



County of San Diego

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**Commission on
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May 5, 2021

Via Drop Box

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Commission on State Mandates
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RE: Claimant's Rebuttal Comments on Test Claim
Extended Conditional Voter Registration, 20-TC-02

Dear Ms. Halsey:

I represent Claimant with regard to the above-referenced test claim. This letter responds to the comments of the Department of Finance (the "Department"), filed April 2, 2021. This letter also includes supplemental information about Claimant's estimate of costs for FY 20-21 in Claimant's test claim. (*See* Section IV, below.)

I. The Department Concedes SB 72 Created an Unfunded Mandate.

The Department does not dispute that SB 72's amendment to Section 2170(d)(1) ("SB 72") created an unfunded mandate. The Department thus tacitly concedes that issue.

II. The Department Concedes Claimants' Training and Supplies Costs Should be Paid by the State.

The Department does not dispute that Claimant incurred training and supplies costs as a result of the mandate, thus tacitly conceding that these categories of costs should be paid by the State.

III. The Department Disputes Claimants' Other Costs, but These Costs Should also be Paid by the State.

The Department disputes the following categories of costs for which Claimant seeks reimbursement:

1. Additional Registrar of Voters Staffing Costs
2. Election Staffing Costs
3. CVR Ballot Processing (labor costs)
4. Costs for opening and operating four new satellite locations

The first three categories of costs are described in the Declaration of Liliana Lau submitted in support of the test claim (“Lau Decl.”) in paragraphs 6(a), (c), and (d), and the Declaration of Michael Vu submitted in support of the test claim (“Vu Decl.”) in paragraphs 19(a), (c), and (d).

The fourth category of costs—the costs for opening and operating four new satellite locations—is described in the Declaration of Liliana Lau in paragraph 8, and the Declaration of Michael Vu in paragraphs 5 through 18.

The Department argues that the four categories of costs were not mandated by SB 72, but that the Registrar of Voters (“Registrar”) used its own discretion to incur these costs. Claimant respectfully disagrees with the Department.

A. Costs are Mandated if a Statute Requires Claimant to Incur Them.

If a statute mandates that local agencies provide a new program or higher level of service, then the State shall provide reimbursement for *all of* the costs of that program or higher level of service, with limited exceptions not relevant here. This is dictated by the California Constitution. Cal. Const. art. 13B, § 6 (“Section 6”).

Section 6 states in relevant part that “[w]henver 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.” (Emphasis added.) The language in Section 6 is broad, and the directive is mandatory. Section 6 plainly requires subvention for *all of* “the costs” of the program or higher level of service.

Although the language of Section 6 is clear on its face, the voter intent reinforces that the directive to the State to reimburse local agencies should be broadly construed. The voter intent of Section 6 was to provide subvention for all costs that local governments had to incur due to State mandates. In the ballot materials for Proposition 4 (which added Section 6 to the California Constitution), the analysis of the Legislative Analyst stated that Section 6 would “require the state to reimburse local governments for **the costs of complying with ‘state mandates.’** The term ‘state mandates’ was defined as **‘requirements imposed on local governments by legislation....’**” *Long Beach Unified*

Sch. Dist. v. State of California, 225 Cal. App. 3d 155, 175 (1990) (quoting (Ballot Pamp., Proposed Amend. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979) p. 16). The argument in favor of Proposition 4 stated that the proposition “WILL NOT allow the state government to force programs on local governments without the state paying for them.” Ballot Pamp., Proposed Amend. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979) p. 18.

The Legislature included similarly broad language in the statutes it enacted to implement Section 6. The Government Code states that costs are reimbursable if a claimant is “**required to incur**” them “**as a result of any statute...**which mandates a new program or higher level of service of an existing program within the meaning of Section 6....” Gov’t Code § 17514 (emphasis added).

The State’s reimbursement must include the costs of “reasonably necessary” activities. Gov’t Code § 17557(a). As the regulations clarify, “reasonably necessary activities” are “**activities necessary to comply with the statutes...**found to impose a state-mandated program.” Cal. Code Regs. tit. 2, § 1183.7 (emphasis added). These activities include activities required by statutes not pled in the test claim “**to the extent that compliance with the approved state-mandated activities would not otherwise be possible.**” *Id.* (emphasis added).

Claimant acknowledges that the Commission first adjudicates whether a statute imposes an unfunded mandate and what activities are required by the mandate, and then separately adjudicates what costs are “reasonably necessary” to be included in the Parameters & Guidelines. However, Claimant respectfully suggests these inquiries overlap and intertwine. Most statutes will not on their face expressly set out all of the numerous steps or activities that a local agency must undertake in order to achieve the specific mandate in the statute. But as a practical matter, several steps and activities will be required of the local agency in order for the agency to implement the mandate. All of the costs necessarily incurred by local agencies to implement the mandate should be reimbursed in order to achieve the objective of Section 6. This objective is to provide funding to local agencies to accomplish the mandates the State required them to achieve. An overly-technical approach to determining what activities are “required” by the mandates contravenes the purpose of Section 6.

The Court of Appeal has held that substance should dictate over form when determining what constitutes an unfunded mandate. In context of the Court’s decision that “unfunded mandates” could be issued in executive orders and were not limited to statutes, the Court explained:

The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation...creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public. **It is clear that the primary concern of the voters was the increased financial burdens being shifted to local government, not the form in which those burdens appeared.**

Long Beach Unified Sch. Dist., *supra*, 225 Cal. App. 3d at 174–75 (internal citation and quotation marks excluded).

With regard to this test claim, the activities that the Department argues were discretionary were not in fact discretionary. They were “required...as a result of” SB 72. Gov’t Code § 17514. At the very least, they were “reasonably necessary” in order to comply with SB 72. Claimant respectfully requests the Commission approve Claimant’s costs to conduct all of the activities set forth in the test claim.

1. Additional Registrar of Voters Staffing Costs Were Required as a Result of SB 72.

This category of costs consists of two sub-categories:

- (a) Additional Registrar of Voters staffing dating on or after January 1, 2020 for the Registrar’s office to plan and prepare for changes due to SB 72, including designing and developing necessary envelopes and workflows[; and]
- (b) The cost of additional Registrar of Voters staffing to handle data entry and processing of the additional increase in CVR registrations and ballots.

Lau Declaration, ¶ 7; *see id.*, ¶ 6(a); *see Vu Declaration* ¶ 19(a).

The first sub-category is costs for planning and preparation to implement the new processes and procedures required of SB 72. SB 72 imposed a new requirement for all *poll workers* to offer CVR to voters *at polling places*. This was a completely new process; poll workers had never been required to do this in the County of San Diego before SB 72 was enacted. It would be impossible to implement the requirements of SB 72 without some staff planning in advance of the election to discuss the new workflows. (*See Vu Dec.*, ¶ 19(a), (b), (e).) Further, as a practical matter, this completely new process required new CVR envelopes at the polls and satellite offices so that they could

be processed separately from other ballots at the Registrar's office. (Vu Decl., ¶ 19(e).) Thus Registrar staff had to spend time designing those envelopes as well. (*Id.*) The plain language of the statute may not require the Registrar to spend resources planning to implement its new requirements, but the Registrar necessarily must have done some planning in order to offer CVR as widely as SB 72 mandated. Thus not only were these costs "reasonably necessary" to implement SB 72, but they were "required...as a result of" SB 72.

The second sub-category is increased staffing costs for processing the increase in CVR registrations and ballots. Such costs were "required...as a result of" SB 72. SB 72 increased the number of voters who registered by CVR. In November 2018, 2,353 individuals registered or re-registered to vote using CVR; in March 2020, 13,452 individuals did so. (Vu Decl., ¶¶ 10, 18.) The legislative history of the statute indicates this was an *anticipated and desired* result of SB 72. The author of SB 72 expressly contemplated the bill would increase voter turnout.¹ Thus the increased staffing costs to process increased CVR registrations and ballots were a natural result of SB 72 and were "required...as a result of" SB 72.

2. Additional Election Worker Staffing Costs Were Required as a Result of SB 72.

Due to the anticipated increase in CVR voters as discussed in the preceding section, the Registrar was required to hire additional election workers. (Vu Decl., ¶ 19(c); Lau Decl., ¶¶ 6(c), 7.) Just as the Registrar was required to incur increased staffing costs to process the increased CVR registrations and ballots, the Registrar was also required to hire additional election workers to provide CVR to the additional voters at the polling places and satellite offices of the Registrar. This increase in voter turnout was expressly contemplated by SB 72, as discussed above, and thus these increased costs were "required...as a result of" SB 72.

3. Additional Labor Costs to Process CVR Ballots Were Required as a Result of SB 72.

Due to the increase in CVR voting described above, the Registrar used automated sorting equipment to sort the CVR ballots. (Vu Decl., ¶ 19(d); Lau Decl., ¶6(d).) Previously, the Registrar had sorted CVR ballots by hand. But because there were so many more CVR ballots to sort after SB 72 was enacted, the Registrar used automated

¹ Test Claim, Exhibit J at 6 ("Research has shown [same-day registration, *i.e.*, CVR] to have the following benefits for voters: *Increases voter turnout.*"); *id* at 4, 6, 8.

equipment to do so. Similar to the costs described in the preceding sections, these costs were incurred as a natural result of SB 72 and thus were “required...as a result of” SB 72.

Although the Department deems this to be a discretionary cost, the only discretion involved was to use the automated equipment to *reduce* staffing costs to process the CVR ballots. If the Registrar had not used the automated equipment, its labor costs to sort the CVR ballots would have been higher.

4. The Creation of Four Satellite Locations Was Reasonably Necessary to Implement SB 72.

As discussed above, Claimant respectfully submits that there is not a bright-line distinction between costs that are “required” by a mandate and costs that are “reasonably necessary” to implement a mandate.

Claimant concedes that SB 72 did not directly require that Claimant open additional satellite offices in March 2020. That said, the satellite offices were necessary for the Registrar to mitigate long lines and wait times at the polling places, when such long lines and wait times were a reasonably-anticipated result of SB 72.

In November 2018, CVR was newly available on election day at the Registrar’s one physical location. (*See* Vu Decl., ¶¶ 7-14.) During that election, a line of voters wrapped around the Registrar’s building equal to the length of over 5 football fields. (*Id.*, ¶ 10.) Although the polls closed at 8:00 p.m., the last voter left the Registrar’s building around 1:00 a.m. (*Id.*)

In March 2020, because SB 72 expanded CVR services to all *polling places*, there was a new possibility that voters would experience the long lines and wait times at *polling places* as well. This possibility was compounded by the fact that—not only were poll workers newly required to offer CVR to voters—but there were also 40 different variations of ballots available at the polls. (Vu Decl., ¶¶ 5, 13.)

In light of the new CVR processes and multiple ballot variations that poll workers would be required to manage on election day in March 2020, the Registrar needed to devise a solution so that voters would not face the long lines and wait times at polling places that voters had experienced in November 2018 at the Registrar’s office. (*Id.* ¶ 14.) Thus it was necessary, in light of SB 72, for the Registrar to create the four satellite locations described in the test claim.

IV. The Registrar's Previous Estimate of FY 20-21 Costs Should be Adjusted Downward because the Registrar will not Conduct a June 2021 Special Election.

Claimant is not aware of any requirement to update estimates of future costs that are contained in an original test claim. However, Claimant will note here that Claimant included estimated costs for conducting a special election on June 8, 2021 to fill the vacancy in Assembly District 79, but the Registrar now will not conduct this election because that vacancy was filled during the April special primary election.²

The Registrar has not finalized its cost calculations for conducting the April 6, 2021 special election. However, because the Registrar will not conduct a June 2021 special election, Claimant's cost estimate for additional activities required by SB 72 while conducting the special elections in FY 20-21 can be reduced by 50%. That is, while Claimant previously estimated \$60,354 total for both special elections, an appropriate estimate for conducting only one special election would be \$30,177. (*See* Lau Decl. ¶ 16.)

V. Conclusion

Claimant respectfully requests the Commission approve its test claim in its entirety.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my personal knowledge, information or belief.

Very truly yours,

DAVID J. SMITH, Acting County Counsel

By 

CHRISTINA SNIDER, Senior Deputy

² See <https://www.sos.ca.gov/elections/prior-elections/special-elections/2021-ad79> (“One candidate received a majority (over 50%) of the votes cast in the primary; therefore, no special general election will be held. (Elections Code section 10705).”)

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 May 6, 2021, I served the:

- **Claimant's Rebuttal Comments filed May 5, 2021**

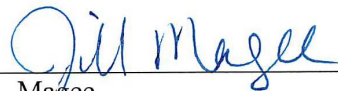
Extended Conditional Voter Registration, 20-TC-02

Elections Code Section 2170 as amended by Statutes 2019, Chapter 565 (SB 72)

County of San Diego, 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 May 6, 2021 at Sacramento, California.



Jill L. Magee

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 4/13/21

Claim Number: 20-TC-02

Matter: Extended Conditional Voter Registration

Claimant: County of San Diego

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