (a)(4).

<sup>29</sup> Staff finds that when a statute is renumbered or reenacted, only substantive changes to the law creating new duties or activities meet the criteria for finding a reimbursable state mandate. This is consistent with long-standing case law: “Where there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the re-enactment takes effect at the same time.” (*In re Martin's Estate* (1908) 153 Cal. 225, 229. See also 15 Ops.Cal.Atty.Gen. 49 (1950).)

void.<sup>30</sup> Subdivision (b), also unchanged from prior law, provides that “The sample ballot shall be identical to the official ballots, except ... [that they] shall be printed on paper of a different texture ... .”

The amendments to subdivision (c) are indicated in underline and strikethrough, as follows:

(c) One sample ballot of the party to which the voter belongs, as evidenced by his or her registration, shall be mailed to each voter entitled to vote at the primary who registered at least 29 days prior to the election not more than 40 nor less than 10 days before the election. A nonpartisan sample ballot shall be so mailed to each voter who is not registered as intending to affiliate with any of the parties participating in the primary election, provided that on election day any such person may, upon request, vote the ballot of a political party if authorized by the party's rules, duly noticed to the Secretary of State.

*Modified Primary Election* (01-TC-13) is a test claim on Statutes 2000, chapter 898 (SB 28) that was heard and decided at the July 28, 2006 Commission hearing. The Legislature largely amended the Elections Code back to the state of the law before Proposition 198 through the adoption of Statutes 2000, chapter 898. Elections Code section 13300 was also amended by Statutes 2000, chapter 898, but that amendment did not take effect when Statutes 2000, chapter 899 (AB 1094) passed in the same session. The legislation specified that in the event that both statutes were chaptered, *and* Assembly Bill 1094 was the one enacted last, section 11.5 of Statutes 2000, chapter 899 prevailed.

In *Modified Primary Election*, the Commission found that Elections Code section 13102, subdivision (b), as amended by Statutes 2000, chapter 898, requires county elections officials to engage in a new activity to “Allow voters who declined to state a party affiliation to vote a party ballot if the political party, by party rule duly noticed to the Secretary of State, authorizes such a person to do so.” Any activity required by Elections Code section 13300, subdivision (c), for allowing decline-to-state voters to request partisan primary ballots at the polls, is already part of the test claim on the earlier-enacted Statutes 2000, chapter 898, and is therefore not *new*. Activities can be attributed to Elections Code section 13102, subdivision (b), and reimbursement can be sought under the *Modified Primary Election* parameters and guidelines, when adopted. Therefore, staff finds that the amendment to Elections Code section 13300 by Statutes 2000, chapter 899, does not mandate a new program or higher level of service.

---

<sup>30</sup> Before the amendments by Statutes 2000, chapters 898 and 899, the changes to the Elections Code made by Proposition 198 reverted to prior law because of the legal principles of *Cummings v. Morez* (1974) 42 Cal.App.3d 66, 73: “A statute which violates either [US or California] Constitution is to that extent void and, ‘[i]n legal contemplation, a void act is as inoperative as though it had never been passed. ...’” For legal purposes, there was no gap in the law because the law treats Proposition 198 as though it never existed; meaning prior law was continuous in effect.

Elections Code Section 13303:

Elections Code section 13303 follows, as amended by Statutes 2000, chapter 899 -- indicated in underline and strikethrough below:

(a) For each election, each appropriate elections official shall cause to be printed, on plain white paper or tinted paper, without watermark, at least as many copies of the form of ballot provided for use in each voting precinct as there are voters in the precinct. These copies shall be designated "sample ballot" upon their face and shall be identical to the official ballots used in the election, except as otherwise provided by law. A sample ballot shall be mailed, postage prepaid, ~~to each voter~~ not more than 40 nor less than 21 days before the election to each voter who is registered at least 29 days prior to the election.

(b) The elections official shall send notice of the polling place to each voter with the sample ballot. Only official matter shall be sent out with the sample ballot as provided by law.

(c) The elections official shall send notice of the polling place to each voter who registered after the 29th day prior to the election and is eligible to participate in the election. The notice shall also include information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed.

At page 4 of the test claim filing, claimant alleges that "Those who registered late were entitled to notification, and an additional mailing was required." DOF did not dispute this allegation in its comments on the test claim filing.

The prior law of Elections Code section 13303, subdivision (b), already required that an "elections official shall send notice of the polling place to each voter with the sample ballot." In addition, Elections Code section 13306, discussed further below, has long provided that "*Notwithstanding Sections 13300, 13301, 13303, and 13307, sample ballots and candidates' statements need not be mailed to voters who registered after the 54th day before an election, but all of these voters shall receive polling place notices ...*" [Emphasis added.] Therefore under prior law, elections official were required to send polling place notices to voters who registered after the 54th day prior to an election. Elections Code section 13303, subdivision (c), as added by Statutes 2000, chapter 899, added information to the polling place notice, which provides a higher level of service to the public within an existing program.

Staff finds that Elections Code section 13303, subdivision (c) mandates a new program or higher level of service for the following one-time activity:

- Amend the polling place notice sent to each voter who registered after the 29th day prior to the election, to include the following: information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed.

Elections Code Section 13306:

Elections Code section 13306 follows, as amended by Statutes 2000, chapter 899 -- indicated in underline and strikethrough below:

Notwithstanding Sections 13300, 13301, 13303, and 13307, sample ballots and candidates' statements need not be mailed to voters who registered after the 54th day before an election, but all of these voters shall receive polling place notices and state ballot pamphlets. A state ballot pamphlet is not required to be mailed to a voter who registered after the 29th day prior to an election. Each of these voters shall receive a notice in bold print that states: "Because you are a late registrant, you are not receiving a sample ballot or candidates' statements."

The addition of a sentence clarifying that state ballot pamphlets are not required to be mailed out to voters who register after the 29th day prior to an election in fact makes the code section identical to prior law, and does not require any activities on the part of county elections officials.

In "Response to Department of Finance," received July 29, 2002, claimant alleges that they "were unable to mail sample ballot pamphlets to those voters who registered between the 29th and 15th days prior to the election. This resulted in an increase in telephone calls from voters inquiring as to why they did not receive a sample ballot pamphlet. This required additional staff time to explain to the voters why they did not receive the sample ballot pamphlet."

First, staff notes that the test claim legislation does not *prohibit* counties from sending the ballot pamphlets to these registrants; it just does not require it. Receiving phone calls from the public is not "mandated" by the test claim legislation; it is part of the business of being a public agency. If the test claim legislation explicitly required any new activities to be performed on the part of county elections officials, responding to public inquiries could be examined at the parameters and guidelines phase to determine whether the requested activities are a reasonable method of complying with the mandate. (Cal. Code of Regs., tit. 2, § 1183.1, subd. (a)(4).) However, there must first be a finding of a reimbursable state-mandated activity in order to reach the issue in parameters and guidelines. Staff finds that the plain language of the amendment to Elections Code section 13306 does not mandate a new program or higher level of service on county elections officials.

**Issue 3: Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?**

Reimbursement under article XIII B, section 6 is required only if any new program or higher-level of service is also found to impose "costs mandated by the state." Government Code section 17514 defines "costs mandated by the state" as any *increased* cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service. The claimant estimated costs of \$200 or more for the test claim allegations, which was the statutory threshold at the time the test claim was filed. The claimant also stated that none of the Government Code section 17556 exceptions apply. For the one-time activity listed in the conclusion below, staff agrees and finds accordingly that it imposes costs mandated by the state upon counties within the meaning of Government Code section 17514.

## CONCLUSION

Staff concludes that Statutes 2000, chapter 899, as it amended Elections Code section 13303, subdivision (c), mandates a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and imposes costs mandated by the state pursuant to Government Code section 17514, for the following one-time activity:

- Amend the polling place notice sent to each voter who registered after the 29th day prior to the election, to include the following: information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed. (Elec. Code, § 13303, subd. (c).)<sup>31</sup>

The other amendments by Statutes 2000, chapter 899, are not subject to article XIII B, section 6 of the California Constitution, or do not mandate a new program or higher level of service, and are denied.

### Recommendation

Staff recommends that the Commission adopt this analysis and partially approve the test claim.

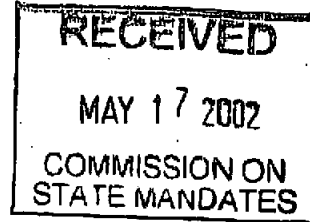
---

<sup>31</sup> As amended by Statutes 2000, chapter 899, operative January 1, 2001.

**PAGES 17-100 LEFT BLANK INTENTIONALLY**

State of California  
 COMMISSION ON STATE MANDATES  
 980 Ninth Street, Suite 300  
 Sacramento, CA 95814  
 (916) 323-3562  
 CSM 1 (2 91)

For Official Use Only

**TEST CLAIM FORM**Claim No. *01-TC-15*

Local Agency or School District Submitting Claim

**County of Orange**

Contact Person

Telephone No.

**Allan P. Burdick/Pamela A. Stone (MAXIMUS, INC.)****(916) 485-8102****Fax (916) 485-0111**

Address

**4320 Auburn Blvd., Suite 2000  
 Sacramento, CA 95841**

Representative Organization to be Notified

**California State Association of Counties**

This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.

**Chapter 899, Statutes of 2000**

**IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.**

Name and Title of Authorized Representative

Telephone No.

**Rosalyn Lever, Registrar of Voters****(714) 567-7620**

Signature of Authorized Representative

Date



**BEFORE THE  
COMMISSION ON STATE MANDATES**

Test Claim of:  
County of Orange

Fifteen Day Close of Voter Registration

Chapter 899, Statutes of 2000

STATEMENT OF THE CLAIM

A. MANDATE SUMMARY

With the passage of Chapter 899, Statutes of 2000, the period prior to an election when a voter could register was substantially lengthened. Prior to the passage of the subject test claim legislation, voters had to register at least 29 days prior to an election in order to be eligible to vote in that election. With the passage of the test claim legislation, that period was lengthened so that voters could register up to and including 15 days prior to the date of the election in order to be eligible to vote in that election.

Under prior law, a person could not be registered except by affidavit of registration, and prior law provided that a properly executed registration was deemed effective if executed on or prior to the 29<sup>th</sup> day and received no later than the 25<sup>th</sup> day prior to an election. This legislation changed the period to the 15<sup>th</sup> day prior to the election period relative to execution of an affidavit of registration and made other technical changes.

Under prior law, the county elections official is required to accept affidavits of registration at all times, except during the 28 days immediately prior to an election. This legislation changed the period to 14 days.

Under prior law, the county elections official is required to accept an affidavit of registration executed as part of a voter registration card if executed on or before the 29<sup>th</sup> day and received not later than the 25<sup>th</sup> day prior to the election. This legislation changed the period to the 15<sup>th</sup> day prior to the election.

Under prior law, in lieu of executing a new affidavit of registration for a change of address within the county, the elections official is required to accept a notice or letter of the change, signed by the voter as he or she is registered and is required to change the address if executed on or before the 29<sup>th</sup> day prior to the election and received on or before the 25<sup>th</sup> day prior to the election. This bill extended the period of execution to and including the 15<sup>th</sup> day prior to the election.

Under prior law, if a county elections official receives an affidavit of registration that does not include portions of the information for which space is provided, the elections official is required to apply a rebuttable presumption that if no execution date is shown, the affidavit was executed on or before the 29<sup>th</sup> day prior to the election provided that: (1) the affidavit is received by the elections official on or before the 29<sup>th</sup> day prior to the election, (2) the affidavit is received by mail by the county elections official no later than the fourth day after the 29<sup>th</sup> day prior to the election, or (3) the affidavit is postmarked on or before the 29<sup>th</sup> day prior to the election and received by mail. This legislation changes it to the 15<sup>th</sup> day instead of the 29<sup>th</sup> day.

Under prior law, upon receipt of a properly executed affidavit of registration or address correction notice, the elections official is required to send the voter a voter notification card by nonforwardable, first class mail, address correction requested, noting that the voter may vote in any election held 29 or more days after the date shown on the reverse side of the notification. This legislation changed the period to 15 or more days.

Prior law required each elections official to send to the Secretary of State a summary statement of the number of voters in the county with other specified information. Counties that use data processing equipment to store the information must send one copy of the magnetic tape file, and each county that does not use data processing storage to send the information by index setting for the information. Summary statements and the magnetic tape file copy or the index must be sent no later than 10 days prior to the primary election, with respect to voters registered before the 28<sup>th</sup> day prior to the primary election, and not less than 10 days prior to the general election with respect to voters registered before the 28<sup>th</sup> day prior to the general election. This legislation changed the reporting deadline to 7 days prior to the election and 14 days.

Prior law requires the Secretary of State to mail state ballot pamphlets to voters where the county clerk uses data processing equipment to store the information pertaining to affidavits of registration. This legislation provides that the requirement applies unless a voter registered fewer than 29 days prior to the election.

This legislation requires the sample ballot to be mailed to those who registered at least 29 days prior to the election, and a notice of polling place with specified information to those voters who registered after the 29<sup>th</sup> day and are eligible to participate in the election.

Although the changes seem very simple, lengthening the time frame within which a person may register to vote and participate in the election, has substantial repercussions on the management and operation of the county elections office. Staffed during election season with temporary employees, the increased workload and shortened time lines to perform the work results in an increase in the number of employees needed to staff the election.

In order to effectuate the changes wrought by this legislation, the County of Orange had planning meetings with both its own staff, as well as other elections officials and the Secretary of State, to make sure that the new changes were implemented properly. These

meetings resulted in the implementation of the following new procedures, as well as redesign and publication of forms and other voting materials.

1. To accommodate the change in dates, the elections software had to be redesigned.
2. Staffing needs to address the increased workload as a result of this legislation were evaluated, and additional staff had to be hired.
3. For voters who registered between the 28th day and up to and including the 15th day prior to the election, the legislation necessitated the printing, processing and mailing of postcards; and/or printing, processing and mailing of additional sample ballot pamphlets.
4. An increase number of voters needed assistance either in person or on the telephone.
5. A methodology was developed for addressing voter complaints concerning registration.
6. It was necessary to change the method by which rosters are delivered to the polls, including express delivery and dispatch.
7. Because of the substantial changes, regular, temporary permanent employees, and poll workers had to be retrained. This resulted in the coordination and planning for the training, training instruction for the trainers, conducting the training classes, revising training videos, producing training aids, and revising the training manual.
8. In order that voters not be confused about the changes, press releases were prepared, development of education material for the sample ballot pamphlet and audio visual instructions to both voters and staff.

Because of the lengthening of the period in which to register to vote, the time period in which to prepare, produce and process materials was shortened. The shortening of this time period required additional personal computers, telephones, space, and more overtime had to be utilized to manage the workload.

#### B. LEGISLATIVE HISTORY PRIOR TO 1975

There was no requirement prior to 1975, nor in any of the intervening years, until the passage of Chapter 899, Statutes of 2000, filed on September 29, 2000, lengthening the period prior to an election when one may register in order to vote in that election from 29 days prior to the election, to 15 days prior to the election, and related provisions.

C. SPECIFIC STATUTORY SECTIONS THAT CONTAIN THE MANDATED ACTIVITIES

The specific sections which contain the mandated activities are Elections Code, Sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13300, 13303, and 13306.

D. COST ESTIMATES

The activities necessary to comply with the mandated activities cost in excess of \$200.00 per year.

Elections departments have different personnel needs than other local government departments. Given the extreme fluctuations in workload, most elections departments hire a large number of temporary employees and poll workers for the purpose of staffing elections. As this personnel pool changes from year to year, it is incumbent upon the elections department to adequately train these individuals. Even if the temporary personnel pool remains the same from year to year, the individuals must be trained in the new developments. In order to train in the most expeditious fashion possible, Orange County has developed a training program wherein it trains its permanent employees to train poll workers and employees who are hired on a temporary basis. Given the needs for temporary employees, Orange County also has training videos for them. In order to accommodate the new legislation, the trainers had to be retrained, the training videos had to be updated, the training manual had to be changed, as well as other materials necessary for an efficient and well conducted election.

Because of the changes in the law, and based on prior experience, a media campaign is necessary to inform the public, and in particular those have not yet registered, of the additional time within which to register and still vote in an election. The change has resulted in more telephone calls and inquiries from voters and the media, to which the elections department has had to give appropriate responses. Additionally, the sample ballot and absentee voter education materials had to be updated to reflect the change in the legislation.

Because of the extreme increase in volume of workload, not only was more personnel necessary, but also a change in the voter registration software was needed to accommodate the changes. More ballots were needed, as those who register between the 28<sup>th</sup> day prior to the election and the 14<sup>th</sup> day prior to the election are now eligible to vote. Those who registered late were entitled to notification, and an additional mailing was required. Also, the time lines within which to provide information to the Secretary of State was shortened.

More questions were raised by voters who were attempting to register during the extended period. Also, there were more steps necessary in order to conduct the election, all which increased the costs thereof.

#### E. REIMBURSABLE COSTS MANDATED BY THE STATE

The costs incurred by the County of Orange as a result of the statutes included in the test claim are all reimbursable costs as such costs are "costs mandated by the State" under Article XIII B (6) of the California Constitution, and Section 17500 *et seq.* of the Government Code. Section 17514 of the Government Code defines "costs mandated by the state", and specifies the following three requirements:

1. There are "increased costs which a local agency is required to incur after July 1, 1980."
2. The costs are incurred "as a result of any statute enacted on or after January 1, 1975."
3. The costs are the result of "a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

All three of the above requirements for finding costs mandated by the State are met as described previously herein.

#### F. MANDATE MEETS BOTH SUPREME COURT TESTS

The mandate created by these three statutes clearly meets both tests that the Supreme Court in the *County of Los Angeles v. State of California* (1987) created for determining what constitutes a reimbursable state mandated local program. Those two tests, which the Commission on State Mandates relies upon to determine if a reimbursable mandate exists, are the "unique to government" and the "carry out a state policy" tests. Their application to this test claim is discussed below.

##### Mandate Is Unique to Local Government

Only local government conducts elections for local, state and federal offices. There are no private entities that conduct elections for local or statewide election. Thus, the mandate is unique to government.

##### Mandate Carries Out a State Policy

The qualification of voters and the conduct of elections is a matter of state policy. With this legislation, the state has instituted a policy of shortening the period before the election by when voters must be registered in order to vote. The apparent purpose of this legislation is to increase the number of individuals who vote in elections, which is a state purpose.

## STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code, Section 17556 which could serve to bar recovery of "costs mandated by the State", as defined in Government Code, Section 17556. None of the seven disclaimers apply to this test claim:

1. The claim is submitted by a local agency or school district which requests legislative authority for that local agency or school district to implement the Program specified in the statutes, and that statute imposes costs upon the local agency or school district requesting the legislative authority.
2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.
3. The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.
4. The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.
5. The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate.
6. The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election.
7. The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

None of the above disclaimers have any application to the County of Orange's test claim.

## CONCLUSION

Chapter 899, Statutes of 2000 imposed a new state mandated program and cost on the County of Orange, by shortening the period before an election by when individuals can register and be eligible to vote. The mandated program meets all of the criteria and tests for the Commission on State Mandates to find a reimbursable state mandated program. None of the so-called disclaimers or other statutory or constitutional provisions that would relieve the State from its constitutional obligation to provide reimbursement have any application to this claim.

G. CLAIM REQUIREMENTS

The following elements of this test claim are provided pursuant to Section 1183, Title 2, of the California Code of Regulations:

Exhibit 1: Chapter 899, Statutes of 2000

CLAIM CERTIFICATION

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 17th day of May, 2002, at Santa Ana, California, by:



Rosalyn Lever  
Registrar of Voters

DECLARATION OF ROSALYN LEVER

I, Rosalyn Lever, make the following declaration under oath:

I am the Registrar of Voters for the County of Orange.

I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs are, in my opinion, "costs mandated by the State", as defined in Government Code, Section 17514:

"Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts, and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are stated upon information or belief, and as to those matters, I believe them to be true.

Executed this 7th day of May, 2002 at Santa Ana, California.



Rosalyn Lever  
Registrar of Voters



## Assembly Bill No. 1094

## CHAPTER 899

An act to amend Sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13303, and 13306 of, and to repeal and add Section 13300 of, the Elections Code, relating to elections.

[Approved by Governor September 28, 2000. Filed  
with Secretary of State September 29, 2000.]

## LEGISLATIVE COUNSEL'S DIGEST

AB 1094, Hertzberg. Voter registration.

Under existing law, a person duly registered as a voter in any precinct in California who moves from the district within 28 days prior to an election shall, for the purpose of that election, be entitled to vote in the precinct from which the person moved until the close of the polls on the date of that election.

This bill would change that period to 14 days.

Under existing law, a person may not be registered as a voter except by affidavit of registration. Existing law requires that the affidavit be mailed or delivered to the county elections official. Existing law provides that a properly executed registration is deemed effective upon receipt of the affidavit by the county elections official no later than the 29th day prior to an election, unless specified circumstances apply.

This bill would provide for a 15-day period instead of a 29-day period relative to receipt of an affidavit of registration and would also make other technical changes to this provision.

Under existing law, generally, the county elections official is required to accept affidavits of registration at all times except during the 28 days immediately preceding any election.

This bill would provide for a 14-day period instead of a 28-day period.

Under existing law, the county elections official or his or her deputy is required accept an affidavit of registration executed as part of a voter registration card in the forthcoming election if the affidavit is executed on or before the 29th day prior to the election, under specified conditions.

This bill would provide for a 15-day period instead of a 29-day period.

Under existing law, in lieu of executing a new affidavit of registration for a change of address within the county, the county elections official is required to accept a notice or letter of the change of address signed by a voter as he or she is registered for a forthcoming election and is required to change the address on the

voter's affidavit of registration if the notification is executed on or before the 29th day prior to the election under specified conditions.

This bill would provide for either a 14-day period or a 15-day period, determined by method of delivery, instead of a 29-day period.

Under existing laws, if a county elections official receives an affidavit of registration that does not include portions of the information for which space is provided, the county elections official or registrar of voters is required to apply a rebuttable presumption that if no execution date is shown, the affidavit was executed on or before the 29th day prior to the election, provided that (1) the affidavit is received by the county elections official on or before the 29th day prior to the election, (2) the affidavit is received by mail by the county elections official no later than the fourth day after the 29th day prior to the election, or (3) the affidavit is postmarked on or before the 29th day prior to the election and received by mail by the county elections official.

This bill would provide for a 15-day period instead of a 29-day period.

Under existing law, upon receipt of a properly executed affidavit of registration or address correction notice or letter, as specified, the county elections official is required to send the voter a voter notification by nonforwardable, first-class mail, address correction requested that informs the voter, among other things, that the voter may vote in any election held 29 or more days after the date shown on the reverse side of the notification.

This bill would provide for a 15-day period instead of a 29-day period.

Existing law requires each county elections official to send to the Secretary of State, in a format described by the Secretary of State, a summary statement of the number of voters in the county with specified information. Existing law requires each county that uses data processing equipment to store the information set forth in the affidavit of registration to send to the Secretary of State one copy of the magnetic tape file with the information requested by the Secretary of State and each county that does not use data processing storage to send to the Secretary of State one copy of the index setting forth that information. Existing law requires the summary statements and the magnetic tape file copy or the index to be sent not less than 10 days prior to the primary election, with respect to voters registered before the 28th day prior to the primary election and not less than 10 days prior to the general election, with respect to voters registered before the 28th day prior to the general election.

This bill would provide for seven-day and 14-day time periods instead of 10-day and 29-day periods.

Existing law requires the Secretary of State to mail ballot pamphlets to voters, in those instances in which the county clerk uses data processing equipment to store the information set forth in the

affidavits of registration, before the election at which measures contained in the ballot pamphlet are to be voted on.

This bill would provide that this requirement applies unless a voter has registered fewer than 29 days before the election.

Proposition 198, an initiative statute approved by the voters at the March 26, 1996, direct primary election, among other things, required each county elections official to prepare sample ballots for each voter entitled to vote at the primary and to mail these ballots not more than 40 nor less than 10 days before the election. On June 26, 2000, the United States Supreme Court in *California Democratic Party v. Jones*, ruled the provisions of Proposition 198 unconstitutional.

This bill would implement the court's holding by instead requiring the sample ballot of the party to which the voter belongs, as evidenced by his or her registration, to be mailed to each voter entitled to vote at the primary who registered at least 29 days prior to the election, not more than 40 nor less than 10 days before the elections. This bill would also require that a nonpartisan sample ballot be mailed to each voter who is not registered as intending to affiliate with any of the parties participating in the primary elections. The bill would impose a state-mandated local program by imposing new duties on local election officials.

Existing law requires the appropriate elections official, for each election, to cause to be printed at least as many copies of the form of ballot provided for use in each voting precinct as there are voters in the precinct, designated as "sample ballot," and mailed, postage prepaid, to each voter not more than 40 nor less than 21 days before the election.

This bill would require the sample ballot to be mailed to voters who registered at least 29 days prior to the election and a notice of the polling place with specified information to voters who registered after the 29th day prior to the election and who is eligible to participate in the election.

This bill would incorporate additional provisions to Section 13300 of the Elections Code to take effect if this bill and SB 28 are both enacted and become effective on or before January 1, 2001, and this bill is enacted last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 2035 of the Elections Code is amended to read:

2035. A person duly registered as a voter in any precinct in California who removes therefrom within 14 days prior to an election shall, for the purpose of that election, be entitled to vote in the precinct from which the person so removed until the close of the polls on the date of that election.

SEC. 2. Section 2102 of the Elections Code is amended to read:

2102. (a) A person may not be registered as a voter except by affidavit of registration. The affidavit shall be mailed or delivered to the county elections official and shall set forth all of the facts required to be shown by this chapter. A properly executed registration shall be deemed effective upon receipt of the affidavit by the county elections official if received on or before the 15th day prior to an election to be held in the registrant's precinct. A properly executed registration shall also be deemed effective upon receipt of the affidavit by the county elections official if any of the following apply:

(1) The affidavit is postmarked on or before the 15th day prior to the election and received by mail by the county elections official.

(2) The affidavit is submitted to the Department of Motor Vehicles or accepted by any other public agency designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg) on or before the 15th day prior to the election.

(3) The affidavit is delivered to the county elections official by means other than those described in paragraphs (1) or (2) on or before the 15th day prior to the election.

(b) For purposes of verifying signatures on a recall, initiative, or referendum petition or signatures on a nomination paper or any other election petition or election paper, a properly executed affidavit of registration shall be deemed effective for verification purposes if both (a) the affidavit is signed on the same date or a date prior to the signing of the petition or paper, and (b) the affidavit is received by the county elections official on or before the date on which the petition or paper is filed.

(c) Notwithstanding any other provision of law to the contrary, the affidavit of registration required under this chapter may not be taken under sworn oath, but the content of the affidavit shall be certified as to its truthfulness and correctness, under penalty of perjury, by the signature of the affiant.

SEC. 3. Section 2107 of the Elections Code is amended to read:

2107. (a) Except as provided in subdivision (b), the county elections official shall accept affidavits of registration at all times except during the 14 days immediately preceding any election, when registration shall cease for that election as to electors residing in the

territory within which the election is to be held. Transfers of registration for an election may be made from one precinct to another precinct in the same county at any time when registration is in progress in the precinct to which the elector seeks to transfer.

(b) The county elections official shall accept an affidavit of registration executed as part of a voter registration card in the forthcoming election if the affidavit is executed on or before the 15th day prior to the election, and if any of the following apply:

(1) The affidavit is postmarked on or before the 15th day prior to the election and received by mail by the county elections official.

(2) The affidavit is submitted to the Department of Motor Vehicles or accepted by any other public agency designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg) prior to the election.

(3) The affidavit is delivered to the county elections official by means other than those described in paragraphs (2) and (3) on or before the 15th day prior to the election.

SEC. 4. Section 2119 of the Elections Code is amended to read:

2119. (a) In lieu of executing a new affidavit of registration for a change of address within the county the county elections official shall accept a notice or letter of the change of address signed by a voter as he or she is registered.

(b) The county elections official shall accept a notification for the forthcoming election and shall change the address on the voter's affidavit of registration accordingly if the notification is executed on or before the 15th day prior to the election and if any of the following apply:

(1) The notification is postmarked on or before the 15th day prior to the election and received by mail by the county elections official.

(2) The notification is submitted to the Department of Motor Vehicles or accepted by any other public agency designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg) prior to the election.

(3) The notification is delivered to the county elections official by means other than those described in paragraphs (2) and (3) on or before the 14th day prior to the election.

SEC. 5. Section 2154 of the Elections Code is amended to read:

2154. In the event that the county elections official receives an affidavit of registration that does not include portions of the information for which space is provided, the county elections official voters shall apply the following rebuttable presumptions:

(a) If no middle name or initial is shown, it shall be presumed that none exists.

(b) If no party affiliation is shown, it shall be presumed that the affiant has no party affiliation.

(c) If no execution date is shown, it shall be presumed that the affidavit was executed on or before the 15th day prior to the election,

provided that (1) the affidavit is received by the county elections official on or before the 15th day prior to the election, or (2) the affidavit is postmarked on or before the 15th day prior to the election and received by mail by the county elections official.

(d) If the affiant fails to identify his or her state of birth within the United States, it shall be presumed that the affiant was born in a state or territory of the United States if the birthplace of the affiant is shown as "United States," "U.S.A.," or other recognizable term designating the United States.

SEC. 6. Section 2155 of the Elections Code is amended to read:

2155. Upon receipt of a properly executed affidavit of registration or address correction notice or letter pursuant to Section 2119, Article 2 (commencing with Section 2220), or the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg), the county elections official shall send the voter a voter notification by nonforwardable, first-class mail, address correction requested. The voter notification shall be substantially in the following form:

#### VOTER NOTIFICATION

You are registered to vote. This card is being sent as a notification of:

1. Your recently completed affidavit of registration,

OR,

2. A correction to your registration because of an official notice that you have moved. If your residence address has not changed or if your move is temporary, please call or write the county elections official immediately.

---

You may vote in any election held 15 or more days after the date shown on the reverse side of this card.

Your name will appear on the index kept at the polls.

---

(Signature of Voter)

SEC. 7. Section 2187 of the Elections Code is amended to read:

2187. (a) Each county elections official shall send to the Secretary of State, in a format described by the Secretary of State, a summary statement of the number of voters in the county. The statement shall show the total number of voters in the county, the number registered as affiliated with each qualified political party, the number registered in nonqualified parties, and the number who

declined to state any party affiliation. The statement shall also show the number of voters, by political affiliations, in each city, supervisorial district, Assembly district, Senate district, and congressional district, located in whole or in part within the county.

(b) The Secretary of State, on the basis of the statements sent by the county elections officials and within 30 days after receiving those statements, shall compile a statewide list showing the number of voters, by party affiliations, in the state and in each county, city, supervisorial district, Assembly district, Senate district, and congressional district, in the state. A copy of this list shall be made available, upon request, to any elector in this state.

(c) Each county that uses data processing equipment to store the information set forth in the affidavit of registration shall send to the Secretary of State one copy of the magnetic tape file with the information requested by the Secretary of State. Each county that does not use data processing storage shall send to the Secretary of State one copy of the index setting forth that information.

(d) The summary statements and the magnetic tape file copy or the index shall be sent at the following times:

(1) On the 135th day before each presidential primary and before each direct primary, with respect to voters registered on the 154th day before the primary election.

(2) Not less than 50 days prior to the primary election, with respect to voters registered on the 60th day before the primary election.

(3) Not less than seven days prior to the primary election, with respect to voters registered before the 14th day prior to the primary election.

(4) Not less than 50 days prior to the general election, with respect to voters registered on the 60th day before the general election.

(5) Not less than seven days prior to the general election, with respect to voters registered before the 14th day prior to the general election.

(6) On or before March 1 of each odd-numbered year, with respect to voters registered as of February 10.

(7) On or before October 1 of each odd-numbered year, with respect to voters registered as of September 12.

(e) The Secretary of State may adopt regulations prescribing the content and format of the magnetic tape file or index referred to in subdivision (c) and containing the registered voter information from the affidavits of registration.

(f) The Secretary of State may adopt regulations prescribing additional regular reporting times, except that the total number of reporting times in any one calendar year shall not exceed 12.

(g) The Secretary of State shall make the information from the magnetic tape files or the printed indexes available, under conditions prescribed by the Secretary of State, to any candidate for federal,

state, or local office, to any committee for or against any proposed ballot measure, to any committee for or against any initiative or referendum measure for which legal publication is made, and to any person for election, scholarly or political research, or governmental purposes as determined by the Secretary of State.

SEC. 8. Section 9094 of the Elections Code is amended to read:

9094. (a) The Secretary of State shall mail ballot pamphlets to voters, in those instances in which the county clerk uses data processing equipment to store the information set forth in the affidavits of registration, before the election at which measures contained in the ballot pamphlet are to be voted on unless a voter has registered fewer than 29 days before the election. The mailing shall commence not less than 40 days before the election and shall be completed no later than 21 days before the election for those voters who registered on or before the 60th day before the election. The Secretary of State shall mail one copy of the ballot pamphlet to each registered voter at the postal address stated on the voter's affidavit of registration, or the Secretary of State may mail only one ballot pamphlet to two or more registered voters having the same surname and the same postal address.

(b) In those instances in which the county clerk does not utilize data processing equipment to store the information set forth in the affidavits of registration, the Secretary of State shall furnish ballot pamphlets to the county clerk not less than 45 days before the election at which measures contained in the ballot pamphlet are to be voted on and the county clerk shall mail ballot pamphlets to voters, on the same dates and in the same manner provided by subdivision (a).

(c) The Secretary of State shall provide for the mailing of ballot pamphlets to voters registering after the 60th day before the election and before the 28th day before the election, by either: (1) mailing in the manner as provided in subdivision (a), or (2) requiring the county clerk to mail ballot pamphlets to those voters registering in the county after the 60th day before the election and before the 28th day before the election pursuant to the provisions of this section. The second mailing of ballot pamphlets shall be completed no later than 10 days before the election. The county clerk shall mail a ballot pamphlet to any person requesting a ballot pamphlet. Three copies, to be supplied by the Secretary of State, shall be kept at every polling place, while an election is in progress, so that they may be freely consulted by the voters.

SEC. 9. Section 13300 of the Elections Code, as amended by Chapter 920 of the Statutes of 1994, is repealed.

SEC. 10. Section 13300 of the Elections Code, as amended by Proposition 198 at the March 26, 1996, direct primary election, is repealed.

SEC. 11. Section 13300 is added to the Elections Code, to read:



(a) By at least 29 days before the primary, each county elections official shall prepare separate sample ballots for each political party and a separate sample nonpartisan ballot, placing thereon in each case in the order provided in Chapter 2 (commencing with Section 13100) and under the appropriate title of each office, the names of all candidates for whom nominations papers have been duly filed with him or her or have been certified to him or her by the Secretary of State to be voted for in his or her county at the primary elections.

(b) The sample ballot shall be identical to the official ballots, except as otherwise provided by law. The sample ballots shall be printed on paper of a different texture from the paper to be used for the official ballot.

(c) One sample ballot of the party to which the voter belongs, as evidenced by his or her registration, shall be mailed to each voter entitled to vote at the primary who registered at least 29 days prior to the election not more than 40 nor less than 10 days before the elections. A nonpartisan sample ballot shall be so mailed to each voter who is not registered as intending to affiliate with any of the parties participating in the primary elections.

SEC. 11.5. Section 13300 is added to the Elections Code, to read:

(a) By at least 29 days before the primary, each county elections official shall prepare separate sample ballots for each political party and a separate sample nonpartisan ballot, placing thereon in each case in the order provided in Chapter 2 (commencing with Section 13100), and under the appropriate title of each office, the names of all candidates for whom nomination papers have been duly filed with him or her or have been certified to him or her by the Secretary of State to be voted for in his or her county at the primary election.

(b) The sample ballot shall be identical to the official ballots, except as otherwise provided by law. The sample ballots shall be printed on paper of a different texture from the paper to be used for the official ballot.

(c) One sample ballot of the party to which the voter belongs, as evidenced by his or her registration, shall be mailed to each voter entitled to vote at the primary who registered at least 29 days prior to the election not more than 40 nor less than 10 days before the election. A nonpartisan sample ballot shall be so mailed to each voter who is not registered as intending to affiliate with any of the parties participating in the primary election, provided that on election day any such person may, upon request, vote the ballot of a political party if authorized by the party's rules, duly noticed to the Secretary of State.

SEC. 12. Section 13303 of the Elections Code is amended to read:

13303. (a) For each election, each appropriate elections official shall cause to be printed, on plain white paper or tinted paper, without watermark, at least as many copies of the form of ballot provided for use in each voting precinct as there are voters in the

precinct. These copies shall be designated "sample ballot" upon their face and shall be identical to the official ballots used in the election, except as otherwise provided by law. A sample ballot shall be mailed, postage prepaid, not more than 40 nor less than 21 days before the election to each voter who is registered at least 29 days prior to the election.

(b) The elections official shall send notice of the polling place to each voter with the sample ballot. Only official matter shall be sent out with the sample ballot as provided by law.

(c) The elections official shall send notice of the polling place to each voter who registered after the 29th day prior to the election and is eligible to participate in the election. The notice shall also include information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed.

SEC. 13. Section 13306 of the Elections Code is amended to read:

13306. Notwithstanding Sections 13300, 13301, 13303, and 13307, sample ballots and candidates' statements need not be mailed to voters who registered after the 54th day before an election, but all of these voters shall receive polling place notices and state ballot pamphlets. A state ballot pamphlet is not required to be mailed to a voter who registered after the 29th day prior to an election. Each of these voters shall receive a notice in bold print that states: "Because you are a late registrant, you are not receiving a sample ballot or candidates' statements."

SEC. 14. Section 11.5 of this bill incorporates provisions in Section 13300 of the Elections Code, as proposed to be added by both this bill and Senate Bill 28. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill adds Section 13300 to the Elections Code, and (3) this bill is enacted after SB 28, in which case Section 11 of this bill shall not become operative.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act affirms for the state that which has been declared existing law by action of the courts, within the meaning of Section 17556 of the Government Code.





July 3, 2002

**RECEIVED**

JUL 10 2002

**COMMISSION ON  
STATE MANDATES**

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of June 4, 2002, the Department of Finance has reviewed the test claim submitted by the County of Orange (claimant) asking the Commission to determine whether specified costs incurred under Chapter 899, Statutes of 2000 (AB 1094, Hertzberg) are reimbursable state mandated costs (Claim No. CSM-01-TC-15 "Fifteen Day Close of Voter Registration").

While we agree that the test claim statute may have resulted in a State-mandated program, we do not concur with all of the activities identified by the claimant. Although we understand the specific activities will be further addressed in the parameters and guidelines should the Commission approve the test claim, we note our concern with what appears to be a fundamental assumption asserted by the claimants that there was an increase in the number of voters as a result of the test claim legislation, as indicated in activities 2, 3, and 4 commencing on page 3 of the test claim.

Specifically, claimants cite costs related to an increase in the number of voters needing assistance, and costs for voters who registered between the 28<sup>th</sup> day and the 15<sup>th</sup> day prior to the election, necessitating additional staff, printing, processing and mailing costs. We have two objections with this assumption: First, there is no evidence that the test claim legislation resulted in an increase of persons registering to vote. The test claim legislation could have merely shifted the cost from before the 29<sup>th</sup> day until after the 29<sup>th</sup> and before the 14<sup>th</sup> day prior to an election, as people may have waited longer to register. This would not constitute new costs since local agencies would have had to incur those costs already under prior law.

In addition, we note that even if there were an increase in the number of registrants subsequent to the test claim legislation, this legislation did not increase the number of persons eligible to register. The Secretary of State's Website indicates that approximately 71 percent of the eligible voters were registered during the 2002 Primary Election. To the extent that the remaining 29 percent chose to register, it would be incumbent upon the local agencies to accommodate those persons, regardless of the test claim legislation. Accordingly, there does not appear to be a correlation between the test claim legislation and an increase in the number of registrants and there should be no reimbursement for those costs.

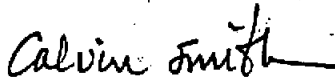
We also note concerns with the following activities identified on Page 3 of the test claim:

1. Redesign of software.
  - This is a one-time activity.
5. Developing a methodology for addressing voter complaints concerning registration.
  - There is no correlation between this activity and the test claim legislation. This activity should be excluded from the test claim.
6. Changing the method by which rosters are delivered to the polls.
  - There is no requirement in the test claim legislation to alter how the rosters are delivered to the polls. This activity should be excluded from the test claim.
7. Training.
  - Chapter 899/00 did not change the process for voter registration, but only changed the deadline for when people can register. Accordingly, training should not be necessary to implement its provisions.
8. Press releases, development of educational material and audio visual instructions for voters and staff.
  - There is no justification for these activities and they should be excluded from the test claim.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your June 4, 2002 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Tom Lutzenberger, Principal Program Budget Analyst and state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



S. Calvin Smith  
Program Budget Manager

Attachments

Attachment A

DECLARATION OF  
DEPARTMENT OF FINANCE  
CLAIM NO.

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the Chapter 899, Statutes of 2000 (AB 1094) sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

7/3/02  
at Sacramento, CA

Tom E. Lutzenberger  
Tom Lutzenberger

## PROOF OF SERVICE

Test Claim Name: 15 Day Close of Voter Registration  
Test Claim Number: 01-TC-15

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, Floor, Sacramento, CA 95814.

On July 3, 2002, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
Facsimile No. 445-0278

B-8

State Controller's Office  
Division of Accounting & Reporting  
Attention: William Ashby  
3301 C Street, Room 500  
Sacramento, CA 95816

B-29

Legislative Analyst's Office  
Attention Marianne O'Malley  
925 L Street, Suite 1000  
Sacramento, CA 95814

County of Orange  
Roselyn Lever, Registrar of Voters  
County of Orange  
Hall of Administration  
P.O. Box 11298  
Santa Ana, CA 92711

Harmeet Barkschat  
Mandate Resource Services  
5325 Elkhorn Blvd., #307  
Sacramento, CA 95842

Dr. Carol Berg  
Education Mandated Cost Network  
1121 L Street, Suite 1060  
Sacramento, CA 95814

Glenn Haas, Bureau Chief  
State Controller's Office  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

Paul Minney  
Spector, Middleton, Young & Minney, LLP  
7 Park Center Drive  
Sacramento, CA 95825

John Mott-Smith, Chief  
Elections Division  
Secretary of State's Office  
1500 11th Street  
Sacramento, CA 95814

Andy Nichols, Senior Manager  
Centration, Inc.  
12510 Tributary Point Drive, Suite 140  
Gold River, CA 95670

Keith Peterson, President  
SixTen & Associates  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

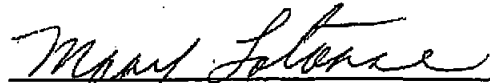
Steve Smith, CEO  
Mandated Cost Systems, Inc.  
11130 Sun Center Drive, Suite 100  
Rancho Cordova, CA 95670

David Wellhouse  
David Wellhouse & Associates, Inc.  
9175 Kiefer Blvd., Suite 121  
Sacramento, CA 95826

Sandy Reynolds, President  
Reynolds Consulting Group, Inc.  
P.O. Box 987  
Sun City, CA 92586

Pam Stone, Legal Counsel  
MAXIMUS  
4320 Auburn Blvd., Suite 2000  
Sacramento, CA 95841

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 3, 2002 at Sacramento, California.

  
\_\_\_\_\_  
Mary Zatorre





Executive Office  
 Archives  
 Business Programs  
 Business Filings  
 Notary Public  
 Uniform Commercial Code  
 Elections  
 Information Technology  
 Management Services  
 Political Reform



**BILL JONES**  
 Secretary of State  
 State of California

ELECTIONS  
 1500 - 11<sup>th</sup> Street, Room 590  
 Sacramento, CA 95814  
 P.O. Box 944260  
 Sacramento, CA 94244-2600  
 (916) 657-2166  
 Voter Registration Hotline  
 1-800-345-VOTE  
 For Hearing and Speech Impaired  
 Only 1-800-833-8683  
 (916) 653-3214 FAX  
 Internet: www.ss.ca.gov

June 20, 2002

**RECEIVED**

JUL 15 2002

**COMMISSION ON  
 STATE MANDATES**

Ms. Shirley Opie  
 Assistant Executive Director  
 Commission on State Mandates  
 980 Ninth Street, Suite 300  
 Sacramento, CA 95814

Dear Ms. Opie:

The Secretary of State's office has been involved with county election officials in preparing for and implementing the provisions of Chapter 899 of the Statutes of 2000. We have reviewed the report of the Commission on the test claim and concur in its findings. We agree that this new law imposed significant new responsibilities on county election officials and that the costs of these additional responsibilities should be borne by the state.

The Secretary of State fully supports the recommendation that the mandated program meets all of the criteria and tests for the Commission on State Mandates to find a reimbursable state mandated program.

Please contact me should you require additional assistance on this or any other issue.

Sincerely,

JOHN P. MOTT-SMITH,  
 Chief, Elections Division

JPMS:snt



**RESPONSE TO DEPARTMENT OF FINANCE*****Fifteen Day Close of Voter Registration***

01-TC-15

County of Orange, Claimant  
Chapter 899, Statutes of 2000 (AB 1094)**RECEIVED**

JUL 29 2002

**COMMISSION ON  
STATE MANDATES**

The County of Orange is in receipt of the comments issued by the Department of Finance, by its letter to Paula Higashi dated July 3, 2002. The following are the responses of the County of Orange.

The County of Orange specifically disagrees with the second and third paragraphs of the first page of said response, which implies that there are no additional costs or increase in workload due to the change in registration dates.

Under the prior law, which provided for a 29 day close of voter registration, the County of Orange had ample time to enter the registrations without requiring massive amounts of overtime from its employees. When data entry of the registration information was accomplished, there was still approximately 20 days remaining to complete other mandated election processing, such as:

- Removing duplicate voter registrations from the file
- Labeling and mailing supplemental sample ballot pamphlets
- Sending official ballots to those voters who vote by mail
- Printing roster indices
- Printing street indices
- Packaging polling place supplies
- Delivering supplies to inspectors
- And allowing ample time to redeliver supplies in the event of an error in delivery.

However, with the new test claim legislation, we now only had 14 days to complete all of the foregoing processes. This required massive amounts of overtime just in order to get the new voter registrations into the computer system so that the processes required above could be completed. Under the new legislation, we are also now required to make an additional mailing to those voters who registered between the 28<sup>th</sup> day and the 15<sup>th</sup> day prior to the election, which is the notice of polling place/voter notification combined card. With the ability to receive registrations at any time prior to election day, we were mailing postcards daily to those registrants that registered legally and were eligible to vote, but whose registrations were received during the 14 days prior to the election.

Furthermore, we were unable to mail sample ballot pamphlets to those voters who registered between the 29<sup>th</sup> and 15<sup>th</sup> days prior to the election. This resulted in an increase in telephone calls from voters inquiring as to why they did not receive a sample

ballot pamphlet. This required additional staff time to explain to the voters why they did not receive the sample ballot pamphlet.

Mr. Lutzenberger is correct when he stated that the test claim legislation did not increase the number of persons eligible to vote. What the test claim legislation did, however, is shorten the time period within which a tremendous amount of work had to be accomplished, necessitating substantial overtime. Additionally, the new legislation created tremendous confusion surrounding the registration process, and resulted in more telephone calls and time to explain the new procedure.

The County of Orange does concur that the redesign of software is a one-time activity. However, the County of Orange disagrees with the remainder of the statements on page 2.

Regarding Item 5, developing a methodology for addressing voter complaints concerning registration, there is a direct correlation between this cost component and the test claim legislation. Due to the confusion to the public regarding the change in registration dates, there were a substantial number of telephone calls and complaints from voters regarding their not having received the sample ballot pamphlet. Each of these calls had to be answered and the concerns of the voter addressed courteously.

Regarding Item 6, changing the method by which rosters are delivered to the polls, the test claim method did change Orange County's methodology. Prior to the test claim legislation, Orange County was able to package supplies, including voter rosters, and Precinct Inspectors had options regarding whether they wished to pick up the supply box, or have it delivered approximately 6 days prior to voting day. However, with the shortening of the time within which voters could register, this legislation backed up the printing of the roster indices. Therefore, all Precinct Inspectors had to pick up their supply boxes and rosters the Saturday or Sunday prior to the election. At the end of the Sunday, there were still 50 boxes that had not been picked up, which required my employees to deliver them to the precincts on Monday, so that the Inspectors would have the ballots and materials available at the polls when they opened on Tuesday morning. Thus, this legislation required that we change our entire way of handling election preparation and the distribution of ballots and supplies to the precincts.

Regarding Item 7, Training, we had to change the way our staff processed voter registrations due to the new test claim legislation. When some voters receive Sample Ballot Pamphlets and some do not, records must be maintained and more checks and balances have to be put into place in order to avoid double voting. For example if someone had been registered prior to the 29<sup>th</sup> day, and that person subsequently reregistered and requested another absentee ballot or was placed in a mailed ballot precinct, steps had to be taken in order to make sure that that voter did not vote twice. Staff had to be retrained and additional staff had to be hired in order to make sure that voters who registered after the 29<sup>th</sup> day could not vote twice. Changing the last day to register required major changes in the County's data entry, duplicate checking, and

absentee voter processes, all necessitating training to both the permanent and extra help employees.

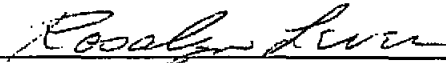
Regarding Item 8, Press release, development of educational material and audio visual instructions for voters and staff – while Orange County did not prepare any audio visual materials, it is possible that other counties did so. Orange County did develop educational brochures in three languages and issued press releases in the hopes that it would clarify the new process for voters and thus reduce the amount of confusion, and thus the requisite time to answer voters' questions. As it is generally less costly to get public information out on confusing issues such as the test claim legislation than answering each person's telephone call, this item constitutes the most reasonable method to comply with the mandate, pursuant to Title 2, California Code of Regulations, Section 1183.1.

In conclusion, except for the concurrence by the County of Orange that the redesign of software is a one-time cost, the County of Orange disputes and disagrees with the remainder of the contentions of the Department of Finance.

#### CERTIFICATION

I, Rosalyn Lever, state:

I am the Registrar of Voters of the County of Orange. In my capacity as Registrar, I have personal knowledge of the facts stated herein, and those facts are true and correct. I declare, under penalty of perjury, that the foregoing is true and correct, and that this declaration is executed this 24<sup>th</sup> day of July, 2002 at Santa Ana, California.

  
\_\_\_\_\_  
Rosalyn Lever

PROOF OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento, and I am over the age of 18 years and not a party to the within action. My place of employment is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841.

On July 29, 2002 I served the Response to Department of Finance, *Fifteen Day Close of Voter Registration*, 01-TC-15, Chapter 899, Statutes of 2000, by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list attached hereto, and by sealing and depositing said envelope in the United State mail at Sacramento, California, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed this 29th day of July, 2002 at Sacramento, California.

  
Declarant

Ms. Glenn Haas, Bureau Chief  
State Controller's Office  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

Mr. Jim Spano  
State Controller's Office  
Division of Audits  
300 Capitol Mall, Suite 518  
Sacramento, CA 95814

Mr. James Lombard, Principal Analyst (A-15)  
Department of Finance  
915 L Street  
Sacramento, CA 95814

Mr. Andy Nichols  
Centration, Inc.  
12150 Tributary Point Drive, Suite 150  
Gold River, CA 95670

Legislative Analyst's Office  
Attention: Marianne O'Malley  
925 L Street, Suite 1000  
Sacramento, CA 95814

Rosalyn Lever, Registrar of Voters  
County of Orange  
P. O. Box 11298  
Santa Ana, CA 92711

John Mott-Smith  
Chief, Elections Division  
Secretary of State's Office  
1500 11<sup>th</sup> Street  
Sacramento, CA 95814

Dr. Carol Berg  
Education Mandated Cost Network  
1121 L Street, Suite 1060  
Sacramento, CA 95814



Keith Peterson  
SixTen & Associates  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

**COMMISSION ON STATE MANDATES**

880 NINTH STREET, SUITE 300

SACRAMENTO, CA 95814

PHONE: (916) 323-3562

FAX: (916) 445-0278

E-mail: csminfo@csm.ca.gov



July 24, 2006

Mr. Allan Burdick

MAXIMUS

4320 Auburn Blvd., Suite 2000

Sacramento, CA 95841

*And Interested Parties and Affected State Agencies (See Enclosed Mailing List)***RE: Draft Staff Analysis and Hearing Date***Fifteen Day Close of Voter Registration, (01-TC-15)*

County of Orange, Claimant

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

Dear Mr. Burdick:

The draft staff analysis of this test claim is enclosed for your review and comment.

**Written Comments**

Any party or interested person may file written comments on the draft staff analysis by Thursday, **August 21, 2006**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

**Hearing**

This test claim is set for hearing on **Thursday, September 28, 2006** at 9:30 a.m. in Room 126, State Capitol, Sacramento, CA. The final staff analysis will be issued on or about September 14, 2006. 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, subdivision (c)(2), of the Commission's regulations.

Please contact Katherine Tokarski at (916) 445-9429 with any questions regarding this matter.

Sincerely,

A handwritten signature in cursive script that reads "Paula Higashi".

PAULA HIGASHI  
Executive Director

Enc. Draft staff analysis and attachments



Hearing Date: September 28, 2006

J:\MANDATES\2001\01-TC-15\cdraftsa.doc

ITEM \_\_\_\_\_

**TEST CLAIM  
DRAFT STAFF ANALYSIS**

Elections Code Sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094,  
13300, 13303 and 13306

Statutes 2000, Chapter 899 (AB 1094)

*Fifteen Day Close of Voter Registration (01-TC-15)*

County of Orange, Claimant

---

**EXECUTIVE SUMMARY**

The Executive Summary will be included with the Final Staff Analysis.

---

## STAFF ANALYSIS

### Claimant

County of Orange

### Chronology

05/17/02 Claimant files test claim with the Commission  
06/04/02 Commission staff issues completeness review letter  
07/03/02 DOF files comments on the test claim  
07/29/02 Claimant files rebuttal to state agency comments  
07/24/06 Commission staff issues the draft staff analysis

### Background

This test claim deals with changes to the deadline for voter registration prior to an election in California. Prior law allowed voters to newly register to vote, reregister, or change their address with county elections officials; until the 29th day before an election. After that date, voter registration closed until the conclusion of the upcoming election. Statutes 2000, chapter 899 was chaptered on September 29, 2000; it amended Elections Code sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13303 and 13306, and repealed and reenacted Elections Code section 13300. These amendments allow new registrations or changes to voter registrations through the 15th day prior to an election. The claimant is seeking mandate reimbursement for costs incurred to register voters from the 28th through the 15th day before elections.

### Claimant's Position

Claimant, County of Orange, filed this test claim on May 17, 2002.<sup>1</sup> Claimant contends that "The specific sections which contain the mandated activities are Elections Code, Sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13300, 13303 and 13306." Claimant asserts that these code sections, as amended by Statutes 2000, chapter 899, constitute a reimbursable state-mandated program. Following are some of the reimbursable activities or costs asserted by the claimant:

- Have internal planning meetings, as well as meetings with the Secretary of State, in order to make sure the changes were implemented properly;
- printing, processing and mailing of postcards and additional sample ballot pamphlets for voters registering between the 28th day and up to and including the 15th day prior to the election;
- retrain personnel on new program, including revising training program, videos, and manuals;
- hold a media campaign to inform the public of the additional time to register and vote;
- respond to additional media and public inquiries about the new law;

---

<sup>1</sup> Potential reimbursement period for this claim begins no earlier than July 1, 2000, based on the filing date of the test claim. (Gov. Code, § 17557, subd. (c).)

- redesign and republish the sample ballot and absentee voter materials;
- redesign and implement voter election software;
- provide additional personnel to accommodate the increased workload;
- change the method of delivery rosters to the polls, including express delivery and dispatch;
- notify those who registered too late;
- complete additional steps in order to conduct the election.

In response to DOF's July 2002 comments on the test claim filing, described below, claimant disputes DOF's disagreements with the reimbursable activities identified, with the exception of agreeing that software redesign is a one-time activity, and reasserts that all of activities identified are necessary to implement the test claim legislation, or are the most reasonable method to comply.

### **Department of Finance's Position**

DOF filed comments on July 3, 2002, addressing the allegations stated in the test claim. The comments state: "we do not concur with all of the activities identified by the claimant. ... we note our concern with what appears to be a fundamental assumption asserted by the claimants that there was an increase in the number of voters as a result of the test claim legislation, ... "

Specifically, claimants cite costs related to an increase in the number of voters needing assistance, and costs for voters who registered between the 28th day and the 15th day prior to the election, necessitating additional staff, printing, processing and mailing costs. We have two objections with this assumption: First, there is no evidence that the test claim legislation resulted in an increase of persons registering to vote. The test claim legislation could have merely shifted the cost from before the 29th day until after the 29th and before the 14th day prior to an election; as people may have waited longer to register. This would not constitute new costs since local agencies would have had to incur those costs already under prior law.

In addition, we note that even if there were an increase in the number of registrants subsequent to the test claim legislation, this legislation did not increase the number of persons eligible to register. The Secretary of State's Website indicates that approximately 71 percent of the eligible voters were registered during the 2002 Primary Election. To the extent that the remaining 29 percent chose to register, it would be incumbent upon the local agencies to accommodate those persons, regardless of the test claim legislation. Accordingly, there does not appear to be a correlation between the test claim legislation and an increase in the number of registrants and there should be no reimbursement for those costs.

DOF then describes several claimant-identified activities that should either be designated as "one-time" activities, or denied altogether on the grounds that they are not required by the test claim legislation, if the test claim is approved by the Commission.

## Discussion

The courts have found that article XIII B, section 6, of the California Constitution<sup>2</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>3</sup> "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."<sup>4</sup> A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.<sup>5</sup> In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.<sup>6</sup>

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.<sup>7</sup> To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.<sup>8</sup> A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."<sup>9</sup>

---

<sup>2</sup> Article XIII B, section 6, subdivision (a), provides: (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

<sup>3</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

<sup>4</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>5</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

<sup>6</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.*); *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 (*Lucia Mar*).

<sup>7</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra*, 44 Cal.3d 830, 835.)

<sup>8</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

<sup>9</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>10</sup>

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>11</sup> In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."<sup>12</sup>

**Issue 1: Is the test claim legislation subject to article XIII B, section 6, of the California Constitution?**

Elections Code Sections 2187 and 9094:

As a preliminary matter, the claimant alleges Elections Code section 2187, as amended by Statutes 2000, chapter 899, imposes a reimbursable state-mandated program. This code section addresses long-standing county reporting requirements on the numbers of registered voters to the Secretary of State. The amendment to Elections Code section 2187 by Statutes 2000, chapter 899 was never operative upon the subsequent adoption of Statutes 2000, chapter 1081 in the same session.<sup>13</sup> The amendments made by Statutes 2000, chapter 1081 are entirely different from the amendments in Statutes 2000, chapter 899, and were not pled as part of this test claim.<sup>14</sup> Thus, Elections Code section 2187, as pled, is not subject to article XIII B, section 6 of the California Constitution.

Elections Code section 9094, as amended by Statutes 2000, chapter 899, addresses the duties of the Secretary of State to provide ballot pamphlets. The amendment to this code section is in subdivision (a), which is specific to the Secretary of State and does not impose any requirements on local government. Thus, Elections Code section 9094, as amended by the test claim statute, is not subject to article XIII B, section 6 of the California Constitution.

Therefore, any future references to "test claim legislation" do not include Elections Code sections 2187 or 9094.

Remaining Test Claim Legislation:

In order for the remaining test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program." In *County of Los Angeles v.*

---

<sup>10</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

<sup>11</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

<sup>12</sup> *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>13</sup> Affected by two or more acts at the same session of the Legislature. (See Gov. Code, § 9605.)

<sup>14</sup> The changes made by Statutes 2000, chapter 1081 included the deletion of two commas, and the deletion of one of seven regular reporting dates to the Secretary of State.



*State of California*, the California Supreme Court defined the word "program" within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.<sup>15</sup> The court has held that only one of these findings is necessary.<sup>16</sup>

Staff finds that registering voters imposes a program within the meaning of article XIII B, section 6 of the California Constitution under both tests. County elections officials provide a service to the members of the public who register to vote. The test claim legislation also requires local elections officials to engage in administrative activities solely applicable to local government, thereby imposing unique requirements upon counties that do not apply generally to all residents and entities of the state.

Accordingly, staff finds that the test claim legislation constitutes a "program" and, thus, may be subject to subvention pursuant to article XIII B, section 6 of the California Constitution *if* the legislation also mandates a new program or higher level of service, and costs mandated by the state.

**Issue 2: Does the test claim legislation mandate a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution?**

Test claim legislation mandates a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not previously required.<sup>17</sup> The courts have defined a "higher level of service" in conjunction with the phrase "new program" to give the subvention requirement of article XIII B, section 6 meaning. Accordingly, "it is apparent that the subvention requirement for increased or higher level of service is directed to state-mandated increases in the services provided by local agencies in existing programs."<sup>18</sup> A statute or executive order mandates a reimbursable "higher level of service" when the statute or executive order, as compared to the legal requirements in effect immediately before the enactment of the test claim legislation, increases the actual level of governmental service to the public provided in the existing program.<sup>19</sup>

*Elections Code Sections 2035, 2102, 2107, 2119, and 2154:*

Elections Code section 2035 formerly provided that a voter registered in California who moves during the last 28 days before an election shall be entitled to vote in the precinct where they were last properly registered. The amendment by Statutes 2000, chapter 899 changed that period to the last 14 days before an election.

---

<sup>15</sup> *County of Los Angeles, supra*, 43 Cal.3d at page 56.

<sup>16</sup> *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

<sup>17</sup> *Lucia Mar Unified School Dist., supra*, 44 Cal.3d 830, 836.

<sup>18</sup> *County of Los Angeles, supra*, 43 Cal.3d 46, 56; *San Diego Unified School District, supra*, 33 Cal.4th 859, 874.

<sup>19</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

Elections Code sections 2102 and 2107 describe what constitutes an effective new voter registration affidavit. The amendment by Statutes 2000, chapter 899, changed the received date, postmarked date, or alternative delivery deadlines from on or before the 29th day prior to an election, to on or before the 15th day prior to an election. The amendment to Elections Code section 2119 made similar changes to the deadlines for accepting notices of change of address for voters who have moved.

Elections Code section 2154 states a number of presumptions that county elections officials shall apply if there is missing information on a voter registration affidavit, in order to hold the registration valid. If the affidavit is not dated, the amendment by Statutes 2000, chapter 899 requires the elections official to presume the registration affidavit was signed on or before the 15th day prior to the election, instead of on or before the 29th day, if the document is received or postmarked by the 15th day prior to the election.

The amendments to numbers of days before an election are the only changes made to these Elections Code sections by the test claim statute. As an example, the complete text of Elections Code section 2107, as amended by Statutes 2000, chapter 899 follows, with changes indicated in underline and strikethrough:

(a) Except as provided in subdivision (b), the county elections official shall accept affidavits of registration at all times except during the ~~28~~14 days immediately preceding any election, when registration shall cease for that election as to electors residing in the territory within which the election is to be held. Transfers of registration for an election may be made from one precinct to another precinct in the same county at any time when registration is in progress in the precinct to which the elector seeks to transfer.

(b) The county elections official shall accept an affidavit of registration executed as part of a voter registration card in the forthcoming election if the affidavit is executed on or before the ~~29~~15th day prior to the election, and if any of the following apply:

(1) The affidavit is postmarked on or before the ~~29~~15th day prior to the election and received by mail by the county elections official.

(2) The affidavit is submitted to the Department of Motor Vehicles or accepted by any other public agency designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg) prior to the election.

(3) The affidavit is delivered to the county elections official by means other than those described in paragraphs (2) and (3) on or before the ~~29~~15th day prior to the election.

At page two of the test claim filing, claimant alleges that these statutory amendments, lengthening the period prior to an election that voter registrations must be processed, "has substantial repercussions on the management and operation of the county elections office. Staffed during elections season with temporary employees, the increased workload and shortened time line to perform the work results in an increase in the number of employees needed to staff the election."

In response to the test claim allegations, DOF argues:

[C]laimants cite ... costs for voters who registered between the 28th day and the 15th day prior to the election, necessitating additional staff, printing, processing and mailing costs. We have two objections with this assumption: First, there is no evidence that the test claim legislation resulted in an increase of persons registering to vote. The test claim legislation could have merely shifted the cost from before the 29th day until after the 29th and before the 14th day prior to an election, as people may have waited longer to register. This would not constitute new costs since local agencies would have had to incur those costs already under prior law.

Staff finds that the code sections as amended do not impose a new program or higher level of service on county elections officials within the meaning of article XIII B, section 6 as determined by the courts. Processing and accepting voter registration affidavits and changes of address are not newly required under the Elections Code. County elections officials have been required to perform these activities long before the enactment of Statutes 2000, chapter 899.<sup>20</sup> The test claim allegations generally request reimbursement for increased staffing expenses, developing and conducting training, and holding planning meetings; these are not new *activities* directly required by the test claim legislation, but instead are *costs* that the claimant is associating with the changed timeframes. Staff does not dispute the claimant's allegations that the changed timeframes impose a burden on the way business is conducted by elections officials during the weeks before an election, and that there are likely associated costs; but the test claim legislation itself did not impose the activities alleged in the manner required for reimbursement under mandates law.

The courts have consistently held that increases in the *cost* of an existing program, are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of article XIII B, section 6.

In 1987, the California Supreme Court decided *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d 46, and, for the first time, defined a "new program or higher level of service" within the meaning of article XIII B, section 6. Counties were seeking the costs incurred as a result of legislation that required local agencies to provide the same increased level of workers' compensation benefits to their employees as private individuals or organizations. The Supreme Court recognized that workers' compensation is not a new program and, thus, determined whether the legislation imposed a higher level of service on local agencies. Although the court defined a "program" to include "laws which, to implement a state policy, impose unique requirements on local governments," the court emphasized that a new program or higher level of

---

<sup>20</sup> The voter registration timelines were last substantively amended following the decision in *Young v. Gness* (1972) 7 Cal.3d 18, in which the California Supreme Court found the 54-day residency requirement and corresponding voter registration deadlines unconstitutional and declared 30 days to be the maximum voter registration restriction permissible under a reasonableness standard.

service requires "state mandated increases in the services provided by local agencies in existing programs."<sup>21</sup>

Looking at the language of article XIII B, section 6 then, it seems clear that by itself the term "higher level of service" is meaningless. It must be read in conjunction with the predecessor phrase "new program" to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing "programs."<sup>22</sup>

Applying these principles, the court held that reimbursement for the increased costs of providing workers' compensation benefits to employees was not required by the California Constitution. The court stated the following:

Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of section 6.<sup>23</sup>

In 1998, the Third District Court of Appeal decided *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1196 and found:

Increasing the cost of providing services cannot be equated with requiring an increased level of service under a[n] [article XIII B,] section 6 analysis.

Seventeen years later, the Supreme Court summarized and maintained its earlier holding in *County of Los Angeles* and stated that although "[t]he law increased the cost of employing public servants, ... it did not in any tangible manner increase the level of service provided by those employees to the public."<sup>24</sup> Thus, the courts have found that a new program or higher level of service requires something more than increased costs experienced uniquely by local government.

Claimant alleges the following new activities were required by the test claim statute, and seeks reimbursement for "[holding] planning meetings with both its own staff, as well as other elections officials and the Secretary of State, to make sure that the new changes were implemented properly. These meetings resulted in the implementation of the following new procedures, as well as redesign and publication of forms and other voting materials[:]"

1. To accommodate the change in dates, the elections software had to be redesigned.
2. Staffing needs to address the increased workload as a result of this legislation were evaluated, and additional staff had to be hired.
3. For voters who registered between the 28th day and up to and including the 15th day prior to the election, the legislation necessitated the printing,

---

<sup>21</sup> *County of Los Angeles, supra*, 43 Cal.3d 46, 56-57.

<sup>22</sup> *Ibid*.

<sup>23</sup> *Id.* at 57-58.

<sup>24</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 875.

processing and mailing of postcards; and/or printing, processing and mailing of additional sample ballot pamphlets.<sup>25</sup>

4. An increase number of voters needed assistance either in person or on the telephone.
5. A methodology was developed for addressing voter complaints concerning registration.
6. It was necessary to change the method by which rosters are delivered to the polls, including express delivery and dispatch.
7. Because of the substantial changes, regular, temporary permanent employees, and poll workers had to be retrained. This resulted in the coordination and planning for the training, training instruction for the trainers, conducting the training classes, revising training videos, producing training aids, and revising the training manual.
8. In order that voters not be confused about the changes, press releases were prepared, development of educational material for the sample ballot pamphlet and audio visual instructions to both voters and staff.

The plain language<sup>26</sup> of Elections Code sections 2035, 2102, 2107, 2119, and 2154, as amended by the test claim statute, do not require counties to carry out any of the new activities as alleged.<sup>27</sup> Instead, counties are required to perform the same activities they have long performed – accepting new voter registrations and changes of address. If the test claim legislation explicitly required any *new* activities to be performed on the part of county elections officials, alleged activities such as training, preparing press releases, and hiring additional employees could be examined at the parameters and guidelines phase of the test claim process to determine whether they are a reasonable method of complying with the mandate.<sup>28</sup> However, there must *first* be a finding of a reimbursable state-mandated activity based on the statutory language of the test claim legislation in order to reach the other issues in the parameters and guidelines. Staff finds that the amendments by Statutes 2000, chapter 899 to Elections Code sections 2035, 2102, 2107, 2119, and 2154 do not mandate a new program or higher level of service on counties.

Elections Code Section 2155:

Elections Code section 2155 requires county elections officials to send voter notification forms to the voter “[u]pon receipt of a properly executed affidavit of registration or address correction notice.” One sentence on this form was changed by Statutes 2000, chapter 899 to read “you may vote in any election held 15 or more days after the date shown on the reverse side of this card.”

---

<sup>25</sup> This activity appears to be connected to Elections Code sections 2155, 13303, and 13306, which are discussed separately below.

<sup>26</sup> “If the terms of the statute are unambiguous, the court presumes the lawmakers meant what they said, and the plain meaning of the language governs.” (*Estate of Griswold* (2001) 25 Cal.4th 904, 911.)

<sup>27</sup> *County of Los Angeles, supra*, 110 Cal.App.4th 1176, 1189.

<sup>28</sup> California Code of regulations, title 2, section 1183.1, subdivision (a)(4).

If county elections officials had to change these cards in response to the test claim legislation, this would have met the legal standards for finding a new program or higher level of service, at least for a one-time activity of amending and reprinting the cards.

However, the very next section in the code, Elections Code section 2156, requires that:

The Secretary of State shall print, or cause to be printed, the blank forms of the voter notification prescribed by Section 2155. The Secretary of State shall supply the forms to the county elections official in quantities and at times requested by the county elections official.

Therefore staff finds that Elections Code section 2155, as amended by the test claim statute, does not mandate a new program or higher of service, because the only activity required of the county is the same as required by prior law – sending a newly registered or re-registered voter a notification form.

Elections Code Section 13300:

Elections Code section 13300, subdivision (a), as repealed and reenacted<sup>29</sup> by Statutes 2000, chapter 899, requires that “at least 29 days before the primary, each county elections official shall prepare separate sample ballots for each political party and a separate sample nonpartisan ballot.” This is unchanged from prior law following the United States Supreme Court decision in *California Democratic Party v. Jones* (2000) 530 U.S. 567, which found the 1996 amendments to the code section by Proposition 198, the “Open Primary Act,” unconstitutional, and therefore void.<sup>30</sup> Subdivision (b), also unchanged from prior law, provides that “The sample ballot shall be identical to the official ballots, except ... [that they] shall be printed on paper of a different texture ... .”

The amendments to subdivision (c) are indicated in underline and strikethrough, as follows:

(c) One sample ballot of the party to which the voter belongs, as evidenced by his or her registration, shall be mailed to each voter entitled to vote at the primary who registered at least 29 days prior to the election not more than 40 nor less than 10 days before the election. A nonpartisan sample ballot shall be so mailed to

---

<sup>29</sup> Staff finds that when a statute is renumbered or reenacted, only substantive changes to the law creating new duties or activities meet the criteria for finding a reimbursable state mandate. This is consistent with long-standing case law: “Where there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the re-enactment takes effect at the same time.” (*In re Martin's Estate* (1908) 153 Cal. 225, 229. See also 15 Ops.Cal.Atty.Gen. 49 (1950).)

<sup>30</sup> Before the amendments by Statutes 2000, chapters 898 and 899, the changes to the Elections Code made by Proposition 198 reverted to prior law because of the legal principles of *Cummings v. Morez* (1974) 42 Cal.App.3d 66, 73: “A statute which violates either [US or California] Constitution is to that extent void and, ‘[i]n legal contemplation, a void act is as inoperative as though it had never been passed. ...’” For legal purposes, there was no gap in the law because the law treats Proposition 198 as though it never existed; meaning prior law was continuous in effect.

each voter who is not registered as intending to affiliate with any of the parties participating in the primary election, provided that on election day any such person may, upon request, vote the ballot of a political party if authorized by the party's rules, duly noticed to the Secretary of State.

*Modified Primary Election* (01-TC-13) is a test claim on Statutes 2000, chapter 898 (SB 28) set for the July 28, 2006 Commission hearing. The Legislature largely amended the Elections Code back to the state of the law before Proposition 198 through the adoption of Statutes 2000, chapter 898. Elections Code section 13300 was also amended by Statutes 2000, chapter 898, but that amendment did not take effect when Statutes 2000, chapter 899 (AB 1094) passed in the same session. The legislation specified that in the event that both statutes were chaptered, *and* Assembly Bill 1094 was the one enacted last, section 11.5 of Statutes 2000, chapter 899 prevailed.

If the test claim analysis on *Modified Primary Election* is adopted, the Commission will find that Elections Code section 13102, subdivision (b), as amended by Statutes 2000, chapter 898, requires county elections officials to engage in a new activity to "Allow voters who declined to state a party affiliation to vote a party ballot if the political party, by party rule duly noticed to the Secretary of State, authorizes such a person to do so." Any activity required by Elections Code section 13300, subdivision (c), for allowing decline-to-state voters to request partisan primary ballots at the polls, is already part of a test claim on the earlier-enacted Statutes 2000, chapter 898, and is therefore not *new*. Activities can be attributed to Elections Code section 13102, subdivision (b), and reimbursement can be sought under the *Modified Primary Election* parameters and guidelines, when adopted. Staff finds that the amendment to Election Code section 13300 by Statutes 2000, chapter 899, does not mandate a new program or higher level of service.

*Elections Code Section 13303:*

Elections Code section 13303 follows, as amended by Statutes 2000, chapter 899 -- indicated in underline and strikethrough below:

- (a) For each election, each appropriate elections official shall cause to be printed, on plain white paper or tinted paper, without watermark, at least as many copies of the form of ballot provided for use in each voting precinct as there are voters in the precinct. These copies shall be designated "sample ballot" upon their face and shall be identical to the official ballots used in the election, except as otherwise provided by law. A sample ballot shall be mailed, postage prepaid, ~~to each voter~~ not more than 40 nor less than 21 days before the election to each voter who is registered at least 29 days prior to the election.
- (b) The elections official shall send notice of the polling place to each voter with the sample ballot. Only official matter shall be sent out with the sample ballot as provided by law.
- (c) The elections official shall send notice of the polling place to each voter who registered after the 29th day prior to the election and is eligible to participate in the election. The notice shall also include information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of

the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed.

At page 4 of the test claim filing, claimant alleges that "Those who registered late were entitled to notification, and an additional mailing was required." DOF did not dispute this allegation in its comments on the test claim filing.

The prior law of Elections Code section 13303, subdivision (b), already required that an "elections official shall send notice of the polling place to each voter with the sample ballot." In addition, Elections Code section 13306, discussed further below, has long provided that "*Notwithstanding Sections 13300, 13301, 13303, and 13307, sample ballots and candidates' statements need not be mailed to voters who registered after the 54th day before an election, but all of these voters shall receive polling place notices ...*" [Emphasis added.] Therefore under prior law, elections official were required to send polling place notices to voters who registered after the 54th day prior to an election. Election Code section 13303, subdivision (c), as added by Statutes 2000, chapter 899, added information to the polling place notice, which provides a higher level of service to the public within an existing program.

Staff finds that Election Code section 13303, subdivision (c) imposes a new program or higher level of service for the following one-time activity:

- Amend the polling place notice sent to each voter who registered after the 29th day prior to the election, to include the following: information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed.

Elections Code Section 13306:

Elections Code section 13306 follows, as amended by Statutes 2000, chapter 899 -- indicated in underline and strikethrough below:

Notwithstanding Sections 13300, 13301, 13303, and 13307, sample ballots and candidates' statements need not be mailed to voters who registered after the 54th day before an election, but all of these voters shall receive polling place notices and state ballot pamphlets. A state ballot pamphlet is not required to be mailed to a voter who registered after the 29th day prior to an election. Each of these voters shall receive a notice in bold print that states: "Because you are a late registrant, you are not receiving a sample ballot or candidates' statements."

The addition of a sentence clarifying that state ballot pamphlets are not required to be mailed out to voters who register after the 29th day prior to an election in fact makes the code section identical to prior law, and does not require any activities on the part of county elections officials.

In a letter, "Response to Department of Finance," received July 29, 2002, pages 1-2, claimant alleges that they "were unable to mail sample ballot pamphlets to those voters who registered between the 29th and 15th days prior to the election. This resulted in an increase in telephone calls from voters inquiring as to why they did not receive a sample ballot pamphlet. This required additional staff time to explain to the voters why they did not receive the sample ballot pamphlet."



First, staff notes that the test claim legislation does not *prohibit* counties from sending the ballot pamphlets to these registrants; it just does not require it. Receiving phone calls from the public is not "mandated" by the test claim legislation; it is part of the business of being a public agency. If the test claim legislation explicitly required any new activities to be performed on the part of county elections officials, responding to public inquiries could be examined at the parameters and guidelines phase to determine whether the requested activities are a reasonable method of complying with the mandate. (Cal. Code of Regs., tit. 2, § 1183.1, subd. (a)(4).) However, there must first be a finding of a reimbursable state-mandated activity in order to reach the issue in parameters and guidelines. Staff finds that the plain language of the amendment to Elections Code section 13306 does not mandate a new program or higher level of service on county elections officials.

**Issue 3: Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?**

Reimbursement under article XIII B, section 6 is required only if any new program or higher-level of service is also found to impose "costs mandated by the state." Government Code section 17514 defines "costs mandated by the state" as any *increased* cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service. The claimant estimated costs of \$200 or more for the test claim allegations, which was the statutory threshold at the time the test claim was filed. The claimant also stated that none of the Government Code section 17556 exceptions apply. For the one-time activity listed in the conclusion below, staff agrees and finds accordingly that it imposes costs mandated by the state upon counties within the meaning of Government Code section 17514.

### CONCLUSION

Staff concludes that Statutes 2000, chapter 899, as it amended Elections Code section 13303, subdivision (c), mandates a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and imposes costs mandated by the state pursuant to Government Code section 17514, for the following one-time activity:

- Amend the polling place notice sent to each voter who registered after the 29th day prior to the election, to include the following: information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed. (Elec. Code, § 13303, subd. (c).)<sup>31</sup>

The other amendments by Statutes 2000, chapter 899, are not subject to article XIII B, section 6 of the California Constitution, or do not impose a new program or higher level of service, and are denied.

### Recommendation

Staff recommends that the Commission adopt this analysis and partially approve the test claim.

---

<sup>31</sup> As amended by Statutes 2000, chapter 899, operative January 1, 2001.

**Commission on State Mandates**

Original List Date: 5/31/2002  
Last Updated: 7/7/2006  
List Print Date: 07/24/2006  
Claim Number: 01-TC-15  
Issue: Fifteen Day Close of Voter Registration

Mailing Information: Draft Staff Analysis

**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.)

---

Mr. Jim Spano  
State Controller's Office (B-08)  
Division of Audits  
300 Capitol Mall, Suite 518  
Sacramento, CA 95814

Tel: (916) 323-5849  
Fax: (916) 327-0832

---

Mr. David Wellhouse  
David Wellhouse & Associates, Inc.  
9175 Kiefer Blvd, Suite 121  
Sacramento, CA 95826

Tel: (916) 368-9244  
Fax: (916) 368-5723

---

Mr. J. Bradley Burgess  
Public Resource Management Group  
1380 Lead Hill Boulevard, Suite #106  
Roseville, CA 95661

Tel: (916) 677-4233  
Fax: (916) 677-2283

---

Mr. John Mott-Smith  
Secretary of State's Office (D-15)  
1500 11th Street  
Sacramento, CA 95814

Tel: (916) 653-5564  
Fax: (916) 653-4620

---

Ms. Carla Castaneda  
Department of Finance (A-15)  
915 L Street, 12th Floor  
Sacramento, CA 95814

Tel: (916) 445-3274  
Fax: (916) 323-9584

---

Mr. Allan Burdick  
MAXIMUS  
4320 Auburn Blvd., Suite 2000  
Sacramento, CA 95841

**Claimant Representative**  
Tel: (916) 485-8102  
Fax: (916) 485-0111

---

Mr. Leonard Kaye, Esq.  
County of Los Angeles  
Auditor-Controller's Office  
500 W. Temple Street, Room 603  
Los Angeles, CA 90012

Tel: (213) 974-8564

Fax: (213) 617-8106

---

Mr. Jim Jagers

P.O. Box 1993  
Carmichael, CA 95609

Tel: (916) 848-8407

Fax: (916) 848-8407

---

Ms. Susan Geanacou  
Department of Finance (A-15)  
915 L Street, Suite 1190  
Sacramento, CA 95814

Tel: (916) 445-3274

Fax: (916) 324-4888

---

Ms. Ginny Brummels  
State Controller's Office (B-08)  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

Tel: (916) 324-0256

Fax: (916) 323-6527

---

Mr. Glen Everroad  
City of Newport Beach  
3300 Newport Blvd.  
P. O. Box 1768  
Newport Beach, CA 92659-1768

Tel: (949) 644-3127

Fax: (949) 644-3339

---

Ms. Bonnie Ter Keurst  
County of San Bernardino  
Office of the Auditor/Controller-Recorder  
222 West Hospitality Lane  
San Bernardino, CA 92415-0018

Tel: (909) 386-8850

Fax: (909) 386-8830

---

Ms. Beth Hunter  
Centration, Inc.  
8570 Utica Avenue, Suite 100  
Rancho Cucamonga, CA 91730

Tel: (866) 481-2621

Fax: (866) 481-2682

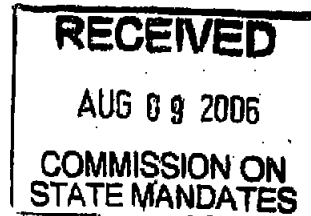
**DEPARTMENT OF  
FINANCE**

ARNOLD SCHWARZENEGGER, GOVERNOR

915 L STREET ■ SACRAMENTO, CA ■ 95814-3706 ■ WWW.DDF.CA.GOV

August 7, 2006

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814



Dear Ms. Higashi:

As requested in your letter of July 24, 2006, the Department of Finance has reviewed the draft staff analysis of Claim No. CSM-01-TC-15 "Fifteen Day Close of Voter Registration."

Consistent with the position stated in our letter dated July 3, 2002, we believe that ongoing activities included in the above referenced test claim, such as training, public education and addressing public complaints, are not reimbursable pursuant to Article XIII B, Section 6 of the California Constitution because they are not directly required by the test claim legislation or do not represent new programs or a higher level of service. We concur with the Commission staff finding that the one-time activity of amending the polling place notice sent to voters registering after the 29<sup>th</sup> day prior to an election is reimbursable.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your July 24, 2006 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Thomas E. Dithridge  
Program Budget Manager

Attachments

Attachment A

DECLARATION OF CARLA CASTANEDA  
DEPARTMENT OF FINANCE  
CLAIM NO. CSM-01-TC-15

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the Chapter No. 899, Statutes of 2000, (AB 1094, Hertzberg) sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

---

at Sacramento, CA

*Carla Castañeda*  
Carla Castañeda

**PROOF OF SERVICE**

Test Claim Name: Fifteen Day Close of Voter Registration

Test Claim Number: CSM-01-TC-15

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12<sup>th</sup> Floor, Sacramento, CA 95814.

On August 7, 2006, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12<sup>th</sup> Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
Facsimile No. 445-0278

B-8

William Ashby  
State Controller's Office  
Division of Accounting & Reporting  
3301 C Street, Room 500  
Sacramento, CA 95816

B-29

Attention Marianne O'Malley  
Legislative Analyst's Office  
925 L Street, Suite 1000  
Sacramento, CA 95814

B-8

Mr. Jim Spano  
State Controller's Office  
Division of Audits  
300 Capitol Mall, Suite 518  
Sacramento, CA 95826

Mr. David Wellhouse

David Wellhouse & Associates, Inc.  
9175 Kiefer Blvd, Suite 121  
Sacramento, CA 95826

Mr. J. Bradley Burgess

Public Resource Management Group  
1380 Lead Hill Boulevard, Suite #106  
Roseville, CA 95661

D-15

Mr. John Mott-Smith  
Secretary of State's Office  
1500 11th Street  
Sacramento, CA 95814

A-15

Ms. Carla Castañeda  
Department of Finance  
915 L Street, 12th Floor  
Sacramento, CA 95814

Mr. Allan Burdick

MAXIMUS  
4320 Auburn Blvd., Suite 2000  
Sacramento, CA 95841

Mr. Leonard Kaye, Esq.

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

Mr. Jim Jagers  
PO Box 1993  
Carmichael, CA 95609

A-15  
Ms. Susan Geanacou  
Department of Finance  
915 L Street, 12th Floor  
Sacramento, CA 95814

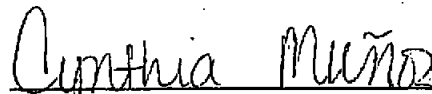
B-08  
Ms. Ginny Brummels  
State Controller's Office  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

Mr. Glen Everroad  
City of Newport Beach  
3300 Newport Blvd.  
PO Box 1768  
Newport Beach, CA 92659-1768

Ms. Bonnie Ter Keurst  
County of San Bernardino  
Office of the Auditor/Controller-Recorder  
222 West Hospitality Lane  
San Bernardino, CA 92415-0018

Ms. Beth Hunter  
Centration, Inc.  
8570 Utica Avenue, Suite 100  
Rancho Cucamonga, CA 91730

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 7, 2006 at Sacramento, California.

  
Cynthia Muñoz