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Commission on
State Mandates

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February 3, 2020

Via Drop Box

Heather Halsey Executive Director Commission on State Mandates 980 Ninth Street, Suite 300 Sacramento, CA 95814

RE: Comments on Test Claim

Vote by Mail Ballots: Prepaid Postage, 19-TC-01 Elections Code Section 3010; Statutes 2018, Chapter 120 (AB 216) Interested Party County of San Diego

Dear Ms. Halsey:

I represent interested party County of San Diego. The County of San Diego supports the test claim of the County of Los Angeles.

I. AB 216 Contains a Reimbursable State Mandate.

AB 216, codified in Section 3010 of the Elections Code, mandates a new program or higher level of service on local governments. The analysis is simple: before the passage of AB 216, the elections officials of local governments were not required to include prepaid postage along with vote by mail ("VBM") ballots; after the passage of AB 216, they are.

A statute creates a "program" when it creates: "[1] programs that carry out the governmental function of providing services to the public, or [2] laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." *County of Los Angeles v. State of California*, 43 Cal. 3d 46, 56 (1987). A program is "new' if the local governmental entity had not previously been required to institute it." *County of Los Angeles v. Comm'n on State Mandates*, 110 Cal. App. 4th 1176, 1189 (2003).

A "higher level of service" means an "increase[] in the services provided by local agencies in existing 'programs." *County of Los Angeles*, 43 Cal. 3d at 56. A higher

level of service exists when: (i) the requirements [in the law] are new in comparison with the preexisting scheme in view of the circumstance that they did not exist prior to the enactment of [the law]; and (ii) the requirements were intended to provide an enhanced service to the public...." San Diego Unified Sch. Dist. v. Comm'n on State Mandates, 33 Cal. 4th 859, 878 (2004).

The purpose of the constitutional provision requiring reimbursement to local governments for a new program or higher level of service is to prevent "transferring to [local] agencies the fiscal responsibility for providing services which the state believed should be extended to the public." *County of Los Angeles*, 43 Cal. 3d at 56-57.

The test claim statute meets both alternate definitions of a "program." The statute carries out the governmental function of providing services to the public—i.e., providing payment in advance for the return of VBM ballots. Assembly Comm. on Elections and Redistricting (March 22, 2017), Comments on AB 216 (purpose of AB 216 is to remedy inequities and voter confusion in voting, when prior to its enactment, some counties voluntarily provided postage on vote by mail ballots and others did not). ¹

The statute also imposes requirements unique to local governments. Neither the state, private citizens, nor private employers are required to provide prepaid postage on VBM ballots. See Cal. Elec. Code § 3010 (a)(2) ("the elections official" must provide the prepaid postage on the return envelope)²; Cal. Elec. Code § 320 (defining elections official as the person who has the duty of conducting an election, or the person having jurisdiction over elections).³

The program created by the statute is "new." Prior to the enactment of AB 216, Section 3010 of the Elections Code required elections officials to deliver to VBM voters only: (1) the ballot, and (2) all supplies necessary for the use and return of the ballot. Now, not only must they include supplies for the return of the ballot, but they must also include a return envelope with prepaid postage. ⁴ *See* Assembly Comm. on Elections and Redistricting (March 22, 2017), Comments on AB 216 ("existing law does not require the return postage on VBM ballots to be prepaid," but AB 216 would "requir[e] that an

¹ Exhibit A, attached hereto, also available at http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB21 (last accessed January 31, 2020).

² Supporting Documents, Test Claim, pp. 18-21.

³ Exhibit B, attached hereto.

⁴ Supporting Documents, Test Claim, pp. 14-21 (former Section 3010 and current Section 3010).

envelope with prepaid postage be included with every VBM ballot in the state of California.") ⁵

Alternatively, the statute imposes a "higher level of service" on local governments because elections officials must include an additional item (prepaid postage on return envelopes) along with VBM ballots, and its requirements were intended to provide an enhanced service to the public. *See San Diego Unified Sch. Dist.*, 33 Cal. 4th at 878.

Indeed, this test claim is identical in all material respects to a test claim the Commission on State Mandates partially approved in 2006, *Permanent Absent Voter II*, 03-TC-11.⁶ The statutes at issue in that test claim required the elections official to include in absentee ballot mailings some information about the absentee voting procedure, which was not required prior to the enactment of the statute. This Commission held those statutes imposed a new program or higher level of service on counties.

The Commission explained:

Prior to the amendment by Statutes 2001, chapter 922, county elections officials did not have a statutory duty to "Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Section 3206." ... Providing this information to voters mandates a new program or higher level of service upon counties....⁷

If the new requirement to place information into ballot mailings constituted a new program or higher level of service, it follows that the same is true for a new requirement to provide prepaid postage.

Further, the Legislature anticipated that AB 216 would impose a mandate on local governments, as indicated in the legislative history. Assembly Comm. on Elections and Redistricting (March 22, 2017), Fiscal Effect of AB 216 ("State-mandated local program; contains reimbursement direction")⁸; 2018 Cal. Legis. Serv. Ch. 120 (Assembly Bill No. 216) ("By imposing additional duties on local elections officials, this bill would impose a

⁵ Exhibit A.

⁶ Statement of Decision, *Permanent Absent Voter II*, 03-TC-11, July 28, 2006, available at https://www.csm.ca.gov/decisions/03tc11sod.pdf (last accessed January 31, 2020).

⁷ *Id.* at 10.

⁸ Exhibit A.

state-mandated local program")⁹; Assembly Comm. on Appropriations (April 5, 2017), Fiscal Effect of AB 216 (fiscal effect would be "GF costs in the low millions of dollars each statewide election, and less for local elections, for potentially reimbursable state mandate to provide prepaid postage on ballot return envelopes for VBM voters")¹⁰; Senate Comm. on Appropriations (August 21, 2017), Fiscal Impact ("By requiring VBM ballots to have prepaid postage, this bill creates a state-mandated local program. To the extent the Commission on State Mandates determines the provisions of this bill create a new program or impose a higher level of service on local agencies, local agencies could claim reimbursement of those costs (General Fund).")¹¹

Although these comments are not binding on the Commission, *see* Cal. Gov't Code § 17575, it is clear the Legislature understood the statute would "transfer[] to [local] agencies the fiscal responsibility for providing services which the state believed should be extended to the public." *County of Los Angeles*, 43 Cal. 3d at 56-57.

The Department of Finance in its comments contends that AB 216 only increased the cost of providing a service, which is not reimbursable. The Department of Finance cites City of Anaheim v. State, 189 Cal. App. 3d 1478 (1987) and San Diego Unified School Dist. v. Commission on State Mandates, 33 Cal. 4th 859 (2004). But the courts in those cases distinguished laws like AB 216—which impose a requirement specifically on local governments—from laws of general application that impose the same requirements on the state, or on all residents generally, but only have an incidental financial effect on local governments. According to the courts, the former create reimbursable mandates; the latter do not.

In *City of Anaheim*, the statute at issue required a state agency (PERS) to increase pension payments to retired public employees. 189 Cal. App. 3d at 1482. Local governments had no control over the pension payments, and the statute did not require them to do anything. *Id.* However, the change had an incidental effect on the City of Anaheim because the resulting transfer of funds between accounts caused the City to increase its contributions to employee salaries. *Id.* at 1482-1483. The Court of Appeal held that the law imposed requirements on the state but only had an incidental effect on

⁹ Supporting Documents, Test Claim, p. 13.

¹⁰ Exhibit C, attached hereto, also available at http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB21 6 (last accessed January 31, 2020).

¹¹ Exhibit D, attached hereto, also available at http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB21 (last accessed January 31, 2020).

¹² Department of Finance's Comments on the Test Claim.

local governments. *Id.* at 1483. Further, the Court explained the City's increased contributions to employee salaries were not a service to the public—they were merely a higher cost of the City compensating its own employees. *Id.* at 1484. As later explained by the Supreme Court of California, "[t]he law increased the cost of employing public servants, but it did not in any tangible manner increase the level of service provided by those employees to the public." *San Diego Unified School Dist.*, 33 Cal. 4th at 875.

In San Diego Unified, the statute at issue required schools to expel students under certain circumstances. 33 Cal. 4th at 868-69. The Supreme Court of California held that the expulsion statute mandated a "higher level of service" on local governments because it applied uniquely to public schools, and because enhancing the safety of the students was a service to the public. Id. at 879. However, in its discussion, the Court distinguished other cases in which Courts of Appeal found that statutes did not impose mandates when the statutes imposed universal requirements on private employers and local governments alike. Id. (citing County of Los Angeles v. State of California, 43 Cal. 3d 46 (1987) and City of Sacramento v. State of California, 50 Cal. 3d 51 (1990).) In that context, the Supreme Court noted that simply because a state law increases the costs borne by local government in providing services, that does not automatically qualify the law as a reimbursable mandate. Id. at 876. However, the Supreme Court contrasted such laws with statutes that impose an "increase in the actual level or quality of governmental services provided," which do impose reimbursable mandates. Id. at 877.

Section 3010 of the Elections Code is such a statute, and it contains a reimbursable mandate. It imposes a requirement unique to local governments, and it requires the local governments to provide a specific service to the public—that is, paying in advance for postage on VBM ballots. This is not a mere incidental effect of a law of general application. Nor it is a requirement that only affects local governments' cost of compensating their own employees. Rather, it falls squarely within the definition of a program or higher level of service.

Further, none of the exceptions to the definition of a mandate set forth in Section 17556 of the Government Code apply here. And the County of San Diego is unaware of any state, federal, or nonlocal agency funds that would cover the cost of the mandate.¹³

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¹³ Other local governments whose elections are consolidated with and administered by the County of San Diego's Registrar of Voters will contribute in part to the cost of administering the election, including prepaid postage. However, such contributions are simply other local governments' funds and thus do not impact the analysis of whether the test claim statute imposes a reimbursable mandate.

AB 216 Applies to Both Statewide and Local Elections. II.

As a point of clarification, the test claim statute applies not only to statewide elections, but also to local elections (and special elections, which could be either statewide or local). The statute does not on its face distinguish between the various types of elections. See Cal. Elec. Code § 3010.

Further, the legislative history also makes clear the statute was intended to apply to both types of elections. Assembly Comm. on Elections and Redistricting (March 22, 2017), Comments on AB 216 ("The provisions outlined in this bill would apply to both state and local elections.")¹⁴; Senate Comm. on Appropriations (August 21, 2017), Staff Comments ("Staff notes that this bill will apply to state and local elections.")¹⁵

Local Governments May Incur Some Costs in Addition to Postage. III.

In addition to postage, the County of San Diego anticipates incurring other costs that are "reasonably necessary for the performance of the state-mandated program" as contemplated by Section 17557 of the Government Code. The sums are expected to be relatively insignificant. Other local governments may incur similar costs.

For example, due to the anticipated increase in mail, the Registrar of Voters purchased a high volume mail subscription ("qualified business reply mail"), with a quarterly fee of \$2,460 over and above the Registrar's prior subscription. ¹⁶ Additionally, the County's Registrar of Voters cannot use VBM envelopes that were already printed because these envelopes indicate that postage is required, as opposed to stating that postage is already paid. The Registrar of Voters incurred a cost of \$0.049 per envelope to print the now-unusable envelopes. 17

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 and belief.

> THOMAS E. MONTGOMERY, County Counsel By: Christia Suida

CHRISTINA SNIDER, Senior Deputy

¹⁴ Exhibit A.

¹⁵ Exhibit D.

¹⁶ Exhibit E, Declaration of Liliana Lau ¶ 4, attached hereto.

¹⁷ *Id.* ¶ 5.

EXHIBIT "A"

Date of Hearing: March 22, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Evan Low, Chair

AB 216 (Gonzalez Fletcher) - As Introduced January 24, 2017

SUBJECT: Vote by mail ballots: identification envelopes: prepaid postage.

SUMMARY: Requires the postage on return envelopes for vote by mail (VBM) ballots to be prepaid. Specifically, **this bill** requires an elections official, when delivering a VBM ballot to a voter, to include a return envelope with postage prepaid.

EXISTING LAW requires an elections official to deliver all of the following to each qualified applicant for a VBM ballot:

- 1) The ballot for the precinct in which the voter resides and, in the case of a presidential primary election, the ballot for the central committee of the party for which the voter has declared a preference, if any; and,
- 2) All supplies necessary for the use and return of the ballot.

FISCAL EFFECT: Unknown. State-mandated local program; contains reimbursement direction.

COMMENTS:

1) Purpose of the Bill: According to the author:

Voting by mail is becoming more popular both for individual voters and for conducting entire elections.

Since 2012, between 50 and 60 percent of ballots cast in California statewide elections have been by mail. As of June 2016, 52.3 percent of registered voters in California were registered as permanent vote by mail (PVBM) voters....

As more and more voters use mail ballots, either through individual choice or the decision by counties, it is important to ensure that the process of voting is as equitable as possible. Unfortunately, the current system of returning a mail ballot is not.

In some counties— such as San Francisco, Santa Clara, Alpine, and Sierra Counties— the postage is pre-paid for mail ballots...

With a stamp currently costing 47 cents each and a lengthy ballot for most voters this past November, this meant some voters ended up paying almost a dollar in order to vote, while others had the cost of their mail ballot covered or were able to vote at no cost in person— even within the same precinct. For voters who do not

regularly carry stamps, voting can be even more costly, as some retailers only sell stamps in books of 20, which cost nearly \$10...

AB 216 will standardize this process by requiring postage on mail ballots to be prepaid, ensuring that voting is free for all California voters.

- 2) Rates of Vote by Mail Voting: AB 1520 (Shelley), Chapter 922, Statutes of 2001, allowed any voter to become a permanent VBM voter. Since that time, the percentage of voters in California who choose to receive a VBM ballot has increased significantly. A majority of California voters now choose to vote using a VBM ballot, either by returning that ballot through the mail or by dropping off their VBM ballot in person. In 2016, about 58% of votes in the primary election and about 59% of votes in the general election were cast using VBM ballots. In 2014, when voter turnout was lower, an even larger percentage of votes were cast on VBM ballots: over 60% of the general election votes and nearly 70% of the votes in the primary election were cast using VBM ballots.
- 3) VBM Postage Rules and Voter Confusion: Since existing law does not require the return postage on VBM ballots to be prepaid, in most counties, a VBM voter must affix the correct amount of postage on the return envelope of their ballot. The amount of postage required can vary depending on the size of the ballot, potentially causing confusion for voters. Some jurisdictions in California already prepay return postage on their VBM ballots even though it is not currently required by state law.

According to California Common Cause, the variations in postage requirements that currently exist between counties and even within elections in the same county add an unreasonable degree of confusion and uncertainty for voters.

By requiring that an envelope with prepaid postage be included with every VBM ballot in the state of California, this bill could help reduce voter confusion. The provisions outlined in this bill would apply to both state and local elections.

4) Insufficient Postage and VBM Ballot Rejection: Although California has one of the highest mail ballot rejection rates in the country, it does not appear that insufficient postage is a significant factor in the rejection of mail ballots. In a statewide survey of the 58 county elections offices conducted in 2014, the California Civic Engagement Project (CCEP) found that the top reasons for rejection of VBM ballots were ballots not arriving on time (50%), or having issues with signatures (37%) including ballots not being signed, or because the signatures could not be verified. CCEP research also found that every California county that responded to their survey (54 of the state's 58 counties sent a response) reported that the county covered the cost of insufficient postage for VBM ballots.

Furthermore, in order to protect against the inadvertent disenfranchisement of voters, it is the policy of the United States Postal Service (Postal Service) that VBM ballots with insufficient postage "must not be detained or treated as unpaid mail." Instead, under Postal Service policy, postal workers are supposed to deliver the ballot to the appropriate elections official, and to seek to recover the postage due from the elections official. Notwithstanding this policy, ballots nonetheless are occasionally returned to voters for insufficient postage.

5) Prepaid Return Postage Could Delay Ballots: One of the most common methods of providing prepaid postage is by using Business Reply Mail. The advantage of using Business Reply Mail is that postage is paid only on the pieces that are sent back to the county. The disadvantage however, is that Business Reply Mail can increase processing time and delay the delivery of ballots to the elections official.

A 2014 California Voter Foundation study of the VBM process in three California counties cautioned about possible delays when counties use Business Reply Mail to prepay the return postage on VBM ballots. The study found that in Sacramento County, the ballots that had prepaid postage through the use of Business Reply Mail could be delayed at the post office, because those ballots had to be processed through the business reply unit of the post office in order to be charged against the county's business reply account. The study noted that "[w]hen only one person works in the business reply unit, mail can be delayed if that person is out of the office or if there is a surge of business reply mail from other sources, possibly disenfranchising a voter who waited until close to the election to return his or her ballot." While the report did not recommend against providing prepaid return postage for VBM ballots, it cautioned that "[w]hile some have suggested providing postage-paid envelopes to all VBM voters (and not just those overseas or living in an all vote-by-mail precinct as current law provides), doing so can actually delay VBM ballot processing since postage paid mail is typically sent business class, not first class."

Additionally, the restructuring of the Postal Service in recent years called *network* rationalization has closed many smaller processing plants across the country, adversely impacting the speed of processing. The Bipartisan Policy Center's report New Realities of Voting by Mail cautions "without realizing that voting by mail in 2016 is very different than in years past, voters are more likely to unwittingly disenfranchise themselves." Business Reply Mail takes longer to reach recipients since "The Postal Service of 2016 does not operate under the same service standards as it did even one or two presidential cycles ago. Mail volume is down, and the USPS has adjusted its infrastructure accordingly. Delivery standards have also changed." This is problematic especially during the lead up to election day when a higher volume of ballots are expected.

Under SB 29 (Correa), Chapter 618, Statutes of 2014, ballots that are mailed by election day are able to be counted if they are received by the elections official by the third day after the election. While SB 29 may help protect against voters being inadvertently disenfranchised if ballots are delayed due to the use of Business Reply Mail under this bill, if delays in the return of VBM ballots nonetheless persist, the timeframe for ballots to be received that was established in SB 29 may need to be revisited to ensure that voters are not inadvertently disenfranchised.

6) Impact of SB 450 Vote Center Model: SB 450 (Allen), Chapter 832, Statutes of 2016, permits specified counties beginning in 2018, and all other counties beginning in 2020, to conduct elections in which every voter is mailed a ballot and vote centers and ballot drop-off locations are available prior to and on election day, in lieu of operating polling places for the election, subject to certain conditions. Counties in California that opt to conduct elections in accordance with SB 450 generally will be required to send VBM ballots to all registered

voters 28 days before election day. As counties implement SB 450, the number of voters who receive a ballot in the mail will increase, which may also increase the number of VBM ballots that are returned by mail. On the other hand, because SB 450 requires participating counties to make ballot drop-off locations available, an increasing number of voters may choose to return VBM ballots in person, rather than through the mail. In any case, SB 450 likely will increase the involvement of the postal system in elections conducted in the state, but SB 450 did not require the return postage on VBM ballots to be prepaid. AB 216 will help address this by providing prepaid envelopes to voters so they can return their ballots.

- 7) State Mandates: The last six state budgets have suspended various state mandates as a mechanism for cost savings. Among the mandates that were suspended were all existing elections-related mandates, including VBM programs. All the existing elections-related mandates have been proposed for suspension again by the Governor in his budget for the 2017-18 fiscal year. This bill adds another elections-related mandate by requiring local elections official to prepay the return postage for VBM ballots.
- 8) **Previous Legislation**: This bill is similar to AB 800 (Gomez) of 2015, AB 1519 (De La Torre) of 2009, and SB 117 (Murray) of 2005, which were all held on the Assembly Appropriations Committee's suspense file, and to SB 1062 (Block) of 2014, which was held on the Senate Appropriations Committee's suspense file.

REGISTERED SUPPORT / OPPOSITION:

Support

Advancement Project

American Civil Liberties Union of California

California Labor Federation

California League of Conservation Voters

California Professional Firefighters

California State Association of Letter Carriers

California Voter Foundation

Disability Rights California

Equal Justice Society

Service Employees International Union, California State Council

Opposition

None on file.

Analysis Prepared by: Bish Paul / E. & R. / (916) 319-2094

EXHIBIT "B"

West's Annotated California Codes Elections Code (Refs & Annos) Division 0.5. Preliminary Provisions (Refs & Annos) Chapter 4. Definitions

West's Ann.Cal.Elec.Code § 320

§ 320. Elections official

Effective: January 1, 2008 Currentness

"Elections official" means any of the following:

- (a) A clerk or any person who is charged with the duty of conducting an election.
- (b) A county clerk, city clerk, registrar of voters, or elections supervisor having jurisdiction over elections within any county, city, or district within the state.

Credits

(Stats.1994, c. 920 (S.B.1547), § 2. Amended by Stats.2007, c. 125 (A.B.1732), § 1.)

West's Ann. Cal. Elec. Code § 320, CA ELEC § 320 Current with all laws through Ch. 870 of 2019 Reg.Sess.

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EXHIBIT "C"

Date of Hearing: April 5, 2017

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez Fletcher, Chair AB 216 (Gonzalez Fletcher) – As Introduced January 24, 2017

Policy Committee:

Elections and Redistricting

Vote: 5 - 2

Urgency: No

State Mandated Local Program: Yes

Reimbursable: Yes

SUMMARY:

This bill requires return envelopes for vote by mail (VBM) ballots to include prepaid postage.

FISCAL EFFECT:

GF costs in the low millions of dollars each statewide election, and less for local elections, for potentially reimbursable state mandate to provide prepaid postage on ballot return envelopes for VBM voters.

For example, if 5.8 million voters (the same that voted by mail in the November 2016 election) returned a ballot by mail at an average cost of \$0.65 per envelope, the cost for prepaid postage would be almost \$3.8 million per election.

COMMENTS:

- 1) **Background.** Existing law requires an elections official to deliver to a voter requesting a VBM ballot: (1) the ballot for the precinct in which the voter resides and, in the case of a presidential primary election, the ballot for the central committee of the party for which the voter has declared a preference, if any, and (2) all supplies necessary for the use and return of the ballot. Some counties, including San Francisco, Santa Clara, Santa Cruz, Alpine, and Sierra include prepaid postage on all return envelopes for VBM ballots.
- 2) Purpose. This bill would require all counties to include prepaid postage on the return envelopes provided to VBM voters. According to the author, "as more and more voters use mail ballots, either through individual choice or the decision by counties, it is important to ensure that the process of voting is as equitable as possible. Unfortunately, the current system of returning a mail ballot is not. In some counties—such as San Francisco, Santa Clara, Alpine, and Sierra Counties the postage is prepaid for mail ballots."

The author also states, "with a stamp currently costing 47 cents each and a lengthy ballot for most voters this past November, this meant some voters ended up paying almost a dollar in order to vote, while others had the cost of their mail ballot covered or were able to vote at no cost in person— even within the same precinct. AB 216 will require that the return envelope provided to vote-by-mail voters by elections officials have pre-paid postage, ensuring that voting is free for all California voters."

3) Staff Comments. Under SB 450 (Allen), Chapter 832, Statutes of 2016, counties are allowed to opt-in to an all VBM election where all voters receive a ballot in the mail. For SB 450 opt-in counties, these mailed ballots can be returned by mail or dropped off at various specified locations, such as a vote center. Some counties are likely to opt-in to SB 450 mail election and vote center model, which will likely increase the number of VBM voters in future elections. Thus, it is likely that the costs of providing prepaid postage for the return envelope for ballots would increase in the future. However, counties that opt-in to SB 450 are likely to experience long-term savings.

Analysis Prepared by: Jessica Peters / APPR. / (916) 319-2081

EXHIBIT "D"

SENATE COMMITTEE ON APPROPRIATIONS

Senator Ricardo Lara, Chair 2017 - 2018 Regular Session

AB 216 (Gonzalez Fletcher) - Vote by mail ballots: identification envelopes: prepaid postage

Version: January 24, 2017 **Policy Vote:** E. & C.A. 5 - 0

Urgency: No Mandate: Yes

Hearing Date: August 21, 2017 Consultant: Robert Ingenito

This bill meets the criteria for referral to the Suspense File.

Bill Summary: AB 216 would require the postage on return envelopes for vote-by-mail (VBM) ballots to be prepaid.

Fiscal Impact: By requiring VBM ballots to have prepaid postage, this bill creates a state-mandated local program. To the extent the Commission on State Mandates determines the provisions of this bill create a new program or impose a higher level of service on local agencies, local agencies could claim reimbursement of those costs (General Fund). If 8.4 million voters (the number of VBM voters in the 2016 General Election) voted by mail at an average cost of \$.65 per envelope, the cost of prepaid postage would be about \$5.5 million. State mandate costs for future local elections would be unknown, also potentially in the millions of dollars.

Background: Existing law allows any voter to become a permanent VBM voter whereby he or she can cast their ballot by mail. The voter, however, is currently responsible for placing the correct amount of postage on the return envelope, which can vary depending on the size of the ballot. VBM voting has been on the increase since 2000 and now more than half of California's eligible voters cast their ballot by mail instead of going to the polls on elections day.

Proposed Law: This bill would require an elections official, when delivering a VBM ballot to a voter, to include a return envelope with postage prepaid.

Related Legislation: This bill is similar to SB 1062 (Block, 2014), which was held on the Senate Appropriations Committee's suspense file, and to AB 800 (Gomez, 2015), AB 1519 (De La Torre, 2009), and SB 117 (Murray, 2005), which were all held on the Assembly Appropriations Committee's suspense file.

Staff Comments: Under the provisions of the bill, the counties would pay for the postage costs and then submit a claim to the Commission on State Mandates for reimbursement from the General Fund.

Some counties already provide postage paid return envelopes, including Alpine, San Francisco, Santa Clara and Sierra. Additionally, the counties of Glenn, Kern, and Tuolumne offer prepaid postage for mandatory VBM ballot voters who do not have a designated polling location provided by the county. Although some counties are already

providing postage paid return envelopes, under the state mandates provisions, these costs would now be borne by the General Fund.

Staff notes that this bill will apply to state and local elections, and while counties currently pay the costs for the expenses associated to local elections, this bill could result in the State paying the postage costs for all ballots related to local elections.

The last seven state budgets have suspended various state mandates as a mechanism for cost savings. Among the mandates that were suspended were all existing elections-related mandates, including VBM programs. This bill would add another elections-related mandate by requiring local elections official to prepay the return postage for VBM ballots.

EXHIBIT "E"

DECLARATION OF LILIANA LAU

I, Liliana Lau, declare as follows:

- 1. I make this declaration based upon my own personal knowledge and based upon my review of the records referenced herein.
- 2. If called upon to testify, I could and would competently testify to the matters set forth herein.
- 3. I am the Administrative Services Manager for the Registrar of Voters for San Diego County. In that capacity, I manage the acquisition of services and goods, as well as processing invoices, for the Registrar.
- 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"). According to the USPS website, this subscription has a quarterly fee of \$2,460 over and above the Registrar's prior subscription.
- 5. Additionally, the Registrar cannot use VBM envelopes that were already printed because these envelopes indicate that postage is required, as opposed to stating that postage is already paid. According to an invoice from the Registrar's vendor, each of these envelopes cost the Registrar \$0.049. I have requested information regarding how many envelopes were already printed and are no longer usable in order to calculate the actual cost.

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 and belief.

Executed this 3rd day of February, 2020, in San Diego County.

ned.

Liliana Lau

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 February 4, 2020, I served the:

• County of San Diego's Comments on the Test Claim filed February 3, 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 February 4, 2020 at Sacramento, California.

Jill L. Magee

Commission on State Mandates 980 Ninth Street, Suite 300 Sacramento, CA 95814

(916) 323-3562

COMMISSION ON STATE MANDATES

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Last Updated: 1/28/20 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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