

September 1, 2020

Ms. Lucia Gonzalez  
County of Los Angeles  
648 Kenneth Hahn Hall of  
Administration  
500 West Temple Street  
Los Angeles, CA 90012-2713

Ms. Natalie Sidarous  
State Controller's Office  
Local Government Programs and  
Services Division  
3301 C Street, Suite 740  
Sacramento, CA 95816

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

**Re: Draft Proposed Decision and Parameters and Guidelines, Schedule for Comments, and Notice of Hearing**

*Vote by Mail Ballots: Prepaid Postage 19-TC-01*  
Elections Code Section 3010; Statutes 2018, Chapter 120 (AB 216)  
County of Los Angeles, Claimant

Dear Ms. Gonzalez and Ms. Sidarous:

The Draft Proposed Decision and Proposed Parameters and Guidelines for the above-captioned matter is enclosed for your review and comment.

**Written Comments**

Written comments may be filed on the Draft Proposed Decision and Proposed Parameters and Guidelines by **September 22, 2020**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.<sup>1</sup>

You are advised that comments filed with the Commission are required to be electronically filed (e-filed) in an unlocked legible and searchable PDF file, using the Commission's Dropbox. (Cal. Code Regs., tit. 2, § 1181.3(c)(1).) Refer to [http://www.csm.ca.gov/dropbox\\_procedures.php](http://www.csm.ca.gov/dropbox_procedures.php) on the Commission's website for electronic filing instructions. If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery or personal service only upon approval of a written request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(c)(2).)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

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<sup>1</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

### **Hearing**

This matter is set for hearing on **Friday, December 4, 2020** at 10:00 a.m., via Zoom. The Proposed Decision will be issued on or about November 20, 2020.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness you are bringing plan to testify and please specify the names of the people who will be speaking for inclusion on the witness list and so that detailed instructions regarding how to participate as a witness in this meeting on Zoom can be provided to them. When calling or emailing, please identify the item you want to testify on and the entity you represent. The Commission Chairperson reserves the right to impose time limits on presentations as may be necessary to complete the agenda.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather Halsey", with a stylized flourish extending to the right.

Heather Halsey  
Executive Director

**ITEM\_\_**

**DRAFT PROPOSED DECISION AND PARAMETERS AND GUIDELINES**

Elections Code Section 3010

Statutes 2018, Chapter 120 (AB 216)

*Vote by Mail Ballots: Prepaid Postage*

19-TC-01

The period of reimbursement begins January 1, 2019.

County of Los Angeles, Claimant

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**EXECUTIVE SUMMARY**

**I. Summary of the Mandate**

On July 24, 2020, the Commission on State Mandates (Commission) adopted the Test Claim Decision finding that Elections Code section 3010, as amended by Statutes 2018, chapter 120, imposes a reimbursable state-mandated program on cities and counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved the Test Claim to provide prepaid postage on identification envelopes delivered to voters with their vote-by-mail ballots, beginning January 1, 2019, for the following elections:

- Statewide general elections, statewide direct primary elections, and the presidential primary elections conducted by counties.<sup>1</sup>
- Regular local elections compelled by state law.<sup>2</sup>
- Special elections called by the Governor or required by state law, including recall elections of local officers, special elections forced by a petition of the voters to issue school bonds or replace an appointee and fill a vacant school board position, and elections required by state law that are conducted by charter cities and counties.<sup>3</sup>

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<sup>1</sup> Elections Code sections 1200-1202, 13001.

<sup>2</sup> For example, California Constitution, article 6, section 16(b), and article 11, section 1; Elections Code sections 1300 et seq., 10517; Education Code sections 5300, 5303; Government Code section 24200, 25304.5.

<sup>3</sup> For example, Elections Code section 10700 (vacancy in a congressional or legislative office), 11110 (recall of state officers), 11200 et seq. (recall of local officers); Education Code section 15100 (voter petition for school bonds); Education Code section 5091(c) (voter petition to replace an appointee and fill a vacant board position); Elections Code sections 8026 (death of incumbent or challenger for a nonpartisan statewide, countywide, or citywide office, or for a nonpartisan office that is elected by division, area, or district, before an election); Education

- School district and community college district discretionary elections required by state law to be conducted by counties and cities when the election is consolidated with non-educational issues or elective offices.<sup>4</sup>

The Commission further concluded that Elections Code section 3010, as amended by Statutes 2018, chapter 120, does *not* impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution:

- When a county or city conducts its own discretionary local elections or holds a required special election that could have been consolidated with a regular election within statutory deadlines; or
- When counties conduct elections for cities or special districts; or when cities and counties conduct an election solely on behalf of a school district or community college district (with no other non-educational issues or elective offices on the ballot). In these elections, there is fee authority sufficient to cover the costs of the mandate pursuant to Government Code section 17556(d) so there are no costs mandated by the state.<sup>5</sup>

## **II. Procedural History**

On July 24, 2020, the Commission adopted the Test Claim Decision,<sup>6</sup> and staff issued the Draft Expedited Parameters and Guidelines.<sup>7</sup> On August 14, 2020, the County of San Diego filed comments on the Draft Expedited Parameters and Guidelines.<sup>8</sup> On September 1, 2020, Commission staff issued the Draft Proposed Decision and Parameters and Guidelines.

## **III. Discussion**

### **A. Eligible Claimants (Section II. of the Parameters and Guidelines)**

In the Test Claim Decision, the Commission found that school districts, community college districts, and special districts are not mandated by state law to provide prepaid postage on the identification envelopes. The requirement is imposed solely on counties and cities.<sup>9</sup> Thus, Section II. of the Parameters and Guidelines limits reimbursement to: “Any city, county, or city and county that incurs increased costs as a result of this mandate is eligible to claim reimbursement.”

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Code section 5093 (special elections consolidated with the next regular election when the vacancy occurs during the period between six months and 130 days prior to a regularly scheduled governing board election).

<sup>4</sup> Education Code sections 5300 and 5303. Elections Code section 10517.

<sup>5</sup> Elections Code sections 10002, 10517, 10520, and Education Code section 5227.

<sup>6</sup> Exhibit A, Test Claim Decision.

<sup>7</sup> Exhibit B, Draft Expedited Parameters and Guidelines.

<sup>8</sup> Exhibit C, County of San Diego’s Comments on the Draft Expedited Parameters and Guidelines.

<sup>9</sup> Exhibit A, Test Claim Decision, pages 20-23.

## **B. Period of Reimbursement (Section III. of Parameters and Guidelines)**

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the test claim on October 15, 2019, establishing eligibility for reimbursement for the 2018-2019 fiscal year, beginning July 1, 2018. However, Statutes 2018, chapter 120 became effective on January 1, 2019, establishing the period of reimbursement beginning January 1, 2019. Thus, Section III. of the Parameters and Guidelines states that the period of reimbursement begins January 1, 2019.

## **C. Reimbursable Activities (Section IV. of the Draft Expedited Parameters and Guidelines)**

Section IV. of the Proposed Parameters and Guidelines include all the activities approved by the Commission as reimbursable state-mandated activities in the Test Claim Decision. The mandate is to provide prepaid postage on identification envelopes delivered to voters with their vote-by-mail ballots for those elections required to be conducted by state law beginning January 1, 2019. Therefore, the cost of postage used for the mandate is eligible for reimbursement.

In comments on the Draft Expedited Parameters and Guidelines, the County of San Diego requests reimbursement for a high-volume mail subscription (“qualified business reply mail”). The County alleges, under penalty of perjury, that these costs “were (and will continue to be) reasonably necessary to handle the potential increased volume of ballots returned by mail when postage is prepaid.”<sup>10</sup> The County’s declaration under penalty of perjury by the Administrative Services Manager for the Registrar of Voters states in pertinent part:

4. Due to the anticipated increase in mail after the passage of AB 216, the Registrar of Voters purchased a high volume mail subscription (“qualified business reply mail”) from the United States Postal Service (USPS).
5. This subscription costs the Registrar of Voters \$2,405 quarterly.
6. Prior to the passage of AB 216, the Registrar did not have this high volume mail subscription and did not incur this fee.<sup>11</sup>

The County’s request for reimbursement of the full costs for mail service subscriptions is overbroad since, as stated, the postage can be used for mailings that are not mandated by the State or are not part of this mandated program. As indicated in the Test Claim Decision,<sup>12</sup> the mandate to provide prepaid postage on vote-by-mail identification envelopes is limited to only the following elections:

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<sup>10</sup> Exhibit C, County of San Diego’s Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>11</sup> Exhibit C, County of San Diego’s Comments on the Draft Expedited Parameters and Guidelines, page 4.

<sup>12</sup> Exhibit A, Test Claim Decision, pages 45-46.

- Statewide general elections, statewide direct primary elections, and the presidential primary elections conducted by counties.<sup>13</sup>
- Regular local elections compelled by state law.<sup>14</sup>
- Special elections called by the Governor or required by state law, including recall elections of local officers, special elections forced by a petition of the voters to issue school bonds or replace an appointee and fill a vacant school board position, and elections required by state law that are conducted by charter cities and counties.<sup>15</sup>
- School district and community college district discretionary elections required by state law to be conducted by counties and cities when the election is consolidated with non-educational issues or elective offices.<sup>16</sup>

Although mail service subscriptions are not mandated, staff finds that the pro rata cost of postage subscriptions, based only on the portion of postage actually used to comply with the mandate in the required elections identified in the Test Claim Decision, is supported by the declarations filed by the County of San Diego and is therefore reasonably necessary to comply with the mandate. Accordingly, Section IV. of the Parameters and Guidelines states the following:

Provide prepaid postage on identification envelopes delivered to voters with their vote-by-mail ballots for the following elections:

- Statewide general elections, statewide direct primary elections, and the presidential primary elections conducted by counties.<sup>17</sup>
- Regular local elections compelled by state law.<sup>18</sup>

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<sup>13</sup> Elections Code sections 1200-1202, 13001.

<sup>14</sup> For example, California Constitution, article 6, section 16(b), and article 11, section 1; Elections Code sections 1300 et seq., 10517; Education Code sections 5300, 5303; Government Code section 24200, 25304.5.

<sup>15</sup> For example, Elections Code section 10700 (vacancy in a congressional or legislative office), 11110 (recall of state elected officers), 11200 et seq. (recall of local officers); Education Code section 15100 (voter petition for school bonds); Education Code section 5091(c) (voter petition to replace an appointee and fill a vacant board position); Elections Code sections 8026 (death of incumbent or challenger for a nonpartisan statewide, countywide, or citywide office, or for a nonpartisan office that is elected by division, area, or district, before an election); Education Code section 5093 (special elections consolidated with the next regular election when the vacancy occurs during the period between six months and 130 days prior to a regularly scheduled governing board election).

<sup>16</sup> Education Code sections 5300 and 5303. Elections Code sections 3024, 10517.

<sup>17</sup> Elections Code sections 1200-1202, 13001.

<sup>18</sup> For example, California Constitution, article 6, section 16(b), and article 11, section 1; Elections Code sections 1300 et seq., 10517; Education Code sections 5300, 5303; Government Code section 24200, 25304.5.

- Special elections called by the Governor or required by state law, including recall elections of local officers, special elections forced by a petition of the voters to issue school bonds or replace an appointee and fill a vacant school board position, and elections required by state law that are conducted by charter cities and counties.<sup>19</sup>
- School district and community college district discretionary elections required by state law to be conducted by counties and cities when the election is consolidated with non-educational issues or elective offices.<sup>20</sup>

Reimbursement for this activity includes the cost of postage, including pro rata postage subscription costs, incurred *only* for the vote by mail identification envelopes delivered to voters for the required elections bulleted above.

***Reimbursement is not required in the following circumstances:***

- When a county or city conducts its own discretionary local elections or holds a required special election that could have been consolidated with a regular election within statutory deadlines; or
- When counties conduct elections for cities or special districts;<sup>21</sup> or when cities and counties conduct an election solely on behalf of a school district or community college district (with no other non-educational issues or elective offices on the ballot).<sup>22</sup> In these elections, there is fee authority sufficient to cover the costs of the mandate pursuant to Government Code section 17556(d) so there are no costs mandated by the state.

**D. Offsetting Savings and Reimbursement (Section VII. of the Parameters and Guidelines)**

Reimbursement under article XIII B, section 6 is required only when the mandated program forces local government to incur “increased actual expenditures of limited tax proceeds that are

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<sup>19</sup> For example, Elections Code section 10700 (vacancy in a congressional or legislative office), 11110 (recall of state elected officers), 11200 et seq. (recall of local officers); Education Code section 15100 (voter petition for school bonds); Education Code section 5091(c) (voter petition to replace an appointee and fill a vacant board position); Elections Code sections 8026 (death of incumbent or challenger for a nonpartisan statewide, countywide, or citywide office, or for a nonpartisan office that is elected by division, area, or district, before an election); Education Code section 5093 (special elections consolidated with the next regular election when the vacancy occurs during the period between six months and 130 days prior to a regularly scheduled governing board election).

<sup>20</sup> Education Code sections 5300 and 5303. Elections Code sections 3024, 10517.

<sup>21</sup> Elections Code sections 10002, 10520.

<sup>22</sup> Elections Code section 10520, Education Code section 5227, 5420, and 3024; *County of Yolo v. Los Rios Community College District* (1992) 5 Cal.App.4th 1242, 1252.

counted against the local government’s spending limit.”<sup>23</sup> The spending limit only applies to revenue that constitutes the local agency’s “proceeds of taxes.”<sup>24</sup> Thus, when a local agency does not use its own proceeds of taxes, but uses state or federal funds that have been appropriated and are used to pay for the mandated program, then reimbursement is not required for spending those funds and they must be identified as offsetting revenues and deducted from a claim for reimbursement.

Therefore, Section VII. of the Proposed Parameters and Guidelines specifically identifies the state and federal funds appropriated in 2019 and 2020 as potentially offsetting revenue when used by the claimant to pay for the mandate. For example, the 2019 State Budget Act appropriated \$19.964 million in federal funds for local assistance for elections that could be used to pay for the mandate in fiscal year 2019-2020.<sup>25</sup> Also, the 2020 State Budget Act appropriates \$36.5 million in state funds and \$72,246,000 in federal funds for local election assistance.<sup>26</sup>

In response to the coronavirus pandemic, Statutes 2020, chapter 4 (AB 860) was enacted as an urgency measure. This bill requires counties to distribute vote-by-mail ballots to all registered voters for the November 3, 2020 election, and requires county election officials to permit any voter to cast a ballot using a certified remote accessible vote-by-mail system for that statewide election.<sup>27</sup>

Also, a Budget Trailer Bill was enacted to specify that the \$36.5 million budget appropriation is for counties to conduct the November 2020 election consistent with state requirements put in place to reduce the spread of COVID-19, and to conduct voter education and outreach, and that these costs include “mailing and postage.”<sup>28</sup>

In addition, Elections Code section 19402 was amended by Statutes 2020, chapter 20 (AB 100) to add subdivision (d)(5) (eff. June 29, 2020), which states that the funds appropriated to counties by the 2019 State Budget Act for voting system replacement costs can now be used for “Costs reasonably related to the administration of an election during the COVID-19 pandemic.”

In accordance with these appropriations, Section VII. of the Proposed Parameters and Guidelines recognize the potential offsetting revenue as noted in the following underlined text:

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds,

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<sup>23</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

<sup>24</sup> *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447.

<sup>25</sup> Statutes 2019, chapter 23 (AB 74), Item 0890-101-0890, schedule (1).

<sup>26</sup> Statutes 2020, chapter 6 (SB 74) Item 0890-101-0001, schedule (1), and Item 0890-101-0890, schedule (1).

<sup>27</sup> See, Elections Code sections 3000.5 and 3016.7, added by Statutes 2020, chapter 4 (AB 860).

<sup>28</sup> Statutes 2020, chapter 7 (AB 89), Item 0890-101-0001, schedule (1), provisions (4) and (5).



funds appropriated in the State Budget for elections that are used to fund this mandate, and other state funds, shall be identified and deducted from the claim. This includes, but is not limited to, federal funds appropriated for elections in the 2019 State Budget Act (Stats. 2019, ch. 23, AB 74, Item 0890-101-0890) and state and federal funds appropriated for elections in the 2020 State Budget Act and Trailer Bills (Stats. 2020, ch. 6, SB 74, Items 0890-101-0001 & 0890-101-0890; Stats. 2020, ch. 7 (AB 89), Item 0890-101-0001; & Elec. Code § 19402, as amended by Stats. 2020, ch. 20 (AB 100)) that are used to fund this mandate.

**E. Claim Preparation and Submission (Section VI. of the Parameters and Guidelines)**

Section V. of the Parameters and Guidelines (Claim Preparation and Submission) identifies the direct costs that are eligible for reimbursement, including: salaries and benefits, materials and supplies, contracted services, travel, training, and fixed assets. However, training and travel costs are not included in the Parameters and Guidelines because those activities were not approved in the Test Claim Decision and the claimant did not request these costs as reasonably necessary to perform the mandated activities or submit evidence to support such a request. The remaining sections of the Proposed Parameters and Guidelines contain standard boilerplate language.

**IV. Staff Recommendation**

Staff recommends that the Commission adopt the Proposed Decision and Parameters and Guidelines in accordance to article XIII B, section 6(a) of California Constitution and Government Code section 17514 to provide for reimbursement beginning January 1, 2019.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical changes to the Proposed Decision following the hearing.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES  
FOR:

Elections Code Section 3010  
Statutes 2018, Chapter 120 (AB 216)  
The period of reimbursement begins  
January 1, 2019.

Case No.: 19-TC-01

*Vote by Mail: Prepaid Postage*

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

*(Adopted December 4, 2020)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided the Decision and Parameters and Guidelines during a regularly scheduled hearing on December 4, 2020. [Witness list will be included in the adopted Decision.]

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 sections 17500 et seq., and related case law.

The Commission [adopted/modified/rejected] the Decision and Parameters and Guidelines by a vote of [vote count will be in the adopted Decision], as follows:

<b>Member</b>	<b>Vote</b>
Lee Adams, County Supervisor	
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	
Jeannie Lee, Representative of the Director of the Office of Planning and Research	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Sarah Olsen, Public Member	
Carmen Ramirez, City Council Member	
Jacqueline Wong-Hernandez, Representative of the State Controller	

**I. Summary of the Mandate**

On July 24, 2020, the Commission on State Mandates (Commission) adopted the Test Claim Decision finding that Elections Code section 3010, as amended by Statutes 2018, chapter 120, imposes a reimbursable state-mandated program on cities and counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved the Test Claim to provide prepaid postage on identification envelopes

delivered to voters with their vote-by-mail ballots, beginning January 1, 2019, for the following elections:

- Statewide general elections, statewide direct primary elections, and the presidential primary elections conducted by counties.<sup>29</sup>
- Regular local elections compelled by state law.<sup>30</sup>
- Special elections called by the Governor or required by state law, including recall elections of local officers, special elections forced by a petition of the voters to issue school bonds or replace an appointee and fill a vacant school board position, and elections required by state law that are conducted by charter cities and counties.<sup>31</sup>
- School district and community college district discretionary elections required by state law to be conducted by counties and cities when the election is consolidated with non-educational issues or elective offices.<sup>32</sup>

The Commission further concluded that Elections Code section 3010, as amended by Statutes 2018, chapter 120, does *not* impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution:

- When a county or city conducts its own discretionary local elections or holds a required special election that could have been consolidated with a regular election within statutory deadlines; or
- When counties conduct elections for cities or special districts; or when cities and counties conduct an election solely on behalf of a school district or community college district (with no other non-educational issues or elective offices on the ballot). In these elections, there is fee authority sufficient to cover the costs of the mandate pursuant to Government Code section 17556(d) so there are no costs mandated by the state.<sup>33</sup>

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<sup>29</sup> Elections Code sections 1200-1202, 13001.

<sup>30</sup> For example, California Constitution, article 6, section 16(b), and article 11, section 1; Elections Code sections 1300 et seq., 10517; Education Code sections 5300, 5303; Government Code section 24200, 25304.5.

<sup>31</sup> For example, Elections Code section 10700 (vacancy in a congressional or legislative office), 11110 (recall of state officers), 11200 et seq. (recall of local officers); Education Code section 15100 (voter petition for school bonds); Education Code section 5091(c) (voter petition to replace an appointee and fill a vacant board position); Elections Code sections 8026 (death of incumbent or challenger for a nonpartisan statewide, countywide, or citywide office, or for a nonpartisan office that is elected by division, area, or district, before an election); Education Code section 5093 (special elections consolidated with the next regular election when the vacancy occurs during the period between six months and 130 days prior to a regularly scheduled governing board election).

<sup>32</sup> Education Code sections 5300 and 5303. Elections Code section 10517.

<sup>33</sup> Elections Code sections 10002, 10517, 10520, and Education Code section 5227.

## **II. Procedural History**

On July 24, 2020, the Commission adopted the Test Claim Decision,<sup>34</sup> and the Decision and Draft Expedited Parameters and Guidelines were issued on that date.<sup>35</sup> On August 14, 2020, the County of San Diego filed comments on the Draft Expedited Parameters and Guidelines.<sup>36</sup> On September 1, 2020, Commission staff issued the Draft Proposed Decision and Parameters and Guidelines.

## **III. Positions of the Parties**

### **A. County of Los Angeles**

The claimant, County of Los Angeles, did not file comments on the Draft Expedited Parameters and Guidelines.

### **B. County of San Diego**

Interested party County of San Diego filed comments on the Draft Expedited Parameters and Guidelines, requesting reimbursement for the increased costs of purchasing postage subscriptions with the U.S. Post Office to prepare for a possible increase in mail after the passage of the test claim statute:

The County respectfully requests the Commission include in the parameters and guidelines that local governments can claim reimbursement for increased costs in their subscriptions with the United States Postal Service (“USPS”), if any, that local governments incurred to prepare for a possible increase in mail after the passage of AB 216. These costs fall within the definition of “reasonably necessary activities” pursuant to 2 C.C.R. section 1183.7(d).

For example, the Registrar of Voters for the County anticipated an increase in mail after the passage of AB 216 and thus purchased a high volume mail subscription (“qualified business reply mail”) from the USPS. This subscription costs \$2,405 per quarter over and above the Registrar’s prior subscription. (Exhibit A (Declaration of Liliana Lau) ¶¶ 4-6; id. Ex. A (receipt).)

The activity for which these costs are reasonably necessary was pled in the test claim. (See 2 C.C.R. § 1183.7(d).) Specifically, these costs were (and will continue to be) reasonably necessary to handle the potential increased volume of ballots returned by mail when postage is prepaid as required by Elections Code section 3010, as amended by AB 216. (See, e.g., Test Claim filed by the County of Los Angeles, pp. 6-7.) The County described this cost in its comments to the

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<sup>34</sup> Exhibit A, Test Claim Decision.

<sup>35</sup> Exhibit B, Draft Expedited Parameters and Guidelines.

<sup>36</sup> Exhibit C, County of San Diego’s Comments on the Draft Expedited Parameters and Guidelines.

test claim. (County of San Diego’s Comments on the Test Claim filed February 3, 2020, p. 6; id. Exhibit E (Declaration of Liliana Lau), ¶ 4.)<sup>37</sup>

These comments were signed under penalty of perjury by the deputy county counsel to the County of San Diego.<sup>38</sup>

The County’s request is also supported by a declaration by the County’s Administrative Services Manager for the Registrar of Voters, which states in relevant part the following:

4. Due to the anticipated increase in mail after the passage of AB 216, the Registrar of Voters purchased a high volume mail subscription (“qualified business reply mail”) from the United States Postal Service (USPS).
5. This subscription costs the Registrar of Voters \$2,405 quarterly.
6. Prior to the passage of AB 216, the Registrar did not have this high volume mail subscription and did not incur this fee.<sup>39</sup>

### **C. Department of Finance**

The Department of Finance has not filed any comments on the Draft Expedited Parameters and Guidelines.

## **IV. Discussion**

### **A. Eligible Claimants (Section II. of the Parameters and Guidelines)**

In the Test Claim Decision, the Commission found that school districts, community college districts, and special districts are not mandated by state law to provide prepaid postage on the identification envelopes. The requirement is imposed solely on counties and cities.<sup>40</sup>

Accordingly, Section II. of the Parameters and Guidelines states the following: “Any city, county, or city and county that incurs increased costs as a result of this mandate is eligible to claim reimbursement.”

### **B. Period of Reimbursement (Section III. of Parameters and Guidelines)**

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the test claim on October 15, 2019, establishing eligibility for reimbursement for the 2018-2019 fiscal year, beginning July 1, 2018. However, Statutes 2018, chapter 120 became effective on January 1, 2019, establishing the period of reimbursement for costs incurred beginning January 1, 2019.

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<sup>37</sup> Exhibit C, County of San Diego’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-2.

<sup>38</sup> Exhibit C, County of San Diego’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>39</sup> Exhibit C, County of San Diego’s Comments on the Draft Expedited Parameters and Guidelines, page 4.

<sup>40</sup> Exhibit A, Test Claim Decision, pages 20-23.

Accordingly, Section III. of the Parameters and Guidelines states that the period of reimbursement begins January 1, 2019.

**C. Reimbursable Activities (Section IV. of the Parameters and Guidelines)**

Pursuant to Government Code section 17557(a) and section 1183.7 of the Commission’s regulations, the Parameters and Guidelines must identify the activities mandated by the state and “may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program.” According to the Commission’s regulations:

‘Reasonably necessary activities’ are those activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program. Activities required by statutes, regulations and other executive orders that were not pled in the test claim may only be used to define reasonably necessary activities to the extent that compliance with the approved state-mandated activities would not otherwise be possible.<sup>41</sup>

Any proposed reasonably necessary activity must be supported by substantial evidence in the record explaining why the proposed activity is necessary for the performance of the state-mandated activity in accordance with Government Code sections 17557(a), 17559, and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5. Section 1187.5 of the Commission’s regulations requires that oral or written representations of fact shall be under oath or affirmation; that all written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so.

Section IV. of the Parameters and Guidelines lists the activities that the Commission approved as reimbursable state-mandated activities. The mandate is to provide prepaid postage on identification envelopes delivered to voters with their vote-by-mail ballots for those elections required to be conducted by state law beginning January 1, 2019. Therefore, the cost of postage used for the mandate is eligible for reimbursement. As indicated in the Test Claim Decision, the claimant declared under penalty of perjury that the average cost of postage was \$.605 per ballot for fiscal year 2018-2019.<sup>42</sup>

The County of San Diego filed comments on the Draft Expedited Parameters and Guidelines, requesting reimbursement for the increased costs in purchasing high volume postage subscriptions with the U.S. Post Office to prepare for a possible increase in mail after the passage of the test claim statute:

The County respectfully requests the Commission include in the parameters and guidelines that local governments can claim reimbursement for increased costs in their subscriptions with the United States Postal Service (“USPS”), if any, that local governments incurred to prepare for a possible increase in mail after the passage of AB 216. These costs fall within the definition of “reasonably necessary activities” pursuant to 2 C.C.R. section 1183.7(d).

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<sup>41</sup> California Code of Regulations, title 2, section 1183.7(d).

<sup>42</sup> Exhibit A, Test Claim Decision, page 42.

For example, the Registrar of Voters for the County anticipated an increase in mail after the passage of AB 216 and thus purchased a high volume mail subscription (“qualified business reply mail”) from the USPS. This subscription costs \$2,405 per quarter over and above the Registrar’s prior subscription. (Exhibit A (Declaration of Liliana Lau) ¶¶ 4-6; id. Ex. A (receipt).)

The activity for which these costs are reasonably necessary was pled in the test claim. (See 2 C.C.R. § 1183.7(d).) Specifically, these costs were (and will continue to be) reasonably necessary to handle the potential increased volume of ballots returned by mail when postage is prepaid as required by Elections Code section 3010, as amended by AB 216. (See, e.g., Test Claim filed by the County of Los Angeles, pp. 6-7.) The County described this cost in its comments to the test claim. (County of San Diego’s Comments on the Test Claim filed February 3, 2020, p. 6; id. Exhibit E (Declaration of Liliana Lau), ¶ 4.)<sup>43</sup>

These comments were signed under penalty of perjury by the deputy county counsel to the County of San Diego.<sup>44</sup>

The County’s request is also supported by a declaration by the County’s Administrative Services Manager for the Registrar of Voters, which states in relevant part the following:

4. Due to the anticipated increase in mail after the passage of AB 216, the Registrar of Voters purchased a high volume mail subscription (“qualified business reply mail”) from the United States Postal Service (USPS).
5. This subscription costs the Registrar of Voters \$2,405 quarterly.
6. Prior to the passage of AB 216, the Registrar did not have this high volume mail subscription and did not incur this fee.<sup>45</sup>

The County’s request for reimbursement of the full costs for mail service subscriptions is overbroad since, as stated, the postage can be used for mailings that are not mandated by State or are not part of this mandated program. As indicated in the Test Claim Decision,<sup>46</sup> the mandate to provide prepaid postage on vote-by-mail identification envelopes is limited to only the following elections:

- Statewide general elections, statewide direct primary elections, and the presidential primary elections conducted by counties.<sup>47</sup>

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<sup>43</sup> Exhibit C, County of San Diego’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-2.

<sup>44</sup> Exhibit C, County of San Diego’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>45</sup> Exhibit C, County of San Diego’s Comments on the Draft Expedited Parameters and Guidelines, page 4.

<sup>46</sup> Exhibit A, Test Claim Decision, pages 45-46.

<sup>47</sup> Elections Code sections 1200-1202, 13001.

- Regular local elections compelled by state law.<sup>48</sup>
- Special elections called by the Governor or required by state law, including recall elections of local officers, special elections forced by a petition of the voters to issue school bonds or replace an appointee and fill a vacant school board position, and elections required by state law that are conducted by charter cities and counties.<sup>49</sup>
- School district and community college district discretionary elections required by state law to be conducted by counties and cities when the election is consolidated with non-educational issues or elective offices.<sup>50</sup>

Thus, the County's request goes beyond the scope of this mandate.

The Commission finds, however, that the pro rata cost of postage subscriptions, based only on the portion of postage actually used to comply with the mandate in the required elections identified in the Test Claim Decision, is reasonably necessary to comply with the mandate, and is supported by the declarations filed by the County of San Diego. Accordingly, Section IV. of the Parameters and Guidelines states the following:

Provide prepaid postage on identification envelopes delivered to voters with their vote-by-mail ballots for the following elections:

- Statewide general elections, statewide direct primary elections, and the presidential primary elections conducted by counties.<sup>51</sup>
- Regular local elections compelled by state law.<sup>52</sup>
- Special elections called by the Governor or required by state law, including recall elections of local officers, special elections forced by a petition of the voters to issue school bonds or replace an appointee and fill a vacant school board position,

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<sup>48</sup> For example, California Constitution, article 6, section 16(b), and article 11, section 1; Elections Code sections 1300 et seq., 10517; Education Code sections 5300, 5303; Government Code section 24200, 25304.5.

<sup>49</sup> For example, Elections Code section 10700 (vacancy in a congressional or legislative office), 11110 (recall of state elected officers), 11200 et seq. (recall of local officers); Education Code section 15100 (voter petition for school bonds); Education Code section 5091(c) (voter petition to replace an appointee and fill a vacant board position); Elections Code sections 8026 (death of incumbent or challenger for a nonpartisan statewide, countywide, or citywide office, or for a nonpartisan office that is elected by division, area, or district, before an election); Education Code section 5093 (special elections consolidated with the next regular election when the vacancy occurs during the period between six months and 130 days prior to a regularly scheduled governing board election).

<sup>50</sup> Education Code sections 5300 and 5303. Elections Code sections 3024, 10517.

<sup>51</sup> Elections Code sections 1200-1202, 13001.

<sup>52</sup> For example, California Constitution, article 6, section 16(b), and article 11, section 1; Elections Code sections 1300 et seq., 10517; Education Code sections 5300, 5303; Government Code section 24200, 25304.5.



and elections required by state law that are conducted by charter cities and counties.<sup>53</sup>

- School district and community college district discretionary elections required by state law to be conducted by counties and cities when the election is consolidated with non-educational issues or elective offices.<sup>54</sup>

Reimbursement for this activity includes the cost of postage, including pro rata postage subscription costs, incurred *only* for the vote by mail identification envelopes delivered to voters for the required elections bulleted above.

***Reimbursement is not required in the following circumstances:***

- When a county or city conducts its own discretionary local elections or holds a required special election that could have been consolidated with a regular election within statutory deadlines; or
- When counties conduct elections for cities or special districts;<sup>55</sup> or when cities and counties conduct an election solely on behalf of a school district or community college district (with no other non-educational issues or elective offices on the ballot).<sup>56</sup> In these elections, there is fee authority sufficient to cover the costs of the mandate pursuant to Government Code section 17556(d) so there are no costs mandated by the state.

#### **D. Offsetting Savings and Reimbursement (Section VII. of the Parameters and Guidelines)**

Reimbursement under article XIII B, section 6 is required only when the mandated program forces local government to incur “increased actual expenditures of limited tax proceeds that are counted against the local government’s spending limit.”<sup>57</sup> The spending limit only applies to

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<sup>53</sup> For example, Elections Code section 10700 (vacancy in a congressional or legislative office), 11110 (recall of state elected officers), 11200 et seq. (recall of local officers); Education Code section 15100 (voter petition for school bonds); Education Code section 5091(c) (voter petition to replace an appointee and fill a vacant board position); Elections Code sections 8026 (death of incumbent or challenger for a nonpartisan statewide, countywide, or citywide office, or for a nonpartisan office that is elected by division, area, or district, before an election); Education Code section 5093 (special elections consolidated with the next regular election when the vacancy occurs during the period between six months and 130 days prior to a regularly scheduled governing board election).

<sup>54</sup> Education Code sections 5300 and 5303. Elections Code sections 3024, 10517.

<sup>55</sup> Elections Code sections 10002, 10520.

<sup>56</sup> Elections Code section 10520, Education Code section 5227, 5420, and 3024; *County of Yolo v. Los Rios Community College District* (1992) 5 Cal.App.4th 1242, 1252.

<sup>57</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

revenue that constitutes the local agency’s “proceeds of taxes.”<sup>58</sup> Thus, when a local agency does not use its own proceeds of taxes, but uses state or federal funds that have been appropriated and are used to pay for the mandated program, then reimbursement is not required for spending those funds and they must be identified as offsetting revenues and deducted from a claim for reimbursement.

Therefore, the Draft Expedited Parameters and Guidelines, in Section VII., identified potentially offsetting revenues appropriated in the State Budget for elections used to fund this mandate as follows:

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, *funds appropriated in the State Budget for elections that are used to fund this mandate*, and other state funds, shall be identified and deducted from the claim.<sup>59</sup>

As described below, Section VII. of the Parameters and Guidelines has now been updated to specifically identify the state and federal funds appropriated in 2019 and 2020 as potential offsetting revenue when used by the claimant to pay for the mandate.

The 2019 State Budget Act (Stats. 2019, ch. 23 (AB 74)), in Item 0890-101-0890 appropriates \$19,964,000 for “local assistance” for elections from the Federal Trust Fund, which could be used to pay for the mandate in fiscal year 2019-2020.<sup>60</sup>

The 2020 State Budget Act (Stats. 2020, ch. 6 (SB 74)) also appropriates state and federal funds for local assistance for elections. Item 0890-101-0001, schedule (1), of the Act appropriates \$36,500,000 in state funds for local assistance for elections. Provisions (1) states that “pursuant to a request from the Secretary of State that includes detailed justification for the increased expenses” the Department of Finance may order the State Controller to increase the appropriation in Schedule (1) “to support increased costs associated with the November 2020 Elections.” Provision (2) requires the State Controller, if required by the Department of Finance, to transfer the \$36.5 million to the Secretary of State for “state-level election activities.” Provision (3) states that the Controller shall reduce the amounts appropriated in Schedule (1) if federal funds are received for the same purposes. A separate appropriation in the 2020 Budget Act, Item 0890-101-0890, appropriates \$72,246,000 for local assistance payable from the Federal Trust Fund for elections. According to Provision (1), this amount may be increased by the Department of Finance up to the total amount of the program reserve. Provision (4) states:

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<sup>58</sup> *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447.

<sup>59</sup> Exhibit B, Draft Expedited Parameters and Guidelines, page 9 (emphasis added).

<sup>60</sup> Statutes 2019, chapter 23, schedule (1), provision (1) further states that the Department of Finance may authorize “an increase in the appropriation of this item, up to the total amount of the program reserve. Any such approval shall be accompanied by the approval of an amended spending plan submitted by the Secretary of State providing detailed justification for the increased expenses.”

Of the amount appropriated in this item, \$65,482,000 shall be used to prevent, prepare for, and respond to the coronavirus for the 2020 federal election cycle. The Director of Finance, upon notification to the Chairperson of the Joint Legislative Budget Committee, shall authorize a transfer from the funding appropriated in Schedule (1) of this item to Schedule (1) of Item 0890-001-0890 for state-level activities related to protecting the 2020 elections from the effects of the coronavirus.

In response to the coronavirus pandemic, Statutes 2020, chapter 4 (AB 860) was enacted as an urgency measure to require counties to distribute vote by mail ballots to all registered voters for the November 3, 2020 election, and to require county election officials to permit any voter to cast a ballot using a certified remote accessible vote by mail system for that statewide election.<sup>61</sup> Thus, the federal funds appropriated to counties to “prevent, prepare for, and respond to the coronavirus for the 2020 federal election cycle”<sup>62</sup> as well as state funds appropriated “to support increased costs associated with the November 2020 Elections”<sup>63</sup> can be used for the prepaid postage costs on the return envelopes for vote by mail ballots for the November 3, 2020 election and other local election needs.

Statutes 2020, chapter 7 (AB 89), a Budget Trailer Bill, amended Item 0890-101-0001 that appropriated \$36,500,000 in state funds for local assistance for elections. The amendment to schedule (1) added Provisions (4) and (5) to specify that the purpose of the funds appropriated to counties is to conduct the November 2020 election consistent with state requirements put in place to reduce the spread of COVID-19, and to conduct voter education and outreach, and states that these costs include “mailing and postage” as follows:

4. Of the amount [\$36.5 million] appropriated in this item, \$23,133,000 shall be provided to counties for: (1) conducting the November 2020 election consistent with state requirements put in place to reduce the spread of COVID-19, and (2) conducting voter education and outreach. The Secretary of State shall estimate costs for these requirements by county, including additional ballot printing, *mailing and postage*, equipment needs, additional staffing, communication and outreach, and other costs as necessary. Pursuant to Section 19402 of the Elections Code, counties may use excess funding to cover COVID-19 related costs in the November 2020 election. The Secretary of State shall compile the remaining amounts from the state’s voting system funding provided in the Budget Act of 2018 (Chs. 29 and 30, Stats. 2018) and the Budget Act of 2019 (Chs. 23 and 55, Stats. 2019) by county. The Secretary of State shall then calculate the difference between the costs related to conducting the November 2020 election and remaining state voting system funding by county. The Secretary of State shall

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<sup>61</sup> See, Elections Code sections 3000.5 and 3016.7, added by Statutes 2020, chapter 4 (AB 860).

<sup>62</sup> Statutes 2020, chapter 6, Item 0890-101-0890, schedule (1), provision (4).

<sup>63</sup> Statutes 2020, chapter 6, Item 0890-101-0001, schedule (1), provision (1).

then reimburse counties for the difference in costs by using \$23,133,000 provided in this item and a portion of the \$65,482,000 provided in Item 0890-101-0890.<sup>64</sup>

5. Of the amount appropriated in this item, \$11,867,000 shall be provided to counties for costs related to COVID-19 in the November 2020 election. The Secretary of State shall provide this funding to counties based on a prorated amount per registered voter in each county.

In addition, Elections Code section 19402 was amended by Statutes 2020, chapter 20 (AB 100) to add subdivision (d)(5) (eff. June 29, 2020), which states that the funds appropriated to counties by the 2019 State Budget Act for voting system replacement costs can now be used for “Costs reasonably related to the administration of an election during the COVID-19 pandemic.”

After the 2020 Budget Act and trailer bills were enacted, the California Secretary of State issued two memoranda to counties. The first, dated July 17, 2020 (Memorandum #20153), explains that AB 89 and AB 100 appropriated funding for the November 2020 election consistent with the requirements to reduce the spread of COVID-19. According to the memo, these bills:

- Appropriated \$65 million in federal funds for state and county support;
- Appropriated \$35 million in state funds for state and county support for communication and outreach efforts;
- Removed the county match requirement for state voting system replacement contracts from July 1, 2020, through June 30, 2021; and
- Modified the allowable expenses for the state voting system replacement funds specified in Elections Code section 19402 to include “costs reasonably related to the administration of an election during the COVID-19 pandemic.”

Additionally, by the state appropriating the \$35 million in state funds, the 20% match requirement for the federal CARES [Coronavirus Aid, Relief, and Economic Security] Act funding is satisfied. Therefore, counties no longer need to establish the county 20% match requirement for the federal COVID-19 funds.<sup>65</sup>

The memorandum further explains the direction in AB 89 requiring the Secretary of State to compile the remaining amounts from the state’s voting system funding provided in the 2019 Budget Act by county, calculate the difference between the costs related to conducting the November 2020 election and remaining state voting system funding by county, and then reimburse counties for the difference in costs.<sup>66</sup>

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<sup>64</sup> Emphasis added.

<sup>65</sup> Exhibit X, California Secretary of State, Memorandum #20153, dated July 17, 2020, <https://elections.cdn.sos.ca.gov/ccrov/pdf/2020/july/20153sl.pdf> (accessed on August 24, 2020), page 1.

<sup>66</sup> Exhibit X, California Secretary of State, Memorandum #20153, dated July 17, 2020, <https://elections.cdn.sos.ca.gov/ccrov/pdf/2020/july/20153sl.pdf> (accessed on August 24, 2020), page 2.

The second memo from the Secretary of State, dated July 27, 2020 (Memorandum #20160), identifies the allocation of state and federal funding to counties pursuant to the 2020 Budget Bills, and clarifies that the portion allocated for COVID-19 prevention can be used for the increased costs relating to voting by mail, and the other portion is to be used for outreach and communication as follows:

As set forth below, a portion of the funding can be used to conduct the November 2020 election in the face of the COVID-19 pandemic, which can include increased costs related to all aspects of voting by mail, equipment needs for processing increased vote-by-mail ballots and meeting the in-person voting requirements, permanent and temporary staffing, additional security, specialized training of staff and election workers, cleaning and disinfection, personal protective equipment, and polling locations and election facilities. Another portion is to be used for outreach and communication.<sup>67</sup>

Accordingly, Section VII. of the Parameters and Guidelines recognize the following potentially offsetting revenue: federal funds appropriated in the 2019 State Budget Act (Stats. 2019, ch. 23, AB 74, Item 0890-101-0890) and state and federal funds appropriated for elections in the 2020 State Budget Act and Trailer Bills (Stats. 2020, ch. 6, SB 74, Items 0890-101-0001 & 0890-101-0890; Stats. 2020, ch. 7 (AB 89), Item 0890-101-0001; and Elections Code section 19402, as amended by Stats. 2020, ch. 20 (AB 100)), as follows:

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, funds appropriated in the State Budget for elections that are used to fund this mandate, and other state funds, shall be identified and deducted from the claim. This includes, but is not limited to, federal funds appropriated for elections in the 2019 State Budget Act (Stats. 2019, ch. 23, AB 74, Item 0890-101-0890) and state and federal funds appropriated for elections in the 2020 State Budget Act and Trailer Bills (Stats. 2020, ch. 6, SB 74, Items 0890-101-0001 & 0890-101-0890; Stats. 2020, ch. 7 (AB 89), Item 0890-101-0001; & Elec. Code, § 19402, as amended by Stats. 2020, ch. 20 (AB 100)) that are used to fund this mandate.

#### **E. Claim Preparation and Submission (Section VI. of the Parameters and Guidelines)**

Section V. of the Parameters and Guidelines (Claim Preparation and Submission) identifies the direct costs that are eligible for reimbursement, including: salaries and benefits, materials and supplies, contracted services, travel, training, and fixed assets. However, training and travel costs are not included in the Parameters and Guidelines because those activities were not approved in the Test Claim Decision and the claimant did not request these costs as reasonably

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<sup>67</sup> Exhibit X, California Secretary of State, Memorandum #20160, dated July 27, 2020, <https://elections.cdn.sos.ca.gov/ccrov/pdf/2020/july/20160sl.pdf> (accessed on August 24, 2020), page 1.

necessary to perform the mandated activities or submit evidence to support such a request. The remaining sections of the Parameters and Guidelines contain standard boilerplate language.

**V. Conclusion**

Based on the foregoing, the Commission hereby adopts the Decision and Parameters and Guidelines.

**PARAMETERS AND GUIDELINES<sup>68</sup>**

Elections Code Section 3010

Statutes 2018, Chapter 120 (AB 216)

*Vote by Mail Ballots: Prepaid Postage*

19-TC-01

Reimbursement for this program begins January 1, 2019

**I. SUMMARY OF THE MANDATE**

On July 24, 2020, the Commission on State Mandates (Commission) adopted the Test Claim Decision finding that Elections Code section 3010, as amended by Statutes 2018, chapter 120, imposes a reimbursable state-mandated program on cities and counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved the Test Claim to provide prepaid postage on identification envelopes delivered to voters with their vote-by-mail ballots, beginning January 1, 2019, for the following elections:

- Statewide general elections, statewide direct primary elections, and the presidential primary elections conducted by counties.<sup>69</sup>
- Regular local elections compelled by state law.<sup>70</sup>
- Special elections called by the Governor or required by state law, including recall elections of local officers, special elections forced by a petition of the voters to issue school bonds or replace an appointee and fill a vacant school board position, and elections required by state law that are conducted by charter cities and counties.<sup>71</sup>

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<sup>68</sup> Please note that the Decision and Parameters and Guidelines is a single document and must be read as a whole. It is not intended to be separated and should be posted in its entirety.

<sup>69</sup> Elections Code sections 1200-1202, 13001.

<sup>70</sup> For example, California Constitution, article 6, section 16(b), and article 11, section 1; Elections Code sections 1300 et seq., 10517; Education Code sections 5300, 5303; Government Code section 24200, 25304.5.

<sup>71</sup> For example, Elections Code section 10700 (vacancy in a congressional or legislative office), 11110 (recall of state officers), 11200 et seq. (recall of local officers); Education Code section 15100 (voter petition for school bonds); Education Code section 5091(c) (voter petition to replace an appointee and fill a vacant board position); Elections Code sections 8026 (death of

- School district and community college district discretionary elections required by state law to be conducted by counties and cities when the election is consolidated with non-educational issues or elective offices.<sup>72</sup>

The Commission further concluded that Elections Code section 3010, as amended by Statutes 2018, chapter 120, does *not* impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution:

- When a county or city conducts its own discretionary local elections or holds a required special election that could have been consolidated with a regular election within statutory deadlines; or
- When counties conduct elections for cities or special districts; or when cities and counties conduct an election solely on behalf of a school district or community college district (with no other non-educational issues or elective offices on the ballot). In these elections, there is fee authority sufficient to cover the costs of the mandate pursuant to Government Code section 17556(d) so there are no costs mandated by the state.<sup>73</sup>

## II. ELIGIBLE CLAIMANTS

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

## III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the test claim on October 15, 2019, establishing eligibility for reimbursement for the 2018-2019 fiscal year, beginning July 1, 2018. However, Statutes 2018, chapter 120 became effective on January 1, 2019, establishing the period of reimbursement for costs incurred beginning January 1, 2019.

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

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

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incumbent or challenger for a nonpartisan statewide, countywide, or citywide office, or for a nonpartisan office that is elected by division, area, or district, before an election); Education Code section 5093 (special elections consolidated with the next regular election when the vacancy occurs during the period between six months and 130 days prior to a regularly scheduled governing board election).

<sup>72</sup> Education Code sections 5300 and 5303. Elections Code section 10517.

<sup>73</sup> Elections Code sections 10002, 10517, 10520, and Education Code section 5227.

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

#### **IV. REIMBURSABLE ACTIVITIES**

To be eligible for mandated cost reimbursement for any 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, and declarations. Declarations must include a certification or declaration stating, “I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct,” and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

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

For each eligible claimant that incurs increased costs, the following activity is reimbursable:

Provide prepaid postage on identification envelopes delivered to voters with their vote-by-mail ballots for the following elections:

- Statewide general elections, statewide direct primary elections, and the presidential primary elections conducted by counties.<sup>74</sup>

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<sup>74</sup> Elections Code sections 1200-1202, 13001.



- Regular local elections compelled by state law.<sup>75</sup>
- Special elections called by the Governor or required by state law, including recall elections of local officers, special elections forced by a petition of the voters to issue school bonds or replace an appointee and fill a vacant school board position, and elections required by state law that are conducted by charter cities and counties.<sup>76</sup>
- School district and community college district discretionary elections required by state law to be conducted by counties and cities when the election is consolidated with non-educational issues or elective offices.<sup>77</sup>

Reimbursement for this activity includes the cost of postage, including pro rata postage subscription costs, incurred *only* for the vote by mail identification envelopes delivered to voters for the required elections bulleted above.

***Reimbursement is not required in the following circumstances:***

- When a county or city conducts its own discretionary local elections or holds a required special election that could have been consolidated with a regular election within statutory deadlines; or
- When counties conduct elections for cities or special districts;<sup>78</sup> or when cities and counties conduct an election solely on behalf of a school district or community college district (with no other non-educational issues or elective offices on the ballot).<sup>79</sup> In these elections, there is fee authority sufficient to cover the costs of the mandate pursuant to Government Code section 17556(d) so there are no costs mandated by the state.

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<sup>75</sup> For example, California Constitution, article 6, section 16(b), and article 11, section 1; Elections Code sections 1300 et seq., 10517; Education Code sections 5300, 5303; Government Code section 24200, 25304.5.

<sup>76</sup> For example, Elections Code section 10700 (vacancy in a congressional or legislative office), 11110 (recall of state elected officers), 11200 et seq. (recall of local officers); Education Code section 15100 (voter petition for school bonds); Education Code section 5091(c) (voter petition to replace an appointee and fill a vacant board position); Elections Code sections 8026 (death of incumbent or challenger for a nonpartisan statewide, countywide, or citywide office, or for a nonpartisan office that is elected by division, area, or district, before an election); Education Code section 5093 (special elections consolidated with the next regular election when the vacancy occurs during the period between six months and 130 days prior to a regularly scheduled governing board election).

<sup>77</sup> Education Code sections 5300 and 5303. Elections Code sections 3024, 10517.

<sup>78</sup> Elections Code sections 10002, 10520.

<sup>79</sup> Elections Code section 10520, Education Code section 5227, 5420, and 3024; *County of Yolo v. Los Rios Community College District* (1992) 5 Cal.App.4th 1242, 1252.

## **V. CLAIM PREPARATION AND SUBMISSION**

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV., Reimbursable Activities, of this document. Each claimed 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**

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

### **B. Indirect Cost Rates**

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include 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 2 Code of Federal Regulations (CFR) part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10 percent of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10 percent.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR part 225, appendices A and B (OMB Circular A-87 attachments A & B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR part 225, appendices A and B (OMB Circular A-87 attachments A & 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 & 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 that the total amount of allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 attachments A & B) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.

## **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed pursuant to this chapter<sup>80</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

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<sup>80</sup> This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

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 offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, funds appropriated in the State Budget or any Budget Trailer bill for elections that are used to fund this mandate, and other state funds, shall be identified and deducted from the claim. This includes, but is not limited to, federal funds appropriated for elections in the 2019 State Budget Act (Stats. 2019, ch. 23, AB 74, Item 0890-101-0890) and state and federal funds appropriated for elections in the 2020 State Budget Act and Trailer Bills (Stats. 2020, ch. 6, SB 74, Items 0890-101-0001 & 0890-101-0890; Stats. 2020, ch. 7 (AB 89), Item 0890-101-0001; & Elec. Code, § 19402, as amended by Stats. 2020, ch. 20 (AB 100)) that are used to fund this mandate.

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

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local governments in claiming costs to be reimbursed. The claiming instructions shall be derived from these parameters and guidelines and the decisions on the test claim and parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the eligible claimants to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

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

Upon request of an eligible claimant, the Commission shall review the claiming instructions issued by the 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 and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.17.

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

The decisions adopted for the test claim and parameters and guidelines are legally binding on all parties and interested parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On September 1, 2020, I served the:

- **Draft Proposed Decision and Parameters and Guidelines, Schedule for Comments, and Notice of Hearing issued September 1, 2020**

*Vote by Mail Ballots: Prepaid Postage, 19-TC-01*

Elections Code Section 3010; Statutes 2018, Chapter 120 (AB 216)

County of Los Angeles, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 1, 2020 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

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# COMMISSION ON STATE MANDATES

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**Last Updated:** 8/14/20

**Claim Number:** 19-TC-01

**Matter:** Vote by Mail Ballots: Prepaid Postage

**Claimant:** County of Los Angeles

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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