

**COMMISSION ON STATE MANDATES**

980 NINTH STREET, SUITE 300  
SACRAMENTO, CA 95814  
PHONE: (916) 323-3562  
FAX: (916) 445-0278  
E-mail: csminfo@csm.ca.gov



July 2, 2008

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, Proposed Parameters and Guidelines, and Hearing Date**  
*Fifteen Day Close of Voter Registration, (01-TC-15)*  
Elections Code Sections 13303  
Statutes 2000, Chapter 899 (AB 1094)  
Orange County, Claimant

Dear Mr. Burdick:

The draft staff analysis and proposed parameters and guidelines, as modified by staff are enclosed for your review and comment.

**Written Comments**

Any party or interested person may file written comments on the draft staff analysis and proposed parameters and guidelines by **July 15, 2008**. 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 Friday, August 1, 2008 at 9:30 a.m. in Room 447, State Capitol, Sacramento, CA. The final staff analysis will be issued on or about July 18, 2008. This matter is proposed for the Consent Calendar. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

**Special Accommodations**

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

Please contact me at (916) 323-8217 with any questions regarding this matter.

Sincerely,

A handwritten signature in black ink that reads "Nancy Patton".

NANCY PATTON  
Assistant Executive Director

MAILED:  FAXED: \_\_\_\_\_  
DATE: 7/2/08 INITIAL: E.A.  
CHRON: \_\_\_\_\_ FILE:   
WORKING BINDER: \_\_\_\_\_

ITEM \_\_\_\_

**PROPOSED PARAMETERS AND GUIDELINES  
DRAFT STAFF ANALYSIS**

Elections Code 13303

Statutes 2000, Chapter 899

*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.

---

## Claimants

County of Orange

## Chronology

- 05/17/02 Claimant files test claim
- 10/04/06 Commission on State Mandates (Commission) adopted Statement of Decision
- 11/28/06 Claimant submits Draft Parameters and Guidelines
- 01/18/07 Claimant submits Amended Proposed Parameters and Guidelines
- 07/01/08 Staff issues draft staff analysis and proposed parameters and guidelines

## Summary of Findings

Claimant, County of Orange, filed this test claim on changes to the deadline for voter registration prior to an election. Prior law allowed voters to newly register to vote, reregister, or change their address with county elections officials, until the 29th day before an election. After that date, voter registration closed until the conclusion of the upcoming election. Statutes 2000, chapter 899 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.

The Commission adopted a Statement of Decision on October 4, 2006, finding that most of the statutory amendments by Statutes 2000, chapter 899, did 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.

The Commission concluded 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.

## Discussion

Staff reviewed the claimant's proposed parameters and guidelines. No comments were filed on the proposed parameters and guidelines. Non-substantive, technical changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision and statutory language. Staff made the following substantive changes:

### II. Eligible Claimants

Claimant proposed that reimbursement begin on the effective date of the test claim legislation – September 29, 2000. However, the test claim legislation does not contain an urgency clause, so it does not become effective until January 1, 2001. Therefore, staff revised this section to clarify that reimbursement begins on January 1, 2001.

### IV. Reimbursable Activities

In the Statement of Decision, only Elections Code section 13303, subdivision (c), as added by Statutes 2000, chapter 899, was found to be mandated by the state. Elections Code section 13303, as amended in 2000, states the following:

(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.

Education Code section 13303, subdivision (a), requires that county election officials mail polling place notices to voters who registered after the sample ballots were issued (voters who registered between the 29<sup>th</sup> and 15<sup>th</sup> day prior to the election). The Commission found, however, that under prior law Elections Code section 13303 already required an elections official to send a notice of the polling place to each voter with a sample ballot. Elections Code section 13303, subdivision (c), just added the following new information to the polling place notice for voters who registered between the 29<sup>th</sup> and 15<sup>th</sup> day prior to the election: 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.

Thus, the Commission approved reimbursement for the following one-time activity:

- 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.<sup>1</sup>

#### Denied Activities

The claimant proposed the following one-time activities in the parameters and guidelines:

- Redesign and republish the sample ballot and absentee voter application.
- Notify every voter who registered from 28 days prior to the election through 15 days prior to the election via post card, the location of their polling place and where they can obtain a sample ballot.
- Provide all sample ballots for each ballot type and the poll site locations.
- Hire additional staff to process registration forms and absentee ballot requests due to the fact that the time period for close of registration was reduced by fourteen days and increased overtime to process all registration forms between the original cut off of 28 days prior to the election to 15 days prior to the election.
- Provide an increased amount of official and sample ballots.

Staff deleted the above activities regarding sending sample ballots and polling place notices, and absentee ballots because the Commission found that they were not mandated by the state under this test claim legislation. The Statement of Decision states that most of the activities alleged by the test claimant, including duties related to absentee ballots have long been performed by county elections officials.<sup>2</sup> The Statement of Decision also states that section 13303 already

<sup>1</sup> Exhibit A, Statement of Decision, page 16.

<sup>2</sup> Exhibit A., Statement of Decision, page 13.

required that elections officials *send* sample ballots and notices of the polling place to each voter.<sup>3</sup> Thus, staff finds that these activities go beyond the scope of the one-time reimbursable activity to amend the existing notice.

Staff also deleted the activity of hiring additional staff to process registration forms because the Commission found it was not mandated by the state.<sup>4</sup> In addition, there is no evidence in the record that actual registrations increased as a result of the test claim statute and, thus, no evidence to warrant the hiring of additional staff to implement the mandate.

At the test claim hearing, Deborah Seiler, Solano County Assistant Registrar of Voters, stated that the test claim legislation has a major impact on the entire elections process, and requires hiring of new staff to process other types of elections functions while the persons who previously processed those functions must remain processing new voter registrations.<sup>5</sup> Chairperson Brown asked if voter registration had increased during this extended time period to register to vote. Neal Kelley, Orange County Registrar of Voters stated that he had no data on hand, but he stated that Orange County's registration numbers are actually decreasing slightly. Chairperson Brown stated that if there is not adequate documentation that the actual registrations have increased, he would find it difficult, notwithstanding the shift in time periods to register to vote, to assume that the workload has increased.<sup>6</sup>

Staff finds that there is no evidence in the record to warrant the hiring of additional staff to implement this mandate.

#### Approved Activities

The claimant did not include the one activity approved in the Statement of Decision. Therefore, staff added the one activity of amending the polling place notice sent to each voter who registered after the 29<sup>th</sup> day prior to the election to include specific information as it was approved in the Statement of Decision.

The claimant also proposed the following one time activities:

- Redesign and implement new election software.
- Modification of Registrar of Voters website.

Section 1183.1, subdivision (a)(4), of the Commission's regulations authorizes the Commission to include the "most reasonable methods of complying with the mandate" in the parameters and guidelines. The "most reasonable methods of complying with the mandate" are "those methods not specified in statute or executive order that are necessary to carry out the mandated program."

Staff finds that redesigning the election software used to amend the notice, and modifying the website to reflect the amended notices sent to voters who register between the 29<sup>th</sup> and 15<sup>th</sup> day are necessary one-time activities to carry out the mandated program. Staff has deleted the

---

<sup>3</sup> Exhibit A, Statement of Decision, page 15.

<sup>4</sup> *Ibid.*

<sup>5</sup> Exhibit A, Statement of Decision, page 12.

<sup>6</sup> Exhibit B, Transcript of Proceedings, pages 32-33.

activity to implement the new software since it implies that the activity is ongoing. The Commission's decision limits reimbursement to one-time activities. Staff further added the following underlined language to limit reimbursement to the scope of the mandated program:

- Redesign and implement new election software used to amend the polling place notice sent to each voter who registered between the 29<sup>th</sup> and 15<sup>th</sup> day prior to the election pursuant to Elections Code section 13303, subdivision (c), as amended by Statutes 2000, chapter 899.
- Modification of the Registrar of Voters website to reflect the amendment to Elections Code section 13303, subdivision (c), by Statutes 2000, chapter 899 that allows voters to register through the 15th day prior to an election.

### **Staff Recommendation**

Staff recommends that the Commission adopt the proposed parameters and guidelines, as modified by staff, beginning on page 7.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.



Adopted: August 1, 2008

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

*Fifteen Day Close of Voter Registration*

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

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

County of Orange, Claimant

**I. SUMMARY OF THE MANDATE**

Claimant, County of Orange, filed this test claim on changes to the deadline for voter registration prior to an election. Prior law allowed voters to newly register to vote, reregister, or change their address with county elections officials, until the 29th day before an election. After that date, voter registration closed until the conclusion of the upcoming election. Statutes 2000, chapter 899 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.

Generally, the Commission 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.

The Commission 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:

~~This test claim deals with changes in the deadline for voter registration prior to an election in California. Prior law allowed voters to newly register to vote, reregister, or change their address with county elections officials until the 29<sup>th</sup> day prior to an election. After that time, the voter registration closed until the conclusion of the upcoming election. Statutes 2000, chapter 899 was chaptered on September 29, 2000, and amended Elections Code Sections 2035, 2102, 2107, 2119, 2154, 2187, 9094, 13300, 13303 and 13306. These amendments allow new registrations or changes to voter registrations through the 15<sup>th</sup> day prior to an election.~~

~~On October 4, 2006, the Commission on State Mandates founds that the above referenced test claim constituted a partially reimbursable mandate for the following one time new activities:~~

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

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.

## **II. ELIGIBLE CLAIMANTS**

Any county, or city and county that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

## **III. PERIOD OF REIMBURSEMENT**

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for this mandate was filed by the test claimant, County of Orange, on April 18, 2002, establishing eligibility for fiscal year 2000-2001. However, the operative date of Statutes 2000, chapter 899, is January 1, 2002. Therefore, costs incurred pursuant to Statutes 2000, chapter 899 are reimbursable on or after January 1, 2001. Therefore, the period of reimbursement begins September 29, 2000, the date of enactment.

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

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

#### IV. REIMBURSABLE ACTIVITIES

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

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, calendars, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

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

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office.

For each eligible claimant, the following activities are reimbursable ~~on a one-time basis~~:

##### One-Time Activity

- Amend the polling place notice sent to each voter who registered after the 29th day prior to the election, to include the following: information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed. (Elec. Code, § 13303, subd. (c), Stats. 2000, ch. 899.)
- 1. ~~Redesign and republish the sample ballot and absentee voter application.~~
- Redesign and implement new election software used to amend the polling place notice sent to each voter who registered between the 29<sup>th</sup> and 15<sup>th</sup> day prior to the election pursuant to Elections Code section 13303, subdivision (c), as amended by Statutes 2000, chapter 899. Actually sending the notices is not reimbursable.
- 3. ~~Notify every voter who registered from 28 days prior to the election through 15 days prior to the election via post card, the location of their polling place and where they can obtain a sample ballot~~

~~4. Provide all sample ballots for each ballot type and the poll site locations.~~

~~5. Hire additional staff to process registration forms and absentee ballot requests due to the fact that the time period for close of registration was reduced by fourteen days and increased overtime to process all registration forms between the original cut off of 28 days prior to the election to 15 days prior to the election.~~

- Modification of the Registrar of Voters website to reflect the amendment to Elections Code section 13303, subdivision (c), by Statutes 2000, chapter 899 that allows voters to register through the 15th day prior to an election.

~~7. Provide an increase amount of official and sample ballots.~~

## V. CLAIM PREPARATION AND SUBMISSION

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

### A. Direct Cost Reporting

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

#### 1. Salaries and Benefits

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

#### 2. Materials and Supplies

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

#### 3. Contracted Services

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

#### 4. Fixed Assets and Equipment

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

#### 5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

#### B. Indirect Cost Rates

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

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

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

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

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

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be

expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

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

## **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>1</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING REVENUES AND REIMBURSEMENTS**

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

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

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

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

---

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

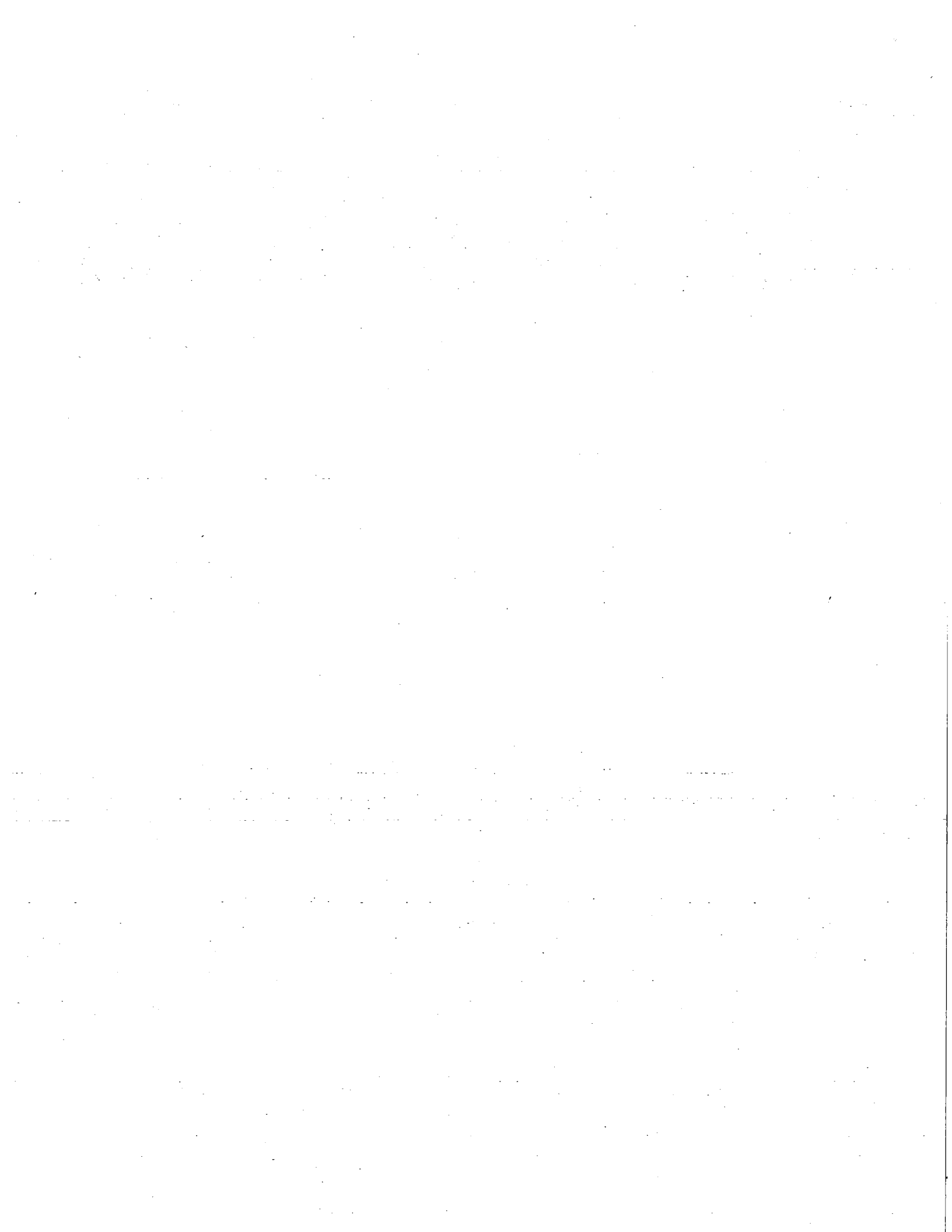
## **IX. REMEDIES BEFORE THE COMMISSION**

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

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

## **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

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





**COMMISSION ON STATE MANDATES**

980 NINTH STREET, SUITE 900  
 SACRAMENTO, CA 95814  
 PHONE: (916) 329-3562  
 FAX: (916) 445-0278  
 E-mail: csminfo@osm.ca.gov



October 31, 2006

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

*And Affected State Agencies and Interested Parties (see attached mailing list)*

RE: **Adopted Statement of Decision**  
*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 Commission on State Mandates adopted the attached Statement of Decision on October 4, 2006. State law provides that reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program; approval of a statewide cost estimate; a specific legislative appropriation for such purpose; a timely-filed claim for reimbursement; and subsequent review of the claim by the State Controller's Office.

Following is a description of the responsibilities of all parties and the Commission during the parameters and guidelines phase.

- **Claimant's Submission of Proposed Parameters and Guidelines.** Pursuant to Government Code section 17557 and California Code of Regulations, title 2, sections 1183.1 et seq., the claimant is responsible for submitting proposed parameters and guidelines by **November 30, 2006**. See Government Code section 17557 and California Code of Regulations, title 2, sections 1183.1 et seq. for guidance in preparing and filing a timely submission. Also, the claimant may propose a "reasonable reimbursement methodology," a formula for reimbursing local agency costs mandated by the state. (See Gov. Code, § 17518.5 and Cal. Code Regs., tit.2, 1183.13.)
- **Review of Proposed Parameters and Guidelines.** Within ten days of receipt of completed proposed parameters and guidelines, the Commission will send copies to the Department of Finance, Office of the State Controller, affected state agencies, and interested parties who are on the enclosed mailing list. Any recipient may propose a "reasonable reimbursement methodology" pursuant to Government Code section 17518.5. All recipients will be given an opportunity to provide written comments or

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM:

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

Statutes 2000, Chapter 899;

Filed on May 17, 2002,

By County of Orange, Claimant.

Case No.: 01-TC-15

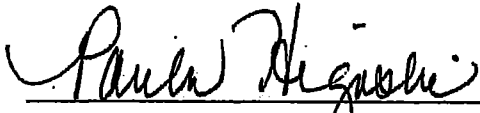
*Fifteen Day Close of Voter Registration*

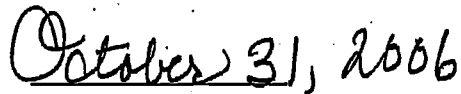
STATEMENT OF DECISION PURSUANT TO  
GOVERNMENT CODE SECTION 17500 ET  
SEQ.; CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7

(Adopted on October 4, 2006)

**STATEMENT OF DECISION**

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

  
\_\_\_\_\_  
PAULA HIGASHI, Executive Director

  
\_\_\_\_\_  
Date

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

**IN RE TEST CLAIM:**

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

Statutes 2000, Chapter 899;

Filed on May 17, 2002,

By County of Orange, Claimant.

Case No.: 01-TC-15

*Fifteen Day Close of Voter Registration*

STATEMENT OF DECISION PURSUANT  
TO GOVERNMENT CODE SECTION 17500  
ET SEQ.; CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7

(Adopted on October 4, 2006)

**STATEMENT OF DECISION**

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on October 4, 2006. Juliana Gmur of Maximus appeared, representing the claimant, County of Orange. Also testifying were Neal Kelly, Orange County Registrar of Voters, Deborah Seiler, Solano County Assistant Registrar of Voters, and Allan Burdick, CSAC SB-90 Service. Carla Castafieda and Susan Geanacou appeared on behalf of the Department of Finance (DOF).

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the staff analysis to partially approve this test claim at the hearing by a vote of 5-1.

**Summary of Findings**

Claimant, County of Orange, filed this test claim on changes to the deadline for voter registration prior to an election. Prior law allowed voters to newly register to vote, reregister, or change their address with county elections officials, until the 29th day before an election. After that date, voter registration closed until the conclusion of the upcoming election. Statutes 2000, chapter 899 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.

Generally, the Commission 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

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;
- 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.

Written comments on the draft staff analysis were received on September 15, 2006, and are discussed in the findings below.

### **Interested Party Positions**

On September 18, 2006, a late filing was received from the County of Sacramento, describing the impact that changing the timeframe for registration prior to an election has had on county registrars and argues that this change has mandated an increased level of service resulting in a reimbursable state-mandated program. The County of Sacramento comments, page one, state:

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.

## COMMISSION FINDINGS

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.

*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>

The Commission 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, the Commission 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.

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.

The Commission 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. The Commission 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.

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. Gnoos* (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.

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.

At the October 4, 2006 Commission hearing, testimony was heard from the claimant's representatives, as well as a representative from an interested party, the Solano County Assistant Registrar of Voters, Deborah Seiler. Ms. Seiler testified that pre-election activities must be performed in a different manner due to the test claim statute:

First of all, one of the things that we're doing at the time that we would ordinarily be finished with voter registration, when it was formerly at 29 days before the election, after that time period, what we were doing is we were putting together the rosters of voters that go out to the polling places. Those rosters we were putting together in time to give to our precinct inspectors to go out to the polling places.

Now, because of the late registrations, we're not able to compile the rosters at the time that we need to get them out to the precinct inspectors. So we've had to come up with alternate methods of delivering those rosters rather than just when the inspectors come in for the training class. So we now have either personal delivery or other mechanisms where staff is delivering it or we have roving inspectors that we have to hire to send out those rosters.

The other issue with the rosters is that particularly in very busy elections -- and a number of counties experienced this in the November of 2004 election, very hotly contested election -- the registration levels were off the charts for all of us. And we had tremendous difficulty getting -- due to the later close of registration, we had tremendous difficulty even getting those names entered into our files and getting those names on the rosters.

---

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



So, now, we send them their first ballot. Then they reregister to vote at the fifteen-day close. Any we have to send them a second ballot -- a second absentee ballot. So we have to go back -- and, obviously, we can't let them vote twice.

So now we're going into this huge retrieval, storage, tracking process, to make sure that these absentee voters who are being able to register at a later point in time are not duplicate voters.

So this is a major impact on our whole process. And in addition, this is just one more thing that carries over into our canvass process, because these are all things that we have to account for in the canvass process.<sup>28</sup>

The plain language<sup>29</sup> of Statutes 2000, chapter 899, as it amended Elections Code sections 2035, 2102, 2107, 2119, and 2154, does not require counties to carry out any of the new activities as alleged.<sup>30</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>31</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. The Commission 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.

<sup>28</sup> October 4, 2006 Commission Hearing Transcript, pages 24-28.

<sup>29</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>30</sup> *County of Los Angeles, supra*, 110 Cal.App.4th 1176, 1189.

<sup>31</sup> California Code of regulations, title 2, section 1183.1, subdivision (a)(4).

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, the Commission 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.

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*

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, the Commission 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. The Commission 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, the Commission agrees and finds accordingly that it imposes costs mandated by the state upon counties within the meaning of Government Code section 17514.

### CONCLUSION

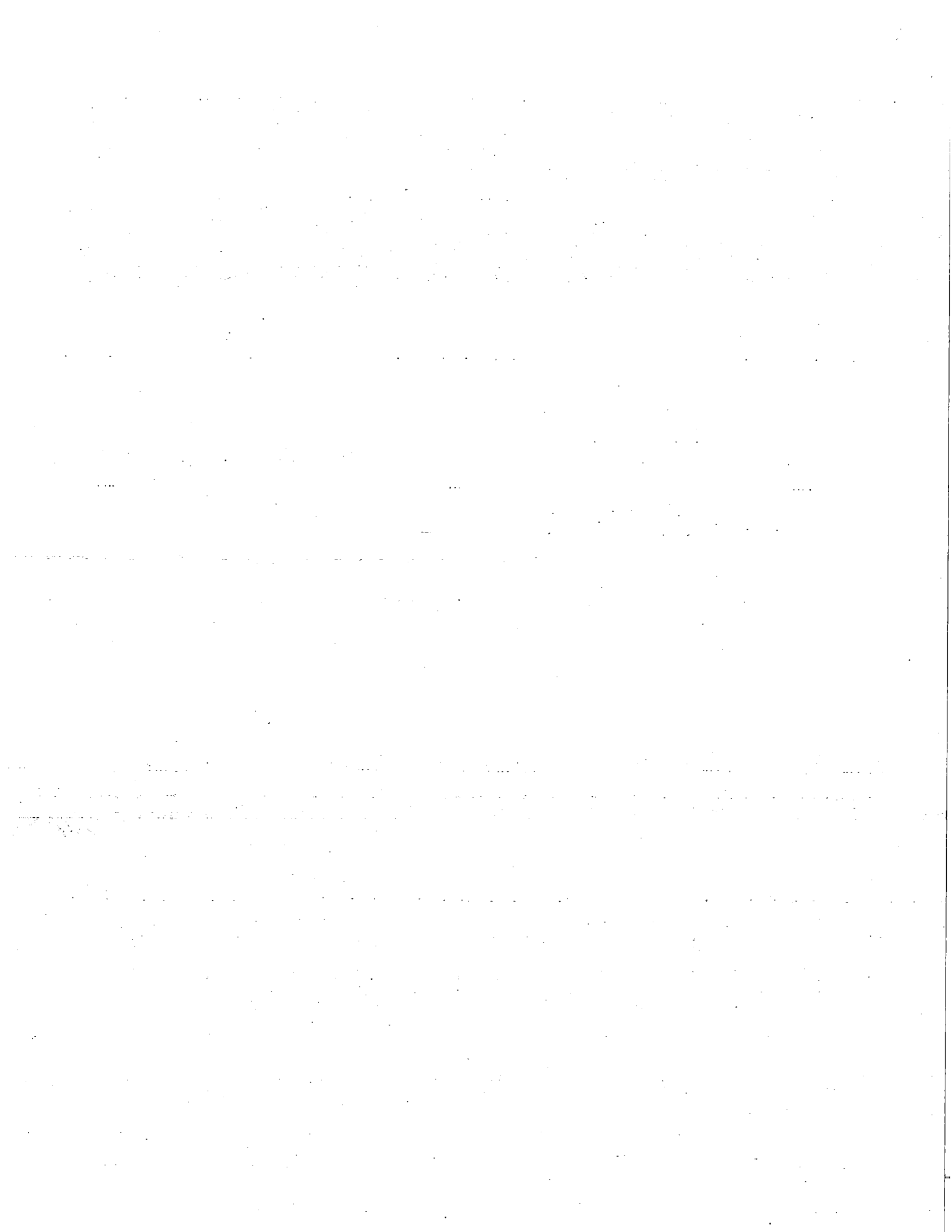
The Commission concludes that Statutes 2000, chapter 899, as it amended Elections Code section 13303, subdivision (c), mandates a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and imposes costs mandated by the state 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>34</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.

---

<sup>34</sup> As amended by Statutes 2000, chapter 899, operative January 1, 2001.



PUBLIC HEARING

COMMISSION ON STATE MANDATES

--oOo--

TIME: 1:30 p.m.

DATE: Wednesday, October 4, 2006

PLACE: State Capitol, Room 126  
Sacramento, California

--oOo--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--oOo--

Reported by:

Daniel P. Feldhaus  
California Certified Shorthand Reporter #6949  
Registered Diplomate Reporter, Certified Realtime Reporter

---

**Daniel P. Feldhaus, C.S.R., Inc.**  
Certified Shorthand Reporters  
8414 Yermo Way, Sacramento, California 95828  
Telephone 916.682.9482 Fax 916.688.0723  
FeldhausDepo@aol.com

A P P E A R A N C E S

COMMISSIONERS PRESENT

VINCENT P. BROWN  
(Commission Chair)  
Representative for MICHAEL GENEST Director  
Department of Finance

PAUL GLAAB  
City Council Member  
City of Laguna Niguel

FRANCISCO LUJANO  
Representative for PHILIP ANGELIDES  
State Treasurer

SEAN WALSH  
Director  
State Office of Planning and Research

AMY HAIR  
Representative for STEVE WESTLY  
State Controller

J. STEVEN WORTHLEY  
Supervisor and Chairman of the Board  
County of Tulare

--o0o--

A P P E A R A N C E S

COMMISSION STAFF PRESENT

PAULA HIGASHI  
Executive Director

CAMILLE SHELTON  
Chief Legal Counsel

DEBORAH BORZELLERI  
Senior Commission Counsel  
(Item 4)

ERIC FELLER  
Commission Counsel  
(Items 9 and 10)

NANCY PATTON  
Deputy Executive Director

KATHERINE TOKARSKI  
Commission Counsel  
(Items 5, 6, 7, and 8)

--o0o--

PUBLIC TESTIMONY

Appearing Re Item 4:

For Claimant, Palos Verdes Estates:

JULIANA F. GMUR, Esq.  
Manager, Cost Services  
MAXIMUS  
4320 Auburn Boulevard, Suite 2000  
Sacramento, California 95841

JAMES B. HENDRICKSON  
City Manager  
City of Palos Verdes Estates  
340 Palos Verdes Drive, West  
Palos Verdes Estates, California

A P P E A R A N C E S

PUBLIC TESTIMONY

*continued*

Appearing Re Item 4: *Continued*

For California State Association of Counties SB 90:

ALLAN BURDICK

Director

California State Association of Counties SB 90 Service

4320 Auburn Boulevard, Suite 2000

Sacramento, California 95841

For Department of Finance:

SUSAN S. GEANACOU, Esq.

Senior Staff Attorney

Department of Finance

915 L Street

Sacramento, California 95814

Appearing Re Items 5 and 6:

For Claimant, County of Orange:

JULIANA F. GMUR, Esq.

Manager, Cost Services

MAXIMUS

NEAL KELLEY

Orange County Registrar of Voters

County of Orange

1300 Building C South Grand Avenue

Santa Ana, California 92705

For County of Solano:

DEBORAH SEILER

Assistant Registrar of Voters

County of Solano

675 Texas Street, Suite 2600

Fairfield, California 94533



A P P E A R A N C E S

PUBLIC TESTIMONY

*continued*

Appearing Re Items 5 and 6: *Continued*

For Department of Finance:

SUSAN S. GEANACOU, Esq.  
Senior Staff Attorney  
Department of Finance

CARLA P. CASTAÑEDA  
Finance Budget Analyst  
Department of Finance  
Education Systems Unit  
915 L Street, Seventh Floor  
Sacramento, California 95814

Appearing Re Items 7 and 8:

For Claimant, County of San Bernardino:

BONNIE TER KEURST  
Manager, Reimbursable Projects  
County of San Diego  
Auditor/Controller-Recorder  
222 W. Hospitality Lane, Fourth Floor  
San Bernardino, California 92415-0018

For Department of Finance:

SUSAN S. GEANACOU, Esq.  
Senior Staff Attorney  
Department of Finance

CARLA P. CASTAÑEDA  
Finance Budget Analyst  
Department of Finance  
Education Systems Unit

A P P E A R A N C E S

PUBLIC TESTIMONY

*continued*

Appearing re Items 9 and 10:

For Claimant, City of Newport Beach:

JULIANA F. GMUR, Esq.  
Manager, Cost Services  
MAXIMUS

GLEN EVERROAD  
Revenue Manager  
City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, California 92658

For Department of Finance:

SUSAN S. GEANACOU, Esq.  
Senior Staff Attorney  
Department of Finance

CARLA P. CASTAÑEDA  
Finance Budget Analyst  
Department of Finance

---o0o---

Commission on State Mandates – October 4, 2006

1 in the court decision which would determine that it is  
2 constitutional, and since the statute allows for people  
3 to file within one year after incurring costs, that if  
4 somebody did incur costs, they may be returning to the  
5 Commission for that particular point. But at this time,  
6 there were no agencies that we know of that incurred any  
7 costs that were awarded by an arbitrator.

8 Thank you.

9 CHAIR BROWN: No comments?

10 MR. HENDRICKSON: No. They have said everything  
11 that needs to be said on our behalf.

12 Thank you.

13 CHAIR BROWN: The Department of Finance?

14 MS. GEANACOU: Yes. Susan Geanacou, Department  
15 of Finance.

16 The Department supports the request for  
17 reconsideration so that the issues raised in the request  
18 can be fully addressed by the staff.

19 CHAIR BROWN: Are there any questions of any  
20 members?

21 (No audible response)

22 CHAIR BROWN: If not, I'd certainly entertain a  
23 motion.

24 MEMBER WALSH: Move to reconsider.

25 CHAIR BROWN: Second?

Commission on State Mandates – October 4, 2006

1 MEMBER WORTHLEY: Second.

2 CHAIR BROWN: All those in favor, say "aye."

3 (A chorus of "ayes" was heard.)

4 CHAIR BROWN: Opposed?

5 (No audible response)

6 CHAIR BROWN: No?

7 Abstentions?

8 (No audible response)

9 CHAIR BROWN: The motion passes.

10 MR. BURDICK: Thank you very much.

11 MS. GMUR: Thank you.

12 MS. HIGASHI: This brings us to the first test  
13 claim on today's agenda, Item 5. This item will be  
14 presented by Commission Counsel Katherine Tokarski.

15 MS. TOKARSKI: Good afternoon. This item is  
16 *Fifteen-Day Close of Voter Registration*.

17 Prior law allowed voters to newly register to  
18 vote, reregister, or change their address with county  
19 elections officials until the twenty-ninth day before  
20 an election. After that date, voter registration closed  
21 until the conclusion of the upcoming election.  
22 Statutes 2000, Chapter 899, amended the Elections Code,  
23 allowing new registrations or changes to voter  
24 registrations through the fifteenth day prior to  
25 an election.

1           The claimant seeks mandate reimbursement for  
2 costs incurred to register voters from the twenty-eighth  
3 through the fifteenth day before elections such as for  
4 implementation planning meetings, revising training  
5 programs, holding an informational media campaign,  
6 responding to additional inquiries about the new law, and  
7 providing additional personnel to accommodate the  
8 increased workload.

9           Staff finds that most of the statutory  
10 amendments by Statutes 2000, Chapter 899, do not mandate  
11 a new program or higher level of service on elections  
12 officials within the meaning of Article XIII B,  
13 Section 6. Processing and accepting voter registration  
14 affidavits and changes of address are not newly required  
15 under the elections code. Elections officials have been  
16 required to perform these activities long before the  
17 enactment of Statutes of 2000, Chapter 899.

18 Staff finds that the amendment to Elections Code  
19 section 13303, subdivision (c), added information to a  
20 preexisting polling place notice, which does provide a  
21 higher level of service to the public within an existing  
22 program.

23           Following the release of the final staff  
24 analysis, staff received late filings from the claimant  
25 and from the County of Sacramento. Those documents,

Commission on State Mandates – October 4, 2006

1 along with the supplemental staff analysis, are in your  
2 binders.

3 Staff recommends that the Commission adopt this  
4 analysis and partially approve the test claim as  
5 described in the conclusion at page 16 of the final staff  
6 analysis.

7 Will the parties and representatives please  
8 state your names for the record?

9 MS. GMUR: Juliana Gmur on behalf of the County  
10 of Orange.

11 MS. SEILER: Deborah Seiler on behalf of Solano  
12 County.

13 MR. KELLEY: Neal Kelley, Registrar of Voters  
14 for Orange County.

15 MS. GEANACOU: Susan Geanacou, Department of  
16 Finance.

17 MS. CASTAÑEDA: Carla Castañeda, Department of  
18 Finance.

19 MS. GMUR: Commissioners --

20 CHAIR BROWN: Okay, proceed.

21 MS. GMUR: Thank you so much.

22 All right, generally, when we come before you,  
23 there are always two things we're looking for: Either  
24 a new program or a higher level of service under an  
25 existing program.

1           In this case, staff is saying that it's not a  
2 higher level of service; it's higher costs. It's the  
3 same program, the same services, higher costs. And they  
4 cite case law. And the case law talks about the fact  
5 that higher costs by themselves are not reimbursable.  
6 But those higher costs in those two cases were regarding  
7 general workers' compensation benefits and death  
8 benefits.

9           Now, the registrars of voters, they're not in  
10 the business of handing out benefits. They are in the  
11 business of handling elections. And so the staff points  
12 to that and says, "There's nothing new here. Registrar  
13 of voters, this is what you do. You're just doing more  
14 of what you normally do. Nothing new."

15           But if you extend that, you could say that peace  
16 officers, they do nothing new. They investigate, they  
17 take reports. Mental health clinicians, mental health  
18 departments, they do nothing new. They provide mental  
19 health services. School districts, education services,  
20 administer records, tests. Cities, counties, they  
21 provide services. So there's nothing new under the sun.

22           But I feel for the staff on this because this  
23 one is really hard to conceptualize. A test claimant  
24 comes before you. It's usually pretty clear: They're  
25 looking for the "who" -- Who gets the service? Who is

Commission on State Mandates - October 4, 2006

1 providing the service? -- or the "what" -- What form are  
2 we filling out? What form or process must we follow? In  
3 this case, it's neither the "who" nor the "what," it's  
4 the "when."

5 Now, it's kind of like somebody running to catch  
6 an airplane. If they came up with a new rule that said  
7 you don't have to board at the gate; you can wait until  
8 the plane has been taxied out. They're on the runway.  
9 We'll wheel some stairs out there, and you can jump on  
10 board.

11 Now, in that case, the Department of Finance  
12 would say, "Where are the new passengers? It's the same  
13 list of passengers. It's just spread over a longer  
14 period of time." Because that's kind of what they've  
15 said in this case: Where are the new voters?  
16 But that's concentrating on the "who" again and not the  
17 "when."

18 For those people on board that airplane, that  
19 crew, they've got certain things they have to do before  
20 takeoff. And for them, the big issue is not that there  
21 are passengers on board, but when the passengers come on  
22 board.

23 And so, too, for our election folks here, they  
24 are providing a higher level of service based on, yes, a  
25 very small change in the law. But if you work in an area



1 that is as calendar-driven and timeline-dependent as  
2 their world is, then that small change is definitely a  
3 higher level of service.

4 I'm going to introduce to you some folks now who  
5 can actually speak on that more than I can.

6 Mr. Neal Kelley, he is our test claimant from  
7 the county; but we're going to lead off with Deborah  
8 Seiler. She is here and she is from the County of  
9 Solano, and she will tell you about that higher level of  
10 service that she has had to provide.

11 MS. SEILER: Thank you, Mr. Chairman, Members of  
12 the Commission. I'm Deborah Seiler. I'm the assistant  
13 registrar of voters in the County of Solano; and I also  
14 serve as co-chair of our California Association of Clerks  
15 and Election Officials legislative committee.

16 Actually, my background, I have a substantial  
17 background with the State. I was the assistant to the  
18 Secretary of State for elections and political reform  
19 for -- I was in the Secretary of State's office for  
20 eleven years and served as the chief elections person in  
21 that office.

22 I was also the chief consultant to the Assembly  
23 Elections and Reapportionment Committee, and served as  
24 one of the commissioners to the State's Fair Political  
25 Practices Commission. I was appointed by former

Commission on State Mandates – October 4, 2006

1 Secretary of State, March Fong Eu.

2 I've also been the editor and publisher of a  
3 monthly newsletter on election issues for about ten  
4 years. I no longer do the newsletter.

5 So I do have a substantial background and, in  
6 addition, have served on many international election  
7 observation missions throughout the world.

8 So I have been with Solano County now for two  
9 years. And I'd like to speak to this issue of the higher  
10 level of service.

11 I guess I would liken it to a stream running  
12 into the ocean. If you all of a sudden put a dam in the  
13 stream, the stream is still going to the ocean, but it's  
14 going to the ocean in a significantly different fashion.

15 And the effect of this close of registration being set  
16 to what we call "E-minus" -- we work in "E-minus"  
17 states -- being set at E-minus-15, or 15 days before the  
18 election, has a profound effect on our offices in a  
19 number of very specific areas.

20 First of all, one of the things that we're doing  
21 at the time that we would ordinarily be finished with  
22 voter registration, when it was formerly at 29 days  
23 before the election, after that time period, what we were  
24 doing is we were putting together the rosters of voters  
25 that go out to the polling places. Those rosters we were

1 putting together in time to give to our precinct  
2 inspectors to go out to the polling places.

3 Now, because of the late registrations, we're  
4 not able to compile the rosters at the time that we need  
5 to get them out to the precinct inspectors. So we've had  
6 to come up with alternate methods of delivering those  
7 rosters rather than just when the inspectors come in for  
8 the training class. So we now have either personal  
9 delivery or other mechanisms where staff is delivering it  
10 or we have roving inspectors that we have to hire to send  
11 out those rosters.

12 The other issue with the rosters is that  
13 particularly in very busy elections -- and a number of  
14 counties experienced this in the November of 2004  
15 election, very hotly contested election -- the  
16 registration levels were off the charts for all of us.  
17 And we had tremendous difficulty getting -- due to the  
18 later close of registration, we had tremendous difficulty  
19 even getting those names entered into our files and  
20 getting those names on the rosters.

21 In some cases, we did not. In some cases, the  
22 counties failed to get the names on the rosters.

23 The consequence of that was that voters came into the  
24 polling place and had to vote provisional ballots, which  
25 is the requirement under the law for a person whose name

Commission on State Mandates -- October 4, 2006

1 is not on the roster.

2 So that provisional voting process then actually  
3 contributed to the amount of time that it took us to  
4 perform the canvass and the amount of staff that we had  
5 to have.

6 One of the big effects of this later close of  
7 registration, too, is on the absentee ballot processing.

8 Ordinarily, our supervisors and lead people in  
9 the absentee processing area -- in the voter registration  
10 area, excuse me -- would sort of morph into the absentee  
11 processing area. So the curtain would fall at 29 days  
12 before the election, and then that 29 days before the  
13 election is also the commencement of the absentee voting  
14 period. And so then that staff would finish up with the  
15 voter registration and then go in and start processing,  
16 getting the absentees out in the mail and processing  
17 those that had returned.

18 No longer can the same staff be used for the  
19 absentee voting process. We have to have a whole new set  
20 of people, managers, supervisors, and expertise now to  
21 come in and do the absentee processing because our voter  
22 registration people who had done it in the past are busy.  
23 They're still engaged in voter registration activities.  
24 So that's had a huge influence on our whole staffing  
25 process.

1           One of the biggest impacts also with respect to  
2 the absentee process is that now we have a setup -- as a  
3 result of this new law, we have a situation where the  
4 absentee voting period starts before the close of  
5 registration.

6           What does that mean for voter registration? It  
7 means that a person who is, for example, a permanent  
8 absentee voter -- and we have many more permanent  
9 absentee voters now than we used to. In Solano County,  
10 it's up to almost 40 percent of our electorate who votes  
11 absentee. So you've got all of these people to whom we  
12 send at 29 days, because that's the beginning of the  
13 absentee period, we send them their permanent absentee  
14 ballot.

15           At E-minus-15, between 29 days and 15 days,  
16 those same people can move and reregister to vote; and  
17 they do.

18           So, now, we send them their first ballot. Then  
19 they reregister to vote at the fifteen-day close. Any we  
20 have to send them a second ballot -- a second absentee  
21 ballot. So we have to go back -- and, obviously, we  
22 can't let them vote twice.

23           So now we're going into this huge retrieval,  
24 storage, tracking process, to make sure that these  
25 absentee voters who are being able to register at a later

Commission on State Mandates - October 4, 2006

1 point in time are not duplicate voters.

2 So this is a major impact on our whole process.  
3 And in addition, this is just one more thing that  
4 carries over into our canvass process, because these are  
5 all things that we have to account for in the canvass  
6 process.

7 So those are a few examples of the profound  
8 impact that this change has really had on our operation.

9 MR. KELLEY: Good afternoon, Mr. Chair and  
10 fellow Commission Members. Thank you for the opportunity  
11 to speak today.

12 Ms. Seiler and counsel have made some persuasive  
13 arguments. I'm afraid I don't have any of the great  
14 analogies that they had for you, but it's kind of a  
15 little bit dry for you.

16 I wanted to go over just a few things that we  
17 have done since the implementation of this fifteen-day  
18 change.

19 We notify every voter who registers, as Deborah  
20 pointed out, from E-28 to E-15, via a postcard, where  
21 they can obtain a sample ballot, and that their  
22 registration was completed.

23 We also have hired additional staff to process  
24 those registration forms. And Deborah touched on that  
25 just a little bit.

1           In the presidential vote for Orange County, we  
2 processed 46,000 registration forms from E-28 to E-15.  
3 And that was significant because we had to bring on a  
4 tremendous amount of extra help and additional staff to  
5 cover that increase in registration.

6           Now, you could probably make the argument that  
7 perhaps those individuals would have registered before  
8 E-28, but I think a lot of them now wait until that time  
9 period just before E-15 to register. So that's been a  
10 significant impact.

11           Also, the printing of sample ballots. Because  
12 we must provide sample ballots for all of those who  
13 register late, we have to essentially make a guess as to  
14 how many individuals are going to register so that we can  
15 print the sample ballot. So that's an increased cost to  
16 provide enough sample ballots for those individuals we  
17 think will register during that time period.

18           In addition to all of that, we've incurred a  
19 substantial amount of overtime for all the reasons  
20 Ms. Seiler pointed out, not just inputting that data in  
21 those registration forms, but making sure during the  
22 canvass period that we're covering all the issues she  
23 brought up. In addition to those individuals who change  
24 their registration and want a different type of ballot,  
25 that's significant, and that happens quite a bit in

Commission on State Mandates – October 4, 2006

1 Orange County.

2 So with that, I want to thank you for the time.

3 CHAIR BROWN: Okay, thank you very much.

4 The Department of Finance?

5 MS. CASTAÑEDA: Carla Castañeda, the Department  
6 of Finance.

7 We concur with the staff analysis. We  
8 understand that the crunch timeline of changing the  
9 deadline from the 29th to the 15th; but we do believe  
10 that all the activities are still the same with the  
11 exception of amending that notice to let voters know  
12 where they're going and where they can get sample  
13 ballots.

14 MS. GEANACOU: If I may, Chair?

15 Susan Geanacou, Department of Finance.

16 Just one comment I wish to add, is that the  
17 manner of the county's adjustment to performing their  
18 preexisting preelection duties are not mandated by the  
19 test claim statutes. That's, I think, something that  
20 needs to be emphasized for the Commission members today.  
21 They did point out some examples of adjustments they'd  
22 made, but those adjustments are not mandated by the test  
23 claim statutes.

24 CHAIR BROWN: Thank you.

25 Questions of the Members?



1           MEMBER WORTHLEY: I checked with our registrar,  
2 and she had a similar story from what we've heard here  
3 this morning about the need for overtime help.

4           To me, this is a very simple issue. If I hired  
5 somebody whose one and only job was to take in voter  
6 registration applications, and I hired them the day after  
7 an election, and their job ran from then until the 28th  
8 day prior to the election, I would pay that person a  
9 certain sum of money for providing those services.

10           The State comes along and mandates that they  
11 have to work two additional weeks. Therefore, my costs  
12 go up. Why? Because of the enhanced service which is  
13 provided: I'm giving two more weeks of service. Two  
14 weeks I didn't have to give before, I now have to give  
15 because it was mandated by the state.

16           The argument was made that this additional cost  
17 is only a cost. But this is a cost that comes about  
18 because of one reason: Enhanced service. That's the  
19 reason why banks increase their hours. That's the reason  
20 why grocery stores increase their hours. The more hours  
21 they're open, the more business they have. And that's  
22 considered enhanced service.

23           To me, this is very simply an enhanced service  
24 that's been mandated by the state. I don't see how you  
25 can call it anything else but enhanced service.

Commission on State Mandates – October 4, 2006

1           It's not a new program. Agreed. We've always  
2           been in this responsibility; we will continue to be in  
3           this responsibility. But when the State mandates that  
4           we have to do it in a fashion that causes us to increase  
5           our costs to provide this enhanced service, the State  
6           should be responsible for paying. It's very simple, in  
7           my mind.

8           CHAIR BROWN: Questions from other Members?

9           (No audible response)

10          CHAIR BROWN: I just have one question. And it  
11          goes to the points that the Department of Finance raise.

12          During the change in time period from 30 to  
13          15 days, is there any documentation that the number of  
14          registrations has increased on a trend-line basis due to  
15          the change in the time frames?

16          MR. KELLEY: I don't have any data to provide  
17          you from Orange County at this point; but I can tell  
18          you that during the presidential, that period of  
19          registration during that two-week period was  
20          significantly higher than the previous presidential.  
21          But in terms of increased registration, our registration  
22          numbers are actually decreasing slightly in Orange  
23          County.

24          CHAIR BROWN: And that goes to a point. It  
25          could be an anomaly based on whatever the election cycle

1 might be.

2 From my standpoint, if there's not adequate  
3 documentation that the actual registrations have  
4 increased, I find it very difficult, notwithstanding the  
5 shift in time periods, that the workload is the same and  
6 has not increased.

7 MS. SEILER: I think it's the method of the  
8 workload that we're trying to point out to you. That is,  
9 that due to the method of having to put this at a  
10 completely different cycle, with different staff, with  
11 additional staff, that it has been an increased cost for  
12 us.

13 MS. SHELTON: If I can, just to add a couple  
14 of things from case law. There aren't too many  
15 higher-level-of-service cases that have been decided by  
16 the courts. One of them, though, is Long Beach Unified  
17 School District v. The State of California. And that  
18 case was a higher level of service regarding racial  
19 desegregation, where you had existing federal law, and  
20 the state came and required additional requirements  
21 imposed. And the court said that was a higher level of  
22 service.

23 In the process, to find a higher level of  
24 service is requiring a finding that the State is  
25 mandating new requirements on the local agencies and

1 school districts.

2 Here, if you just take a look at the  
3 legislation, I think there is an example on page 8, all  
4 the Legislature did was change the number "29" to the  
5 number "15." The Legislature did not change any of the  
6 mandated activities.

7 The activities that are performed by the  
8 counties, are activities they've decided to perform or  
9 felt necessary to perform in order to comply with the  
10 legislation.

11 And, yes, I'm sure there are increased costs.  
12 But those activities have not been expressly mandated by  
13 the state which is required for a reimbursement finding.

14 MEMBER WORTHLEY: Well, time is money. I mean,  
15 that's a very -- that's axiomatic. We're requiring  
16 additional time. It requires additional money.  
17 Even if there was a representation made by the increase  
18 in Orange County today. Even if you only had a few  
19 people come in, it still affects the sequencing of  
20 events. You still have to have people available to  
21 receive and process these applications, if it was only  
22 ten.

23 The point is, before, you had a point in time  
24 where you could say, "This is when it ends." And as was  
25 stated before -- and I've seen this happen in our own

1 elections office -- if you were to graph the activity  
2 level in an elections office, as you get closer to the  
3 election, it goes like this (indicating).

4 We are now taking a responsibility, just at the  
5 time when it's getting extremely busy in elections  
6 offices, and adding additional responsibilities to the  
7 elections office. Now, it's that much more difficult to  
8 try to deal with these additional responsibilities. It  
9 does result in the need for additional people, as was  
10 pointed out. People who morphed into other  
11 responsibilities in the elections office have to be,  
12 again, left to this particular role and responsibility  
13 of accepting these applications; whereas before, they  
14 would move on to a different responsibility level.

15 It's an additional cost -- it's an enhanced  
16 service. And if it's not an enhanced service, you might  
17 ask yourself, then why did the Legislature change the  
18 law? What was the purpose of changing the law if it  
19 wasn't considered an enhanced service? There certainly  
20 would be no reason for it.

21 CHAIR BROWN: Mr. Burdick?

22 MR. BURDICK: Chairman Brown and Members, again,  
23 Allan Burdick representing CSAC SB 90 service. It seems  
24 like there's a couple of points here that maybe have been  
25 missed or maybe you haven't discussed. One of the things

Commission on State Mandates - October 4, 2006

1 that we've got into defining was what is a reimbursable  
2 state mandate, and does it implement a public policy.  
3 And, boy, it sure seems to me that that providing people  
4 more time to register is a public policy. What they're  
5 doing is they're implementing a public policy that is  
6 mandated on.

7 The second thing is this discussion about what  
8 are they required to do? Were these things that have  
9 been explained by these two professionals in this  
10 business? You know, are these things which essentially  
11 are optional?

12 Now, let me tell you, first of all, election  
13 departments are not the highest-funded department in a  
14 county government. They're General Fund departments; and  
15 very often, you know, they're lucky to get every dime  
16 they can to maintain whatever level of service they can  
17 do to meet their requirements.

18 And the way the law is intended to be is, is it  
19 reasonably necessary for these people to do that in order  
20 to be able to carry it out? And they've made the  
21 decision that it's reasonably necessary to do it.

22 I think they will tell you they didn't do this  
23 because, you know, they thought it would be fun -- a  
24 nice, extra frill or something. They looked at it, they  
25 looked at the law, they're professionals; and they said,

1 you know, put together a plan to implement that  
2 legislation.

3 And I think finally is the fact that this is the  
4 first time we've had this really kind of serious  
5 discussion about what is being done and the implications  
6 and so forth. And, obviously, there's nobody here from  
7 the Secretary of State's office who could participate in  
8 the discussion to provide state advice to you. But as  
9 you know, the next step in the process is parameters and  
10 guidelines, in which you then sit down and try to work  
11 out what is eligible and what is not eligible. That  
12 does then come back to the Commission for its  
13 consideration.

14 So it seems to me I would hope the Commission  
15 would look at this and say, "This is a perfect example  
16 of something we should send to the  
17 parameters-and-guidelines stage. We should not limit  
18 them by the decision we made today," because I think  
19 there's agreement that there is some level of mandate  
20 there. The question is the scope of it. To send it back  
21 to parameters and guidelines, have it come back to you,  
22 after you've had the Secretary of State participate,  
23 after you've had the Department of Finance have the  
24 benefit of that discussion and make its decision, I think  
25 that you'd have a much more sound decision than trying to

1 grapple with this today when you're getting this -- a lot  
2 of this stuff is relatively new information for you.

3 Thank you very much.

4 CHAIR BROWN: Thank you, Mr. Burdick.

5 MS. SHELTON: I'd like to clarify that a test  
6 claim finding is a question of law. The standard is not  
7 whether or not it's reasonably necessary for counties to  
8 perform those activities. We wouldn't dispute those  
9 factual determinations made by each county.

10 The standard is whether or not the state has  
11 mandated the counties to perform those activities. And  
12 here, there is no evidence in the law at all that the  
13 State has mandated any additional activities, other than  
14 changing the dates in the statutes.

15 The activities that they're discussing here  
16 cannot necessarily be discussed during the  
17 parameters-and-guidelines phase because we're making a  
18 finding. And this proposed decision makes a finding that  
19 they are not mandated by the State.

20 During parameters and guidelines, the Commission  
21 does have discretion to determine activities that are  
22 reasonably necessary to comply with the mandated  
23 activity.

24 But the only mandated activity in the proposed  
25 decision is the activity to amend the polling place



1 notice.

2 So any additional activities that the Commission  
3 includes in parameters and guidelines has to relate to  
4 amending the polling place notice. And that would be  
5 listed to that activity.

6 CHAIR BROWN: Thank you, Counsel.

7 Mr. Walsh?

8 MEMBER WALSH: Are there any other people who  
9 want to testify in this dispute or --

10 MS. GMUR: Yes, as a matter of fact. No  
11 surprise there. There is mandated activity. Again, I  
12 said, it's really hard to conceptualize. I had to go  
13 around this several times before I could see it myself.  
14 It's not what you're doing; it's when you're doing it.  
15 Just like Mr. Worthley stated, he said it's like a  
16 business. If you're going to stay open on Saturday, your  
17 employer is requiring you to do the same thing you do  
18 every other day of the week, you just have to do it now  
19 on Saturday. The same, too, for our election folks. The  
20 service itself is the same, but the change of the date is  
21 mandated as to when it is to be done.

22 CHAIR BROWN: Any further follow-ups or  
23 questions?

24 Do we have a motion for the staff  
25 recommendation?

Commission on State Mandates – October 4, 2006

1 MEMBER WALSH: Move to approve the staff  
2 recommendation.

3 CHAIR BROWN: Do we have a second?

4 MEMBER HAIR: I'll second.

5 All those in favor, say "aye."

6 (A chorus of "ayes" was heard.)

7 CHAIR BROWN: Opposed?

8 MEMBER WORTHLEY: Nay.

9 Any abstentions?

10 (No audible response)

11 CHAIR BROWN: The ayes have it.

12 The staff recommendation is approved.

13 MS. HIGASHI: Item 6 will be presented by  
14 Ms. Tokarski.

15 MS. TOKARSKI: Item 6 is the proposed Statement  
16 of Decision for the item you just heard. The sole issue  
17 is whether the proposed Statement of Decision accurately  
18 reflects the Commission's decision on the *Fifteen-Day*  
19 *Close of Voter Registration* test claim.

20 Staff recommends that the Commission adopt the  
21 proposed Statement of Decision beginning on page 3, which  
22 accurately reflects the staff analysis and recommendation  
23 on this test claim. Minor changes, including those that  
24 reflect the late filings, hearing testimony, and vote  
25 count will be included when issuing the final Statement

1 of Decision.

2 CHAIR BROWN: Do we have a motion on that  
3 recommendation?

4 MEMBER WALSH: So moved.

5 MEMBER GLAAB: Second.

6 CHAIR BROWN: All those in favor, say "aye."

7 (A chorus of "ayes" was heard.)

8 CHAIR BROWN: Opposed?

9 MEMBER WORTHLEY: No.

10 CHAIR BROWN: Abstentions?

11 (No audible response)

12 CHAIR BROWN: The ayes have it. The staff  
13 recommendation approved.

14 MR. BURDICK: Thank you very much.

15 MS. GMUR: Thank you.

16 MS. HIGASHI: Item 7 is the claim on Voter

17 *Identification Procedures*. This item will also be

18 presented by Commission Counsel Katherine Tokarski.

19 MS. TOKARSKI: This test claim addresses an

20 amendment to Elections Code section 14310 regarding

21 counting provisional ballots. A provisional ballot is a

22 regular ballot that has been sealed in a special

23 envelope, signed by the voter, and then deposited in the

24 ballot box. Provisional ballots can be required for

25 several reasons to prevent fraud. For example, when poll

1 workers cannot immediately verify an individual's name on  
2 the official roster or if a voter requested an absentee  
3 ballot but instead comes to the polling place without  
4 bringing the absentee ballot.

5 Statutes of 6000, Chapter 260, amended Elections  
6 Code section 14310, subdivision (c)(1), to add a  
7 requirement that elections officials compare the  
8 signature on each provisional ballot envelope with the  
9 signature on the voter's affidavit of registration.

10 Staff finds that performing signature comparison for all  
11 provisional ballots cast is a reimbursable state-mandated  
12 program.

13 However, in a situation where a local government  
14 calls a special election that could otherwise have been  
15 legally consolidated with the next local or statewide  
16 election, the downstream costs for checking signatures on  
17 provisional ballots for that voluntarily-held election  
18 would not be reimbursable.

19 Staff recommends that the Commission adopt this  
20 analysis and partially approve the test claim as  
21 described in the conclusion at page 12 of the final staff  
22 analysis.

23 Will the parties please state their names?

24 MS. TER KEURST: Hi, I'm Bonnie Ter Keurst. I'm  
25 representing the County of San Bernardino.

**REPORTER'S CERTIFICATE**

I hereby certify that the foregoing proceedings were duly reported by me at the time and place herein specified;

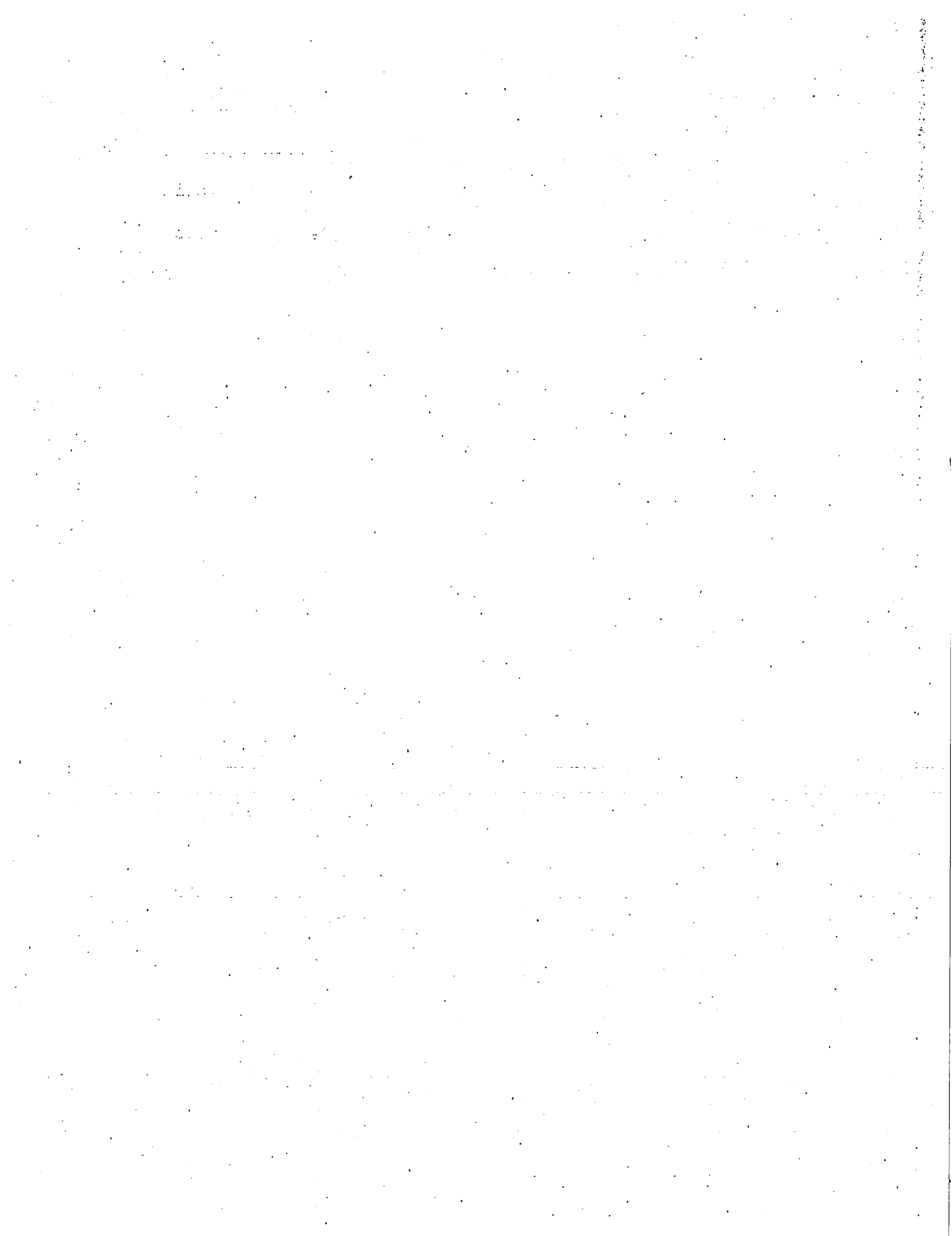
That the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In witness whereof, I have hereunto set my hand on October 23, 2006.

---

Daniel P. Feldhaus  
California CSR #6949  
Registered Diplomat Reporter  
Certified Realtime Reporter



Commission on State Mandates

Original List Date: 5/31/2002  
Last Updated: 9/19/2006  
List Print Date: 07/01/2008  
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

---

Ms. Jolene Tollenaar  
MGT of America  
455 Capitol Mall, Suite 600  
Sacramento, CA 95814

Tel: (916) 712-4490  
Fax: (916) 290-0121

---

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, 11th Floor  
Sacramento, CA 95814

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

---

Ms. Annette Chinn  
Cost Recovery Systems, Inc.  
705-2 East Bidwell Street, #294  
Folsom, CA 95630

Tel: (916) 939-7901  
Fax: (916) 939-7801

---

Ms. Donna Ferebee  
Department of Finance (A-15)  
915 L Street, 11th Floor  
Sacramento, CA 95814

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

---

Mr. Neal Kelley  
County of Orange - Registrar of Voters  
1300 South Grand Avenue, Building C  
Santa Ana, CA 92705

Tel:  
Fax:

---

Ms. Deborah Seiler  
County of Solano - Registrar of Voters  
675 Texas Street, Suite 2600  
Fairfield, CA 94533

Tel: (707) 421-6280  
Fax: (707) 421-6925

---

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

---

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

---

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

Tel: (916) 485-8102

Fax: (916) 485-0111

