



May 6, 2020

Ms. Erika Li
Department of Finance
915 L Street, 10th Floor
Sacramento, CA 95814

Ms. Hasmik Yaghobyan
County of Los Angeles
500 West Temple Street, Room 603
Los Angeles, CA 90012

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

Re: Draft Proposed Decision, 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. Li and Ms. Yaghobyan:

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

Written Comments

Written comments may be filed on the Draft Proposed Decision by **May 27, 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.¹

You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

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.

Hearing

This matter is set for hearing on **Friday, July 24, 2020** at 10:00 a.m. via Zoom. The Proposed Decision will be issued on or about July 10, 2020.

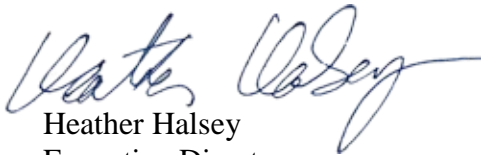
¹ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial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

Ms. Li and Ms. Yaghobyan
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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 long horizontal flourish extending to the right.

Heather Halsey
Executive Director

ITEM ____
TEST CLAIM
DRAFT PROPOSED DECISION

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

EXECUTIVE SUMMARY

Overview

This Test Claim was filed on Statutes 2018, chapter 120 (AB 216), which amended Elections Code section 3010, effective January 1, 2019, to require elections officials to include prepaid postage on identification envelopes delivered to vote-by-mail voters for returning their ballots.

Staff finds that Elections Code section 3010, as amended by the test claim statute, imposes a reimbursable state-mandated program on counties and cities. Accordingly, staff recommends that the Commission on State Mandates (Commission) approve this Test Claim as specified herein.

Procedural History

The claimant filed the Test Claim on October 15, 2019.¹ The Department of Finance (Finance) filed comments on the Test Claim on January 2, 2020.² Interested party County of San Diego filed comments on the Test Claim on February 3, 2020.³ The claimant filed late rebuttal comments on February 27, 2020.⁴ Commission staff issued the Draft Proposed Decision on May 6, 2020.⁵

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of

¹ Exhibit A, Test Claim, page 1.

² Exhibit B, Finance's Comments on the Test Claim, page 1.

³ Exhibit C, County of San Diego's Comments on the Test Claim, page 1.

⁴ Exhibit D, Claimant's Late Rebuttal Comments, page 1.

⁵ Exhibit E, Draft Proposed Decision.

service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁶

Claims

The following chart provides a brief summary of the claims and issues raised and staff’s recommendation.

Issue	Description	Staff Recommendation
Was the Test Claim timely filed, and if so, when does the reimbursement period begin?	<p>Government Code section 17551(c) states that test claims “shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.”</p> <p>Government Code section 17557(e) requires a test claim to be “submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.”</p>	<p><i>Timely filed with a Potential Period of Reimbursement Beginning January 1, 2019</i> - The effective date of the test claim statute (Stats. 2018, ch. 12) is January 1, 2019. The Test Claim was filed on October 15, 2019,⁷ within 12 months of the effective date of the test claim statute.</p> <p>Because this test claim was filed on October 15, 2019, the potential period of reimbursement under section 17557 would begin on July 1, 2018. However, since the test claim statute has a later effective date, the period of reimbursement for this Test Claim begins on the statute’s effective date, January 1, 2019.</p>

⁶ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

⁷ Exhibit A, Test Claim, page 1.

Issue	Description	Staff Recommendation
<p>Does the test claim statute impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution?</p>	<p>The test claim statute requires elections officials to provide prepaid postage on identification envelopes delivered to vote-by-mail voters for returning their ballots.</p> <p>Finance argues that the test claim statute merely imposes increased costs, but is not a new program or higher level of service.</p>	<p><i>Approve</i> –The test claim statute imposes a new requirement on “elections officials” to provide prepaid postage on identification envelopes delivered with vote-by-mail ballots for all state and local elections. “Elections official” is defined broadly in Elections Code section 320. However, counties and cities conduct elections for school districts and community college districts, and counties conduct elections for special districts.⁸ Thus, the requirement to provide prepaid postage on identification envelopes is mandated only on counties and cities.</p> <p>In <i>Kern High School Dist.</i>, the California Supreme Court explained that “the proper focus under a legal compulsion inquiry is upon the nature of the claimants’ participation in the underlying programs themselves.”⁹ Activities undertaken at the option or discretion of local government, without legal compulsion or compulsion as a practical matter, do not impose a state-mandated program within the</p>

⁸ Education Code sections 5200 et seq., 5220, 5300, 5303, Elections Code section 10517; *County of Yolo v. Los Rios Community College Dist.* (1992) 5 Cal.App.4th 1242.

⁹ *Dept. of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 743.

Issue	Description	Staff Recommendation
		<p>meaning of article XIII B, section 6.¹⁰</p> <p>Thus, the test claim statute imposes a state-mandated program when a state or local election is called on an election date established by state law or by the Governor, or for elections that must be held by a statutory deadline and cannot be accommodated at the next established election date. If, however, a local government calls for other special local elections that are authorized by law, this is at the discretion of local government, and the downstream requirement to provide prepaid postage on the identification envelope is not mandated by the state and thus, not eligible for reimbursement.</p> <p>Also, this mandate imposes a new program or higher level of service because it is imposed uniquely on cities and counties, and provides a service (postage-free vote-by-mail voting) to the public. The test claim statute also imposes costs mandated by the state on cities and counties that conduct elections. Although various statutes provide counties and cities fee authority to recover some of their election costs from other local</p>

¹⁰ *Dept. of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731; *Dept. of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1365-1366.

Issue	Description	Staff Recommendation
		governments, ¹¹ the fees are not “sufficient to pay for the mandated program or increased level of service” within the meaning of Government Code section 17556(d). There is no authority to charge fees when counties administer statewide elections, when counties and cities administer their own required municipal elections, and when counties and cities administer school and community college district elections consolidated with non-educational issues or elective offices. ¹² However, any fee revenue that county and city elections officials are authorized to collect from other local governments for their share of the costs to comply with the mandate in accordance with applicable statutes, shall be identified as offsetting revenue and deducted from the costs claimed.

Staff Analysis

A. The Test Claim Was Timely Filed with a Period of Reimbursement Beginning January 1, 2019.

Government Code section 17551(c) states that test claims “shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.”¹³ The effective date of the test claim statute is January 1, 2019. The Test Claim was filed on October 15,

¹¹ Elections Code sections 10002, 10517, 10520 and Education Code section 5227.

¹² Education 3204.

¹³ Government Code section 17551(c).

2019,¹⁴ within 12 months of the effective date of the test claim statute. Therefore, the Test Claim is timely filed.

In addition, Government Code section 17557(e) establishes the period of reimbursement for approved test claims that are “submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.” In this case, the test claim was filed October 15, 2019, establishing a potential period of reimbursement under section 17557 beginning July 1, 2018. However, since the test claim statute has a later effective date, the period of reimbursement for this claim begins on the statute’s effective date, January 1, 2019.

B. Elections Code Section 3010, as Amended by Statutes 2018, Chapter 120, Imposes a Reimbursable State-Mandated Program on County and City Elections Officials by Requiring Prepaid Postage on the Identification Envelopes Delivered to Vote-By-Mail Voters only when a State or Local Election Is Called on an Election Date Established by State Law or by the Governor, or for Elections That Must Be Held by a Statutory Deadline that Cannot Be Accommodated at the Next Established Election Date. If, However, a Local Government Calls for a Special Local Election Authorized by Law, the Downstream Requirement to Provide Prepaid Postage on the Identification Envelope Is Not Mandated by the State.

Statutes 2018, chapter 120 amended Elections Code section 3010, as indicated in strikeout and underline as follows:

- (a) The elections official shall deliver all of the following to each qualified applicant [for a vote-by-mail ballot]:
 - (1) The ballot for the precinct in which ~~he or she~~ the voter resides. In primary elections this shall also be accompanied by the ballot for the central committee of the party for which the voter has disclosed a preference, if any.
 - (2) All supplies for the use and return of the ballot, including an identification envelope with prepaid postage for the return of the vote by mail ballot.
- (b) ~~No~~ An officer of this state ~~may~~ shall not make ~~any~~ a charge for services rendered to ~~any~~ a voter under this chapter.

Although “supplies for the use and return of the ballot” is not defined in section 3010, preexisting law (Elec. Code, § 3011) requires sending the vote-by-mail voter an identification envelope that includes “a warning plainly stamped or printed on it that the voter must sign the envelope in his or her own handwriting in order for the ballot to be counted.” Since prior law required delivering an identification envelope to the voter as part of the “supplies for the use and return of the ballot,” the requirement to deliver the identification envelope is not new. The only new requirement is for “elections officials” to provide prepaid postage on identification envelopes delivered with vote-by-mail ballots for all state and local elections. Although the legislative history of the test claim statute indicates that some counties were already providing prepaid postage on the identification envelopes, the requirement has now become mandated by

¹⁴ Exhibit A, Test Claim, page 1.

the state.¹⁵ Government Code section 17565 states that “[i]f a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.”

“Elections official” is defined broadly in section 320 of the Elections Code. However, school districts, community college districts, and special districts do not conduct their own elections. Under Education Code sections 5300 and 5303, county election officials conduct elections for school and community college districts “in accordance with the Elections Code.”¹⁶ If a school district is located within the boundaries of a chartered city, the board of education is elected under the laws governing the city.¹⁷ Similarly, with respect to elections for special districts, Elections Code section 10517 requires that “the county elections official of each affected county shall conduct the general district election for the portion of the district located within the county.” Thus, the requirement to provide prepaid postage on identification envelopes is mandated only on counties and cities.

However, in *Kern High School Dist.*, the California Supreme Court explained that “the proper focus under a legal compulsion inquiry is upon the nature of the claimants’ participation in the underlying programs themselves.”¹⁸ Activities undertaken at the option or discretion of local government, without legal compulsion or compulsion as a practical matter, do not impose a state-mandated program within the meaning of article XIII B, section 6.¹⁹

Applying the decision in *Kern*, the Commission finds that if a state or local election is called on an election date established by state law or by the Governor, or the election must be held by a statutory deadline and cannot be accommodated at the next established election date, then the activity to provide prepaid postage on identification envelopes is mandated by the state.

However, some local elections are held entirely at the discretion of the local agency and are not mandated by the state. For example, if a local government calls for a special election on a date other than an established election date (which may be authorized for several reasons, including for the adoption of local propositions, ordinances, resolutions, and measures for increased taxes

¹⁵ Exhibit C, County of San Diego’s Comments on the Test Claim, page 8. (Assembly Committee on Elections and Reapportionment, Analysis of AB 216 (2017-2018 Sess.) as introduced January 24, 2017.)

¹⁶ See also, Elections Code section 10517; *County of Yolo v. Los Rios Community College Dist.* (1992) 5 Cal.App.4th 1242.

¹⁷ Education Code sections 5200 et seq., 5220.

¹⁸ *Dept. of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 743.

¹⁹ *Dept. of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731; *Dept. of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1365-1366.

or bonds),²⁰ this is an extra election called at the discretion of local government, and under the reasoning of the *Kern* decision, the downstream requirement to provide prepaid postage on the identification envelope is not mandated by the state.

Staff further finds that the mandate imposes a new program or higher level of service on cities and counties. The new requirement is imposed uniquely on city and county elections officials, and provides a governmental service to the public. The requirement to provide prepaid postage on the identification envelope was intended to make the vote-by-mail process more equitable and less costly for voters.²¹ The legislative history also indicates that because the required postage can vary depending on the size of the ballot, the prepaid identification envelope may reduce potential confusion for vote-by-mail voters, thereby providing a governmental service to the public.²²

Finally, staff finds that the test claim statute imposes costs mandated by the state on cities and counties. Although various statutes authorize cities and counties to charge fees and be reimbursed by other local governments to conduct their elections and to provide prepaid postage on vote-by-mail ballots,²³ the fee authority is not sufficient to pay for all costs mandated by the state within the meaning of Government Code section 17556(d). There is no authority to charge fees when counties administer statewide elections, when counties and cities administer their own required municipal elections, and when counties and cities administer school and community college district elections consolidated with non-educational issues or elective offices.²⁴

Conclusion

Accordingly, staff concludes that Elections Code section 3010, as amended by Statutes 2018, chapter 120, imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution on county and city elections officials to provide prepaid postage on identification envelopes delivered to voters with their vote-by-mail ballots, beginning January 1, 2019, for state or local elections called on an election date established by state law or by the Governor, or for elections that must be held by a statutory deadline and cannot be accommodated at the next established election date. If, however, a local government calls for other special local elections authorized by law, these are at the discretion of local government, and the downstream requirement to provide prepaid postage on the identification

²⁰ See, for example, Elections Code sections 306 (city measures), 312 (county measures), 350 (school measures); 9100 et seq., 9200 et seq., 9300 et seq., 10100 et seq. (Municipal Elections), 24200 (election of county officers); Education Code sections 15100-15126 (school district and community college bond measures).

²¹ Exhibit C, County of San Diego's Comments on the Test Claim, pages 8-9. (Assembly Committee on Elections and Reapportionment, Analysis of AB 216 (2017-2018 Reg. Sess.) as introduced January 24, 2017.)

²² Exhibit X, Assembly Floor, Analysis of AB 216 (2017-2018 Reg. Sess.) as amended September 1, 2017, page 1.

²³ Elections Code sections 10002, 10517, 10520, and Education Code section 5227.

²⁴ Education Code section 3204.

envelope is not mandated by the state and thus, not eligible for reimbursement. Any fee revenue that county and city elections officials are authorized to collect from other local governments for their share of the costs to comply with the mandate in accordance with applicable statutes, shall be identified as offsetting revenue and deducted from the costs claimed.²⁵

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision to approve the Test Claim and authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

²⁵ Elections Code sections 10002, 10517, 10520, and Education Code section 5227.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

<p>IN RE TEST CLAIM Elections Code Section 3010 Statutes 2018, Chapter 120 (AB 216)</p> <p>Filed on October 15, 2019 County of Los Angeles, Claimant</p>	<p>Case No.: 19-TC-01 <i>Vote by Mail Ballots: Prepaid Postage</i></p> <p>DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. <i>(Adopted July 24, 2020)</i></p>
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DECISION

The Commission in State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on July 24, 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] the Proposed Decision to [approve/partially approve/deny] the Test Claim by a vote of [vote will be included in the adopted Decision], as follows:

Member	Vote
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	

Summary of the Findings

This Test Claim was filed on Statutes 2018, chapter 120, which amended Elections Code section 3010, effective January 1, 2019, to require “elections officials” to include prepaid postage on identification envelopes delivered to vote-by-mail voters for returning their ballots.

The Commission finds that the test claim statute was timely filed and that the reimbursement period begins on January 1, 2019, based on the effective date of the statute.

The Commission also finds that the test claim statute imposes a new requirement on “elections officials” to provide prepaid postage on identification envelopes delivered with vote-by-mail ballots for all state and local elections. Although the legislative history of the test claim statute indicates that some counties were already providing prepaid postage on the identification envelopes, the requirement is now mandated by the state,²⁶ Government Code section 17565 states that “[i]f a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.”

Although “elections official” is defined broadly in section 320 of the Elections Code, school districts, community college districts, and special districts do not conduct their own elections. Thus, the requirement to provide prepaid postage on identification envelopes is mandated only on counties and cities.

The Commission finds that if a state or local election is called on an election date established by state law or by the Governor, or if the election must be held by a statutory deadline and cannot be accommodated at the next established election date, then the activity to provide prepaid postage on identification envelopes is mandated by the state.

However, some local elections are held entirely at the discretion of the local agency and are not mandated by the state. For example, if a local government calls for a special election on a date other than an established election date (which is authorized for several reasons, including for the adoption of local propositions, ordinances, resolutions, and measures for increased taxes or bonds),²⁷ this is at the discretion of local government, and under the reasoning of the *Kern* decision, the downstream requirement to provide prepaid postage on the identification envelope is not mandated by the state. In *Kern High School Dist.*, the California Supreme Court explained that “the proper focus under a legal compulsion inquiry is upon the nature of the claimants’ participation in the underlying programs themselves.”²⁸ Activities undertaken at the option or

²⁶ Exhibit C, County of San Diego’s Comments on the Test Claim, page 8. (Assembly Committee on Elections and Reapportionment, Analysis of AB 216 (2017-2018 Sess.) as introduced January 24, 2017.)

²⁷ See, for example, Elections Code sections 306 (city measures), 312 (county measures), 350 (school measures); 9100 et seq., 9200 et seq., 9300 et seq., 10100 et seq. (Municipal Elections), 24200 (election of county officers); Education Code sections 15100-15126 (school district and community college bond measures).

²⁸ *Dept. of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 743.

discretion of local government, without legal compulsion or compulsion as a practical matter, do not impose a state-mandated program within the meaning of article XIII B, section 6.²⁹

The Commission further finds that the mandate imposes a new program or higher level of service on cities and counties. The new requirement is imposed uniquely on city and county elections officials, and provides a governmental service to the public. The requirement to provide prepaid postage on the identification envelope was intended to make the vote-by-mail process more equitable and less costly for voters.³⁰ The legislative history also indicates that because the required postage can vary depending on the size of the ballot, the prepaid identification envelope may reduce potential confusion for vote-by-mail voters, thereby providing a governmental service to the public.³¹

Finally, the Commission finds that the test claim statute imposes costs mandated by the state on cities and counties. Although various statutes authorize cities and counties to charge fees and be reimbursed by other local governments to conduct their elections and to provide prepaid postage on vote-by-mail ballots,³² the fee authority is not sufficient to pay for all costs mandated by the state within the meaning of Government Code section 17556(d). There is no authority to charge fees when counties administer statewide elections, when counties and cities administer their own required municipal elections, and when counties and cities administer school and community college district elections consolidated with non-educational issues or elective offices.³³

Therefore, the Commission approves this Test Claim and finds that Elections Code section 3010, as amended by Statutes 2018, chapter 120, imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution on county and city elections officials to provide prepaid postage on identification envelopes delivered to voters with their vote-by-mail ballots, beginning January 1, 2019, when a state or local election is called on an election date established by state law or by the Governor, or for elections that must be held by a statutory deadline and cannot be accommodated at the next established election date. If, however, a local government calls for a special local election authorized by law, this extra election is called at the discretion of local government, and the downstream requirement to provide prepaid postage on the identification envelope is not mandated by the state and thus, not eligible for reimbursement. Any fee revenue that county and city elections officials are authorized to collect from other local governments for their share of the costs to comply with the

²⁹ *Dept. of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731; *Dept. of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1365-1366.

³⁰ Exhibit C, County of San Diego's Comments on the Test Claim, pages 8-9. (Assembly Committee on Elections and Reapportionment, Analysis of AB 216 (2017-2018 Reg. Sess.), as introduced January 24, 2017.)

³¹ Exhibit X, Assembly Floor, Analysis of AB 216 (2017-2018 Reg. Sess.), as amended September 1, 2017, page 1.

³² Elections Code sections 10002, 10517, 10520, and Education Code section 5227.

³³ Education Code section 3204, last amended by Statutes 2007, chapter 508.

mandate in accordance with applicable statutes, shall be identified as offsetting revenue and deducted from the costs claimed.³⁴

COMMISSION FINDINGS

I. Chronology

- 01/01/2019 Effective date of Statutes 2018, chapter 120, amending Elections Code section 3010.
- 10/15/2019 The claimant filed the Test Claim.³⁵
- 01/02/2020 The Department of Finance (Finance) filed comments on the Test Claim.³⁶
- 02/03/2020 The County of San Diego filed comments on the Test Claim.³⁷
- 02/27/2020 The claimant filed late rebuttal comments on the Test Claim.³⁸
- 05/06/2020 Commission staff issued the Draft Proposed Decision.³⁹

II. Background

A. Vote-by-Mail Voting in California

This Test Claim concerns Statutes 2018, chapter 120, which amended Elections Code section 3010 to require “elections officials” to include prepaid postage on identification envelopes delivered to vote-by-mail voters for returning their ballots. The Elections Code defines a vote-by-mail voter as “any voter casting a ballot in any way other than at the polling place.”⁴⁰

Voting by mail has been authorized in California since 1923,⁴¹ when voters seeking to vote by mail were required to submit to the elections official a vote-by-mail application with an affidavit to show county residency, duly registered-voter status, and absence from the voting precinct on Election Day.⁴² Upon receipt of the application and affidavit, the elections official delivered a ballot and “supplies,” including an identification envelope, to the voter:

[I]t shall be the duty of the county clerk or registrar of voters receiving same [application and affidavit] to deliver to said applicant . . . an official ballot of the

³⁴ Elections Code sections 10002, 10517, 10520, and Education Code section 5227.

³⁵ Exhibit A, Test Claim.

³⁶ Exhibit B, Finance’s Comments on the Test Claim.

³⁷ Exhibit C, County of San Diego’s Comments on the Test Claim.

³⁸ Exhibit D, Claimant’s Late Rebuttal Comments.

³⁹ Exhibit E, Draft Proposed Decision.

⁴⁰ Elections Code section 300. Prior to Statutes 2007, chapter 508, vote-by-mail voters were known as “absentee voters.” Section 300 also defines a “military or overseas voter” (formerly known as a “special absentee voter”).

⁴¹ Former Elections Code sections 1357-1364 (Stats. 1923, ch. 283).

⁴² Former Elections Code section 1357(b) (Stats. 1923, ch. 283).

precinct of said applicant, together with an identification envelope and a return envelope, and a small rubber stamp and stamp pad for marking said ballot: *provided, however*, that before delivering or mailing such ballot and supplies, the county clerk ... shall satisfy himself from the affidavit of registration of such voter as to the truth of the affidavit....⁴³

Originally, vote-by-mail ballots were made available only to voters not able to vote at the polling place due to illness, absence from precinct on the day of election, physical handicap, conflicting religious commitments, or when the voter resided more than 10 miles from the polling place.⁴⁴ In 1978, however, the Legislature declared that vote-by-mail ballots “shall be available to any registered voter.”⁴⁵

Since the mid-1970s, elections officials have been required to send to every registered voter an application to vote by mail with the sample ballot (or after 2016, with the county information guide).⁴⁶ The application informs the voter of the elections official’s address and specifies the official’s address as the only appropriate destination for mailing the application.⁴⁷ The application for a vote-by-mail ballot is made in writing to the elections official having jurisdiction over the election “between the 29th and 7th day prior to the election,” and “shall be signed by the applicant under penalty of perjury.”⁴⁸ Any applications received by the elections official before the 29th day are kept and processed during the application period.⁴⁹

Upon receipt of the vote-by-mail application:

[T]he elections official should determine if the signature and residence address on the ballot application appear to be the same as that on the original affidavit of registration. The elections official may make this signature check upon receiving the voted ballot, but the signature must be compared before the vote-by-mail voter ballot is canvassed.⁵⁰

⁴³ Former Elections Code section 1357(c) (Stats. 1923, ch. 283). Emphasis in original.

⁴⁴ Former Elections Code section 1003 (Stats. 1976, ch. 1275).

⁴⁵ Elections Code section 3003 (Stats. 1994, ch. 920); former Elections Code section 1003 (Stats. 1978, ch. 77).

⁴⁶ Former Elections Code section 14621.3 (Stats. 1974, ch. 945); former Elections Code section 1018 (Stats. 1976, ch. 1275); Elections Code section 3022 (Stats. 2016, ch. 422).

⁴⁷ Elections Code section 3006(b)(4) (as last amended by Stats. 2014, ch. 596).

⁴⁸ Elections Code section 3001 (as last amended by Stats. 2013, ch. 501); see also, Elections Code section 3006(e) (as last amended by Stats. 2014, ch. 596).

⁴⁹ Elections Code section 3001 (as last amended by Stats. 2013, ch. 501.)

⁵⁰ Elections Code section 3009(a) (as last amended by Stats. 2015, ch. 728). “Official canvass” means “the public process of processing and tallying all ballots received in an election” Elections Code section 335.5.

If the elections official determines that the application does not contain all of the required information or is otherwise defective, the elections official shall mail the voter a vote-by-mail ballot together with a notice informing the voter how to correct the defect in order for the ballot to be counted.⁵¹

If the elections official deems the applicant entitled to a vote-by-mail ballot, then the ballot is delivered to the voter.⁵² Elections Code section 3010, as amended in 2015, stated that the elections official shall deliver to each qualified applicant the vote-by-mail ballot and “all supplies necessary for the use and return of the ballot.”⁵³ Elections Code section 3011 describes what must be printed on the identification envelope that is delivered with the ballot to vote-by-mail voters, including the voter’s signature, address, date, and notice that the envelope must be signed by the voter for the ballot to be counted.⁵⁴

The voter returns the ballot sealed inside the identification envelope, which must be received by the elections official who issued the ballot, or dropped off at an authorized location within the state, no later than the close of the polls on election day.⁵⁵ Upon receiving a vote-by-mail ballot, the elections official is required to compare the signature on the identification envelope with either the signature on the voter’s affidavit of registration or on a form issued by an election official that contains the voter’s signature and is part of the voter’s registration record. If the signatures compare, the elections official deposits the ballot, still in the identification envelope, in a ballot container. If the signatures do not compare, the cause of the rejection is written on the face of the identification envelope.⁵⁶ In addition, the identification envelope is not opened and the ballot is not counted unless the voter completes a signature verification process.⁵⁷ If the identification envelope is returned unsigned, the ballot is not counted unless the voter completes an unsigned ballot statement.⁵⁸ In any event, “[a] ballot shall not be removed from its identification envelope until the time for processing ballots” and a “ballot shall not be rejected for cause after the identification envelope has been opened.”⁵⁹ Vote by mail ballots are generally counted and canvassed in the same manner as ballots cast in a precinct polling place.⁶⁰

⁵¹ Elections Code section 3009(c) (as last amended by Stats. 2015, ch. 728).

⁵² Elections Code section 3009(b) (as last amended by Stats. 2015, ch. 728).

⁵³ Elections Code section 3010 (as amended by Stats. 2015, ch. 728); see also, former Elections Code section 1357(c) (Stats. 1923, ch. 283).

⁵⁴ Elections Code section 3011 (as amended by Stats. 2015, ch. 278).

⁵⁵ Elections Code sections 3017(a)(3) (as amended by Stats. 2017, ch. 806).

⁵⁶ Elections Code section 3019 (as amended by Stats. 2017, ch. 820).

⁵⁷ Elections Code section 3019(c) and (d).

⁵⁸ Elections Code section 3019(e) and (f) (as amended by Stats. 2017, ch. 820).

⁵⁹ Elections Code section 3019(g) (as amended by Stats. 2017, ch. 820).

⁶⁰ Elections Code section 15109.

Permanent vote-by-mail voting became available in California in 1982 for voters with specified conditions or disabilities.⁶¹ In 2001, this law was expanded to allow any voter in California to apply for permanent vote-by-mail status regardless of condition or disability.⁶² Permanent vote-by-mail applications are processed in the same manner as an application for a vote-by-mail ballot.⁶³

In 2016, the Legislature authorized specified counties beginning January 1, 2018, and all other counties beginning January 1, 2020, to conduct all mail-in 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.⁶⁴

County elections officials administer almost every aspect of voting in California including vote-by-mail voting.⁶⁵ As explained in the analysis, counties typically administer elections for cities, special districts, and school and community college districts in the county. These local governments then reimburse counties for administering their local elections, based on the portion of the ballot dedicated to the local governments' candidates and issues.⁶⁶

B. The Test Claim Statute: Statutes 2018, Chapter 120, Amended Elections Code Section 3010

The test claim statute amended section 3010 of the Elections Code to require elections officials to include prepaid postage on the identification envelope for returning vote-by-mail ballots as follows:

- (a) The elections official shall deliver all of the following to each qualified applicant:
 - (1) The ballot for the precinct in which ~~he or she~~ the voter resides. In primary elections, this shall also be accompanied by the ballot for the central committee of the party for which the voter has disclosed a preference, if any.
 - (2) All supplies necessary for the use and return of the ballot, including an identification envelope with prepaid postage for the return of the vote by mail ballot.
- (b) ~~No~~ An officer of this state ~~may~~ shall not make a charge for services rendered to ~~any~~ a voter under this chapter.

⁶¹ Statutes 1982, chapter 1422, former Elections Code sections 1450-1456. Statutes 1994, chapter 920 reorganized the entire Elections Code, including the repeal of the permanent absentee voter statutes in Elections Code sections 1450 through 1456, and reenacted those provisions as Elections Code sections 3200 through 3206.

⁶² Statutes 2001, chapter 922, Elections Code sections 3201-3202,

⁶³ Elections Code section 3203 (Stats. 2013, ch. 560).

⁶⁴ Statutes 2016, chapter 832.

⁶⁵ Elections Code section 3000 et seq.

⁶⁶ Exhibit X, LAO, "Considering the State's Role in Elections, the 2017-2018 Budget," March 30, 2017. Elections Code sections 10002, 10517, 10520, and Education Code section 5227.

According to the legislative history of the test claim statute, the requirement for prepaid postage on the identification envelope was intended to make the vote-by-mail process more equitable and free for voters who vote by mail.⁶⁷ The legislative history also indicates that because the required postage can vary depending on the size of the ballot, the prepaid identification envelope may reduce potential confusion for vote-by-mail voters.⁶⁸

C. Past Commission Decisions on Election Laws

The Commission has not received a prior Test Claim on Elections Code section 3010,⁶⁹ but has heard and decided the following Test Claims on election laws, most of which have been suspended by the Legislature for many years.⁷⁰

Absentee Ballots, CSM-3713

The Board of Control (predecessor to the Commission) determined, at its hearing of June 17, 1981, that Elections Code section 1003 (later renumbered to section 3003)⁷¹ imposed a reimbursable state-mandated program to make “absentee ballots . . . available to any registered voter.” Under prior law, vote-by-mail ballots were made available only to voters not able to vote at the polling place due to illness, absence from precinct on the day of election, physical handicap, conflicting religious commitments, or when the voter resided more than 10 miles from the polling place.⁷² Thus, the costs associated with the increase in absentee ballot filings was

⁶⁷ Exhibit C, County of San Diego’s Comments on the Test Claim, pages 8-9. (Assembly Committee on Elections and Reapportionment, Analysis of AB 216 (2017-2018 Reg. Sess.) as introduced January 24, 2017.)

⁶⁸ Exhibit X, Assembly Floor, Analysis of AB 216 (2017-2018 Reg. Sess.) as amended September 1, 2017, page 1.

⁶⁹ There has also been no test claim filed on former Elections Code section 1008 (Stats. 1976, ch. 1275), which was renumbered to section 3010 in 1994.

⁷⁰ Exhibit X, LAO, “Considering the State’s Role in Elections, the 2017-2018 Budget,” March 30, 2017, page 6, which states:

Mandates can be suspended as part of the annual budget bill. When a mandate is suspended, the requirement remains in law but local governments do not have to comply with the suspended mandate requirements in that year.

For many years, the state has suspended election mandates, providing no regular assistance to counties. Currently, the state owes counties about \$71 million for outstanding elections mandates incurred in prior years. Despite these mandates being suspended, counties continue the activities associated with the suspended laws—costing counties roughly \$30 million in general election years. Although the state has not paid for these regular ongoing costs, it has provided one-time funds to counties on occasion for particular elections issues.

⁷¹ This was originally former Elections Code section 1003 (Stats. 1976, ch. 1275, Stats. 1978, ch. 77), but was renumbered to section 3003 by Statutes 1994, chapter 920.

⁷² Former Elections Code section 1003 (Stats. 1976, ch. 1275).

determined to be reimbursable, based on specified formulas for counties administering the elections for other local agencies, and for local agencies and school districts administering their own elections.⁷³

The *Absentee Ballots*, CSM-3713 mandate has been suspended every year since 2011-12.⁷⁴

Permanent Absent Voter, CSM-4358

On September 21, 1989, the Commission adopted the *Permanent Absent Voter*, CSM-4358 Test Claim Statement of Decision, finding that former Elections Code sections 1450-1456 (Stats. 1982, ch. 1422) imposed a reimbursable state-mandated program on counties to: (1) establish and maintain a list of permanent absent voters who provide evidence of physical disability; (2) mail absent voter ballots to such voters for each election in which they are eligible to vote; and (3) delete from the permanent absent voter list any person who fails to return an executed absent voter ballot for any statewide direct primary or general election.⁷⁵

These test claim statutes were repealed and reenacted by Statutes 1994, chapter 920, which required that an application for permanent absent voter status be made available to any voter, and not just to voters with physical disabilities. On December 1, 2011, the Commission determined that reimbursement for this program ended effective June 30, 2010, finding that the mandated activity in the *Permanent Absent Voter II*, 03-TC-11 Parameters and Guidelines (see below), replaced the activity in the *Permanent Absent Voter*, CSM-4358 program.⁷⁶ Additionally, the *Permanent Absent Voter*, CSM-4358 mandate was suspended in the state budget in every year beginning 2011-12.⁷⁷

*Absentee Ballots, Tabulation by Precinct, 00-TC-08*⁷⁸

On April 24, 2003, the Commission approved the *Absentee Ballots, Tabulation by Precinct*, 00-TC-08 mandate, and found the following activities eligible for reimbursement: (1) including the precinct of each absentee voter on the elections official's absentee ballot list; (2) tabulating by precinct the votes cast by absentee ballot and ballots cast at the polling place in statewide elections or special elections to fill a vacant congressional or legislative office, for elections

⁷³ Exhibit X, Commission on State Mandates, Parameters and Guidelines for *Absentee Ballots*, 02-PGA-02, adopted February 27, 2003.

⁷⁴ Exhibit X, LAO, "Analysis of Other Budget Issues," March 13, 2013. LAO, "Considering the State's Role in Elections, the 2017-2018 Budget," March 30, 2017.

⁷⁵ Exhibit X, Commission on State Mandates, Statement of Decision for *Permanent Absentee Voters*, CSM-4358, adopted September 21, 1989, page 4.

⁷⁶ Exhibit X, Commission on State Mandates, Final Staff Analysis for Proposed Parameters and Guidelines for *Permanent Absentee Voters*, CSM-4358, amended December 1, 2011, page 2.

⁷⁷ Exhibit X, LAO, "Analysis of Other Budget Issues," March 13, 2013; LAO, "Considering the State's Role in Elections, the 2017-2018 Budget," March 30, 2017.

⁷⁸ This Test Claim was filed on Elections Code sections 15111, 15321, and 21000 as added or amended by Statutes 1999, chapter 697. The title of this program was *Absentee Ballots II* during the Test Claim phase and was changed during the Parameters and Guidelines phase.

conducted between June 1, 2000, and January 1, 2001; and (3) making available to the Legislature and appropriate legislative committees election returns for each precinct reflecting the total for all ballots cast, including both absentee ballots and ballots cast at polling places, in statewide elections or special elections to fill a vacant congressional or legislative office for elections conducted between June 1, 2000, and January 1, 2001.⁷⁹ The Commission also identified offsetting revenues for counties, based on statutes that authorize counties to charge a fee to other local agencies and school districts for the cost to modify absentee ballot lists to include the precinct of each absentee voter, when the ballots include city, school district, community college district, or special district issues or candidates.⁸⁰

The *Absentee Ballots, Tabulation by Precinct*, 00-TC-08 mandate has been suspended every year since 2011-12.⁸¹

Permanent Absentee Voters II, 03-TC-11⁸²

On July 26, 2006, the Commission approved the *Permanent Absentee Voters II*, 03-TC-11 Test Claim finding that Elections Code sections 3201 and 3203(b)(2) impose a reimbursable state-mandated program on county elections officials to make an application for permanent absent voter status available to any voter. This replaced the *Permanent Absent Voter*, CSM-4358 program, which was limited to permanent absentee voters who provided evidence of physical limitations. The Commission also approved for reimbursement the requirement for county elections officials to include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and the consequences for failing to return an executed absentee voter ballot for statewide primary or general elections.⁸³

⁷⁹ Exhibit X, Commission on State Mandates, Statement of Decision for *Absentee Ballots Tabulation by Precinct (Absentee Ballots II)*, 00-TC-08, adopted April 24, 2003, page 10.

⁸⁰ Exhibit X, Commission on State Mandates, Statement of Decision for *Absentee Ballots, Tabulation by Precinct (Absentee Ballots II)*, 00-TC-08, adopted April 24, 2003, pages 9-11. The counties' fee authority was based on Elections Code sections 10002, 13001, and 10416.

⁸¹ Exhibit X, LAO "Analysis of Other Budget Issues," March 13, 2013; LAO, "Considering the State's Role in Elections, the 2017-2018 Budget," March 30, 2017.

⁸² This Test Claim was filed on Elections Code Sections 3100, 3101, 3103, 3104, 3106, 3108, 3110, 3200, 3201, 3202, 3203, 3204, 3205, and 3206; Statutes 1994, chapter 920; Statutes 1996, chapter 724; Statutes 2001, chapter 918; Statutes 2001, chapter 922; Statutes 2002, chapter 664; Statutes 2003, chapter 347. Note that Statutes 1994, chapter 920 reorganized the entire Elections Code, including the repeal of Elections Code sections 1450 through 1456, and reenacted these provisions as Elections Code sections 3200 through 3206.

⁸³ Exhibit X, Commission on State Mandates, Statement of Decision, *Permanent Absent Voters II*, 03-TC-11, adopted July 28, 2006, pages 2, 15.

The *Permanent Absent Voters II*, 03-TC-11 mandate has been suspended each year beginning with the 2013-2014 budget.⁸⁴

Voter Identification Procedures, 03-TC-23

On October 4, 2006 the Commission approved the *Voter Identification Procedures*, 03-TC-23 Test Claim finding that Elections Code section 14310(c)(1), as amended by Statutes 2000, chapter 260, imposed a reimbursable state-mandated program on city and county elections officials to compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration, and to reject any ballot when the signatures do not compare, for statutorily required elections. The Commission also concluded that when a local government calls a special election that could have otherwise been legally consolidated with the next local or statewide election, holding the special election is a voluntary decision on the part of the local government, and the downstream costs for checking signatures on provisional ballots are not reimbursable.⁸⁵

The *Voter Identification Procedures*, 03-TC-23 mandate has been suspended each year beginning with the 2013-2014 budget.⁸⁶

Post-Election Manual Tally, 10-TC-08

In July 2014, the Commission adopted the *Post-Election Manual Tally*, 10-TC-08 Test Claim Decision, finding that regulations adopted by the Secretary of State imposed a reimbursable state mandate on counties to conduct post-election manual tallies of votes for races with very narrow margins of victory during elections conducted in whole or in part on a mechanical, electromechanical, or electronic voting system.⁸⁷ The emergency regulations were effective only from October 20, 2008 until April 12, 2009, coinciding with the November 2008 Presidential General Election. The Commission also found that cities were not eligible claimants because any municipal elections held during the November 2008 Presidential General Election would have been consolidated with the statewide election administered by counties, so city elections officials were not required to comply with the test claim regulations.⁸⁸

⁸⁴ Exhibit X, LAO “Analysis of Other Budget Issues,” March 13, 2013; LAO, “Considering the State’s Role in Elections, the 2017-2018 Budget,” March 30, 2017.

⁸⁵ Exhibit X, Commission on State Mandates, Statement of Decision, *Voter Identification Procedures*, 03-TC-23, adopted October 4, 2006, page 2, 8-10, 11.

⁸⁶ Exhibit X, LAO “Analysis of Other Budget Issues,” March 13, 2013; LAO, “Considering the State’s Role in Elections, the 2017-2018 Budget,” March 30, 2017.

⁸⁷ This Test Claim was filed on former California Code of Regulations, title 2, division 7, chapter 3, sections 20120, 20121, 20122, 20123, 20124, 20125, 20126, and 20127 (Register 2008, No. 43) effective from October 20, 2008 to April 12, 2009.

⁸⁸ Exhibit X, Commission on State Mandates, Parameters and Guidelines for *Post-Election Manual Tally*, 10-TC-08, corrected December 19, 2014, pages 2-3.

III. Positions of the Parties and Interested Parties

A. County of Los Angeles

The claimant, County of Los Angeles, alleges that the test claim statute imposes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution. Specifically, the claimant alleges reimbursable costs for "The supplies necessary for the use and return of the ballot, including an identification envelope with prepaid postage for return of the envelope by mail ballot."⁸⁹ According to the Test Claim:

With a stamp currently costing \$0.55 per envelope and rising, it would often cost \$1.00 for voters to cast their VBM [vote-by-mail] ballots while voters in other jurisdictions were provided with free postage.⁹⁰

The Claimant's increased cost to comply with the AB 216 mandate in Fiscal Year (FY) 2018-19 was totaled at \$688,639 [total number of returned mail (171,455) x the cost of stamp (\$.605)], well in excess of \$1,000, pursuant to Government Code § 17564.

The Claimant estimates that it will incur \$620,791 in increased cost to comply with the AB 216 mandate in FY 2019-20.⁹¹

For fiscal year 2019-2020, the claimant estimates its costs by multiplying the number of vote-by-mail applicants in the 2018 election plus five percent, by the percentage of vote-by-mail responses for the November 2018 election, by the average cost of postage per ballot. Thus, the claimant estimates \$620,791 in increased 2019-2020 costs attributable to the mandate.⁹² The Test Claim includes a declaration of these allegations by the Fiscal Operations Branch Manager for the Los Angeles County Registrar Recorder/County Clerk's Office.⁹³

The claimant also quotes the Assembly Appropriations Committee estimate of statewide costs at \$5.5 million.⁹⁴

In its rebuttal comments, the claimant disagrees with Finance's argument that the test claim statute only increases costs, but does not impose a new program or higher level of service. The claimant argues that the test claim statute "imposes a requirement unique to local governments and requires the local governments to provide a specific service to the public, that is, to provide prepaid postage on VBM ballots. This is not a mere incidental effect of a law of general application."⁹⁵ The claimant also argues that the cases cited by Finance are distinguishable from

⁸⁹ Exhibit A, Test Claim, page 12 (Declaration of Margaret Palacios).

⁹⁰ Exhibit A, Test Claim, page 6.

⁹¹ Exhibit A, Test Claim, pages 7, 12-13 (Declaration of Margaret Palacios). The claimant states on page 13 that the "average cost of postage is \$.605."

⁹² Exhibit A, Test Claim, page 18 (Declaration of Margaret Palacios).

⁹³ Exhibit A, Test Claim, pages 6-7, 12-15 (Declaration of Margaret Palacios).

⁹⁴ Exhibit A, Test Claim, page 18 (Declaration of Margaret Palacios).

⁹⁵ Exhibit D, Claimant's Late Rebuttal Comments, page 1.

the test claim statute. In *City of Anaheim v. State*,⁹⁶ the test claim statute did not require local governments to do anything. Regarding *San Diego Unified School Dist.*,⁹⁷ the claimant states:

The Supreme Court of California affirmed the judgment as it provided reimbursement for costs related to the hearings triggered by the mandatory expulsion recommendation. However, the Court reversed the judgment for reimbursement of costs related to hearings triggered by the discretionary expulsion recommendations.⁹⁸

The claimant also asserts that the test claim statute “is not a mere incidental effect of a law of general application. Rather, it falls squarely within the definition of a new program and higher level of service.”⁹⁹

B. Department of Finance

In its comments on the Test Claim, Finance argues that the test claim statute merely imposes increased costs on local government, but is not a new program or higher level of service:

The requirement to provide prepaid postage does not amount to a new program or higher level of service. Increased costs alone will not result in a reimbursable state mandate (*City of Anaheim v. State* (1987) 189 Cal.App.3d 1478). Reimbursement is not required if the test claim statute merely implements some change that increases the cost of providing a service. (*San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859). Accordingly, the Commission should deny the test claim because AB 216 does not impose a new program or higher level of service.¹⁰⁰

Finance also argues that the claimant’s alleged fiscal year 2018-19 costs are overstated:

Claimant reports a cost of \$668,939 to comply with the AB 216 mandate in fiscal year 2018-19. However, \$584,909 of the cost was invoiced on November 6, 2018, which is prior to AB 216 becoming law. AB 216 went into effect on January 1, 2019.¹⁰¹

C. County of San Diego

The County of San Diego filed comments as an interested party, arguing that the test claim statute imposes a reimbursable state mandate, stating “before the passage of AB 216, the elections officials of local governments were not required to include prepaid postage along with

⁹⁶ *City of Anaheim v. State* (1987) 189 Cal.App.3d 1478.

⁹⁷ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859.

⁹⁸ Exhibit D, Claimant’s Late Rebuttal Comments, page 1.

⁹⁹ Exhibit D, Claimant’s Late Rebuttal Comments, page 1.

¹⁰⁰ Exhibit B, Finance’s Comments on the Test Claim, page 1.

¹⁰¹ Exhibit B, Finance’s Comments on the Test Claim, page 1.

vote by mail (“VBM”) ballots; after the passage of AB 216, they are.”¹⁰² The County also states that the test claim statute meets both alternate definitions of a “program” because it “carries out the governmental function of providing services to the public—i.e., providing payment in advance for the return of VBM ballots.”¹⁰³ The County argues that this test claim statute, like the statute at issue in *San Diego Unified School Dist.*, requires an “increase in the actual level or quality of governmental services provided,” which does impose a reimbursable mandate.¹⁰⁴ The County also argues that paying postage on vote-by-mail ballots “is not a mere incidental effect of a law of general application. Nor is it 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.”¹⁰⁵ The County also states that the statute imposes requirements unique to local governments, and that sending a voter a return envelope with prepaid postage is a new program or higher level of service. The County further argues that this Test Claim is identical in all material respects to a Test Claim the Commission partially approved in 2006, *Permanent Absent Voter II*, 03-TC-11, in which the test claim statute required the elections official to include in absentee ballot mailings some information about the absentee voting procedure that was not required prior to the enactment of the statute.¹⁰⁶

The County also points out that the test claim statute applies to both statewide and local elections, and that local governments may incur some costs in addition to postage, such as purchase of a high-volume mail subscription, and costs for unusable identification envelopes that were printed before the test claim statute was enacted.¹⁰⁷

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service...

The purpose of article XIII B, section 6 is to “preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that

¹⁰² Exhibit C, County of San Diego’s Comments on the Test Claim, page 1.

¹⁰³ Exhibit C, County of San Diego’s Comments on the Test Claim, page 2.

¹⁰⁴ Exhibit C, County of San Diego’s Comments on the Test Claim, pages 4-5.

¹⁰⁵ Exhibit C, County of San Diego’s Comments on the Test Claim, page 5.

¹⁰⁶ Exhibit C, County of San Diego’s Comments on the Test Claim, pages 2-3.

¹⁰⁷ Exhibit C, County of San Diego’s Comments on the Test Claim, page 6.

articles XIII A and XIII B impose.”¹⁰⁸ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”¹⁰⁹

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.¹¹⁰
2. The mandated activity constitutes a “program” that either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.¹¹¹
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.¹¹²
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.¹¹³

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.¹¹⁴ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.¹¹⁵ In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an

¹⁰⁸ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

¹⁰⁹ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

¹¹⁰ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

¹¹¹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

¹¹² *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal3d 830, 835.

¹¹³ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

¹¹⁴ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

¹¹⁵ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

“equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹¹⁶

A. The Test Claim Was Timely Filed with a Period of Reimbursement Beginning January 1, 2019.

Government Code section 17551(c) states that test claims “shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.”¹¹⁷

The effective date of Statutes 2018, chapter 12 is January 1, 2019. The Test Claim was filed on October 15, 2019,¹¹⁸ within 12 months of the effective date of the test claim statute. Therefore, the Test Claim is timely filed.

In addition, Government Code section 17557(e) establishes the period of reimbursement for approved test claims by requiring a test claim to “be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.” In this case, the test claim was filed October 15, 2019, establishing a potential period of reimbursement under section 17557 beginning July 1, 2018. However, since the test claim statute has a later effective date, the period of reimbursement for this claim begins on the statute’s effective date, January 1, 2019.

B. Elections Code Section 3010, as Amended by Statutes 2018, Chapter 120, Imposes a Reimbursable State-Mandated Program on County and City Elections Officials by Requiring Prepaid Postage on the Identification Envelopes Delivered to Vote-By-Mail Voters only when a State or Local Election Is Called on an Election Date Established by State Law or by the Governor, or for Elections That Must Be Held by a Statutory Deadline and Cannot Be Accommodated at the Next Established Election Date. If, However, a Local Government Calls for a Special Local Election Authorized by Law, the Downstream Requirement to Provide Prepaid Postage on the Identification Envelope Is Not Mandated by the State.

1. Elections Code section 3010, as amended by Statutes 2018, chapter 120, imposes a new requirement on “elections officials” to include prepaid postage on identification envelopes delivered with vote-by-mail ballots for all state and local elections.

The test claim statute amended Elections Code section 3010, as indicated in strikeout and underline as follows:

- (a) The elections official shall deliver all of the following to each qualified applicant [for a vote-by-mail ballot]:

¹¹⁶ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 [citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817].

¹¹⁷ Government Code section 17551(c).

¹¹⁸ Exhibit A, Test Claim, page 1.

- (1) The ballot for the precinct in which ~~he or she~~ the voter resides. In primary elections this shall also be accompanied by the ballot for the central committee of the party for which the voter has disclosed a preference, if any.
 - (2) All supplies for the use and return of the ballot, including an identification envelope with prepaid postage for the return of the vote by mail ballot.
- (b) ~~No~~ An officer of this state ~~may~~ shall not make ~~any~~ a charge for services rendered to ~~any~~ a voter under this chapter.

Thus, the plain language of the test claim statute requires elections officials to deliver to all qualified applicants for a vote-by-mail ballot: (1) an identification envelope, (2) with prepaid postage.

Preexisting law requires voters who request to vote by mail to submit an application in writing to the local elections official between the 29th and 7th day prior to the election.¹¹⁹ Upon approval of the application, the election official delivers to the voter a vote-by-mail ballot and (according to Elec. Code, § 3010, as last amended in 2015) “supplies for the use and return of the ballot.” These ballot “supplies” were not defined in section 3010.¹²⁰

In examining what “supplies” were required under prior law, the California Supreme Court has said: “we keep in mind that ‘the meaning of the enactment may not be determined from a single word or sentence; the words must be construed in context.’”¹²¹ Also, section 3010 “should be

¹¹⁹ Elections Code sections 3001, 3006, 3021. “Elections official” is defined in Elections Code section 320 as “any of the following: (a) A clerk or person who is charged with the duty of conducting an election. (b) A county clerk, city clerk, registrar of voters, elections supervisor, or governing board having jurisdiction over elections within any county, city, or district within the state.”

¹²⁰ Statutes 2015, chapter 728. Older statutes more clearly indicated the “supplies” for returning the ballot. Former Elections Code section 1357(c) as enacted by Statutes 1923, chapter 283 required, upon receipt of the absentee ballot application and affidavit, “it shall be the duty of the or registrar of voters receiving same to deliver to said applicant . . . an official ballot of the precinct of said applicant, together with an identification envelope and a return envelope, and a small rubber stamp and stamp pad for marking said ballot: *provided, however*, that before delivering or mailing such ballot and supplies, the county clerk . . . shall satisfy himself from the affidavit of registration of such voter as to the truth of the affidavit” (Underlining added, italics in original.)

Also, former Elections Code section 14632 (Stats 1961, ch. 23) stated: “All supplies mentioned in this chapter and necessary for the use of the voter in preparing and returning his ballot shall be prepared and furnished by the clerk. No officer of this State may make any charge for services rendered to any voter under the provisions of this chapter.”

¹²¹ *Commission on Peace Officer Standards and Training v. Superior Court* (2007) 42 Cal.4th 278, 294.

construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect.”¹²²

Immediately prior to the enactment of the test claim statute, Elections Code section 3011, defined the “identification envelope” as containing specified information, including “a warning plainly stamped or printed on it that the voter must sign the envelope in his or her own handwriting in order for the ballot to be counted” as follows:

- (a) The identification envelope shall contain all of the following:
 - (1) A declaration, under penalty of perjury, stating that the voter resides within the precinct in which he or she is voting and is the person whose name appears on the envelope.
 - (2) The signature of the voter.
 - (3) The residence address of the voter as shown on the affidavit of registration.
 - (4) The date of signing.
 - (5) A notice that the envelope contains an official ballot and is to be opened only by the canvassing board.
 - (6) A warning plainly stamped or printed on it that voting twice constitutes a crime.
 - (7) A warning plainly stamped or printed on it that the voter must sign the envelope in his or her own handwriting in order for the ballot to be counted.
 - (8) A statement that the voter has neither applied, nor intends to apply, for a vote by mail voter's ballot from any other jurisdiction for the same election.
 - (9) The name of the person authorized by the voter to return the vote by mail ballot pursuant to Section 3017.
 - (10) The relationship to the voter of the person authorized to return the vote by mail ballot.
 - (11) The signature of the person authorized to return the vote by mail ballot.
- (b) Except at a primary election for partisan office, and notwithstanding any other provision of law, the vote by mail voter's party preference may not be stamped or printed on the identification envelope.¹²³

Thus, under prior law, an identification envelope was required to be delivered to the voter as part of the “supplies for the use and return of the ballot.” Therefore, the requirement to deliver the identification envelope is not new. The only new requirement imposed by the test claim statute

¹²² *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1184.

¹²³ Statutes 2015, chapter 728. Section 3011 was amended by Statutes 2018, chapter 203 to add the following subdivision (c): “Notwithstanding paragraphs (9) to (11), inclusive, of subdivision (a), a ballot shall not be disqualified solely because the person authorized to return it did not provide on the identification envelope his or her name, relationship to the voter, or signature.”

is for the “elections official” to provide *prepaid postage* on the identification envelope for the return of the vote-by-mail ballot.

In addition, the requirement to provide prepaid postage on the identification envelopes applies to all vote-by-mail ballots for each election, so it establishes a requirement for all state and local elections. This is also stated in the legislative history of the test claim statute.¹²⁴ “Local elections” are defined as “a municipal, county, or district election,” and may include local governing body elections and local measures, such as tax and bond measures.^{125, 126}

2. The new requirement to provide prepaid postage on the identification envelopes constitutes a state mandate on city and county election officials only when a state or local election is called on an election date established by state law or by the Governor, or for elections that must be held by a statutory deadline that cannot be accommodated at the next established election date. If, however, a local government calls for a special local election authorized by law, this is at the discretion of local government, and the downstream requirement to provide prepaid postage on the identification envelope is not mandated by the state.

The test claim statute, Elections Code section 3010(a), states that “[t]he elections official *shall* deliver all of the following to each qualified applicant . . . (2) All supplies for the use and return of the ballot, including an identification envelope with prepaid postage for the return of the vote by mail ballot.”¹²⁷ Elections Code section 354 states that “shall” is mandatory. Although the test claim statute’s legislative history states that some counties were already providing prepaid postage on the identification envelopes, the requirement has now become mandated by the state.¹²⁸ Government Code section 17565 states that “[i]f a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.”

The scope of the mandate, however, requires further discussion.

¹²⁴ Elections Code section 328. See also, Exhibit C, County of San Diego’s Comments on the Test Claim, pages 9, 19. (Assembly Committee on Elections and Redistricting, Analysis of AB 216 (2017-2018 Reg. Sess.) as introduced January 24, 2017; Senate Committee on Appropriations, Analysis of AB 216 (2017-2018 Reg. Sess.) as introduced January 24, 2017.)

¹²⁵ Elections Code section 328.

¹²⁶ See, for example, Elections Code sections 306 (city measures), 312 (county measures), 350 (school measures); 9100 et seq., 9200 et seq., 9300 et seq., 10100 et seq. (Municipal Elections), 24200 (election of county officers); Education Code sections 15100-15126 (school district and community college bond measures).

¹²⁷ Emphasis added.

¹²⁸. Exhibit C, County of San Diego’s Comments on the Test Claim, page 8. (Assembly Committee on Elections and Redistricting, Analysis of AB 216 (2017-2018 Reg. Sess.) as introduced January 24, 2017.)

- a. *The requirement to provide prepaid postage on identification envelopes is mandated only on counties and cities.*

The requirement to provide prepaid postage on the identification envelopes expressly applies to “elections officials,” which, as broadly defined in Elections Code section 320, includes “any of the following: (a) A clerk or person who is charged with the duty of conducting an election. (b) A county clerk, city clerk, registrar of voters, elections supervisor, or governing board having jurisdiction over elections within any county, city, or district within the state.”

Elections Code section 13001 provides, however, that “[a]ll expenses authorized and necessarily incurred in the preparation for, and conduct of, elections as provided in this code shall be paid from the county treasuries, except that when an election is called by the governing body of a city the expenses shall be paid from the treasury of the city.” Thus, the county is responsible for providing prepaid postage for vote-by-mail ballots for all statewide elections and county and municipal elections.

Cities may conduct their own municipal elections, and as stated in Elections Code 13001, “when an election is called by the governing body of a city the expenses shall be paid from the treasury of the city.”¹²⁹ Cities may also request the county to consolidate their elections with other elections. Elections Code section 10002 states:

The governing body of any city or district may by resolution request the board of supervisors of the county to permit the county elections official to render specified services to the city or district relating to the conduct of an election. Subject to approval of the board of supervisors, these services shall be performed by the county elections official.

However, school districts, community college districts, and special districts do not conduct their own elections in most circumstances. Under Education Code sections 5300 and 5303, county election officials conduct the elections of school and community college districts “in accordance with the Elections Code.”¹³⁰ However, if a school district is located within the boundaries of a chartered city, the board of education is elected under the laws governing the city.¹³¹ Similarly, with respect to elections for special districts, Elections Code section 10517 requires that “the county elections official of each affected county shall conduct the general district election for the portion of the district located within the county.” Elections Code section 10518 nevertheless allows a county to authorize the appropriate officer of a school district or special district to perform any of the functions required of the county election official “[i]f, within any portion of a county, only one district has scheduled a general district election”¹³² The state has not

¹²⁹ Elections Code sections 10200 et seq., and 10240.

¹³⁰ See also, Elections Code section 10517; *County of Yolo v. Los Rios Community College Dist.* (1992) 5 Cal.App.4th 1242.

¹³¹ Education Code sections 5200 et seq., 5220.

¹³² Elections Code section 10518 states “If, within any portion of a county, only one district has scheduled a general district election, the county elections official *may* authorize the appropriate

mandated this shift of election duties from the county to the district, and nothing in article XIII B prohibits the shifting of costs between local governmental entities.¹³³ Thus, school districts, community college districts, and special districts are not mandated by state law to provide prepaid postage on the identification envelopes.

Moreover, beginning January 1, 2018, Elections Code section 14052 requires that local elections (except special elections) be held on a statewide election date if prior elections resulted in a significant decrease in voter turnout.¹³⁴ Beginning January 1, 2019, statewide elections may only occur on the first Tuesday after the first Monday in March in each even-numbered year (when the State holds its Primary Election) and the first Tuesday after the first Monday in November in each even-numbered year (when the State holds its General Election).¹³⁵ Elections Code section 10402.5 also provides:

Any state, county, municipal, district, and school district election held on a statewide election date pursuant to Section 1002 shall be consolidated with the statewide election pursuant to this part except that, in counties of the first class, the board of supervisors may deny any request for consolidation if it finds that the ballot style, voting equipment, or computer capacity is such that additional elections or materials cannot be handled.

Thus, since counties are responsible for statewide elections, city, school district, and special district elections are increasingly likely to be consolidated with the statewide ballot and processed by the counties. Nevertheless, the requirement to provide prepaid postage on identification envelopes is mandated on counties and cities when they conduct an election.

officer of the district to perform any of the functions required of the county elections official under this part.” (Emphasis added.)

¹³³ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1815.

¹³⁴ Elections Code section 14052 (Stats. 2015, Ch. 235, Sec. 1. SB 415) states:

- (a) Except as provided in subdivision (b), a political subdivision shall not hold an election other than on a statewide election date if holding an election on a nonconcurrent date has previously resulted in a significant decrease in voter turnout.
- (b) A political subdivision may hold an election other than on a statewide election date if, by January 1, 2018, the political subdivision has adopted a plan to consolidate a future election with a statewide election not later than the November 8, 2022, statewide general election.

Elections Code section 14056 states “This chapter does not apply to special elections.” “Special election” is defined as “an election, the specific time for the holding of which is not prescribed by law.” (Elec. Code, § 356.)

¹³⁵ Elections Code sections 1000, 1001.

- b. *Elections held at the discretion of the local government (such as non-required special elections) are not mandated by the state and thus subvention is not required.*

Providing prepaid postage on identification envelopes is required for all elections. However, in *Kern High School Dist.*, the California Supreme Court explained that “the proper focus under a legal compulsion inquiry is upon the nature of the claimants’ participation in the underlying programs themselves.”¹³⁶ Activities undertaken at the option or discretion of local government, without legal compulsion or compulsion as a practical matter, do not impose a state-mandated program within the meaning of article XIII B, section 6.¹³⁷

As indicated above, counties are required by state law to conduct statewide elections.¹³⁸ In addition, there are many local elections required to be held by state law. For example, elections for superior court judges shall be held during the county general election.¹³⁹ Counties are also required to conduct elections for their county officers,¹⁴⁰ and elections on behalf of special districts, and school and community college districts that are not governed by a city charter.¹⁴¹ Similarly, elections are required by state law to fill vacancies for city council and mayor.¹⁴²

State law generally requires these local elections to be conducted on election dates established by state law. For example, Elections Code section 1300, et seq. provides the general election dates for local governments. Elections Code 1300 states that an election to select county officers shall be held with the statewide primary election at which candidates for Governor are nominated. And Elections Code section 1303 requires that “the regular election to select governing board members in any school district, community college district, or county board of education shall be held on the first Tuesday after the first Monday in November of each odd-numbered year.” As indicated above, beginning January 1, 2018, Elections Code section 14052 requires that all local elections, except special elections, be held on a statewide election date if prior elections resulted in a significant decrease in voter turnout.¹⁴³ If a local prior election did *not* result in a significant

¹³⁶ *Dept. of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 743.

¹³⁷ *Dept. of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731; *Dept. of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1365-1366.

¹³⁸ Elections Code section 13001.

¹³⁹ California Constitution, article 6, section 16(b).

¹⁴⁰ California Constitution, article 11, section 1. Government Code section 24200.

¹⁴¹ Education Code sections 5300, 5303, and Elections Code section 10517.

¹⁴² Government Code sections 36503, 36512, and 34906.

¹⁴³ Elections Code section 14052 (Stats. 2015, ch. 235, sec. 1. (SB 415)) states:

- (a) Except as provided in subdivision (b), a political subdivision shall not hold an election other than on a statewide election date if holding an election on a nonconcurrent date has previously resulted in a significant decrease in voter turnout.

decrease in voter turnout, then the local election must still generally be held on an established election date. Elections Code section 1002 states that all state, county, municipal, district, and school district elections shall be held on an established election date, except as provided in Elections Code section 1003 (which includes special elections and elections relating to city or county charters).

The Governor also has the authority to call a special election, requiring the county to conduct an election.¹⁴⁴ This can occur when a petition for recall of a state elected officer is filed and certified. Recall is the power of the voters to remove an elective officer.¹⁴⁵ Upon receiving certification of the sufficiency of a recall petition for a state-elected officer from the Secretary of State, the Governor is required to publish a notice for the holding of the recall election.¹⁴⁶ The recall election of a state officer shall be held between 60 and 80 days from the date of certification of sufficient signatures.¹⁴⁷ However, the recall election may be conducted “within 180 days from the date of certification of sufficient signatures in order that the election may be consolidated with the next regularly scheduled election occurring wholly or partially within the same jurisdiction in which the recall election is held, if the number of voters eligible to vote at that next regularly scheduled election equal to at least fifty percent of all the voters eligible to vote at the recall election.”¹⁴⁸

Recall elections of local officers are also established by state law.¹⁴⁹ The recall election of a local officer shall be held between 88 and 125 days after the issuance of the order, and if a regular or special election is to be held throughout the electoral jurisdiction of the officer sought to be recalled within such time period, the recall election shall be held on the same day and consolidated with the regular or special election.¹⁵⁰

Thus, if a state or local election is called on an election date established by state law or by the Governor, or the election must be held by a statutory deadline that cannot be accommodated at

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- (b) A political subdivision may hold an election other than on a statewide election date if, by January 1, 2018, the political subdivision has adopted a plan to consolidate a future election with a statewide election not later than the November 8, 2022, statewide general election.

Elections Code section 14056 states “This chapter does not apply to special elections.” And a “‘Special election’ is an election, the specific time for the holding of which is not prescribed by law.” (Elec. Code, § 356.)

¹⁴⁴ Elections Code sections 1003, 13001.

¹⁴⁵ California Constitution, article II, sections 13-19; Elections Code sections 11000 et seq.

¹⁴⁶ Elections Code section 11110.

¹⁴⁷ California Constitution, article II, section 15(a).

¹⁴⁸ California Constitution, article II, section 15(a).

¹⁴⁹ Elections Code sections 11200 et seq.

¹⁵⁰ Elections Code section 11242.

the next established election date, then the activity to provide prepaid postage on identification envelopes is mandated by the state.

However, some local elections are held entirely at the discretion of the local agency and are not mandated by the state. For example, if a local government calls for a special election at a time other than an established election, this is at the discretion of local government, and the downstream requirement to provide prepaid postage on the identification envelope is not mandated by the state.

A “special election” is “an election, the specific time for the holding of which is not prescribed by law.”¹⁵¹ The Elections Code provides several examples when special elections may be called at the option of local government. For example, Elections Code 9222 authorizes a city to call a special election to vote on a proposition, ordinance, or resolution:

The legislative body of the city *may* submit to the voters, without a petition therefor, a proposition for the repeal, amendment, or enactment of any ordinance, to be voted upon at any succeeding regular or special city election, and if the proposition submitted receives a majority of the votes cast on it at the election, the ordinance shall be repealed, amended, or enacted accordingly. A proposition may be submitted, or *a special election may be called for the purpose of voting on a proposition, by ordinance or resolution.*¹⁵²

Elections Code sections 1405 and 1410 similarly provide that a county, city, or district may call a special election to submit an initiative measure or referendum to the voters. Initiative measures can be for the purpose of raising local taxes, to obtain voter approval of local revenue bonds, or to place voter initiative measures to a vote by the electorate.¹⁵³ Moreover, cities, counties, and districts are authorized, “at their discretion,” to hold advisory special elections to allow voters to express their opinions on substantive issues.¹⁵⁴

Accordingly, the Commission finds that providing prepaid postage on the identification envelopes is mandated by the state only when a state or local election is called on an election date established by state law or by the Governor, or for elections that must be held by a statutory deadline that cannot be accommodated at the next established election date (such as a recall election). If, however, a local government calls for a local special election authorized by law, but not required, this is at the discretion of local government, and the downstream requirement to provide prepaid postage on the identification envelope is not mandated by the state.

¹⁵¹ Elections Code section 356.

¹⁵² Emphasis added. Elections Code section 354 states “‘Shall’ is mandatory and ‘may’ is permissive.” See also, Elections Code 9140, which authorizes the county board of supervisors to submit to the voters, without a petition, an ordinance for the repeal, amendment, or enactment of any ordinance; and Elections Code section 9118, which provides that if a petition for a county ordinance is signed by ten percent of the voters, the county governing board must either adopt the ordinance or hold an election to adopt it.

¹⁵³ Government Code sections 53723, 54380. See also, Elections Code section 9118

¹⁵⁴ Elections Code section 9603. Government Code section 61008(d).

3. Elections Code section 3010, as amended by Statutes 2018, chapter 120, imposes a new program or higher level of service on counties and cities.

As indicated above, the mandate to provide prepaid postage on identification envelopes for state and local elections called on an election date established by state law or by the Governor, or for elections that must be held by a statutory deadline that cannot be accommodated at the next established election date, is new. For the mandate to constitute a new program or higher level of service, it must also carry out the governmental function of providing a service to the public, or to implement a state policy, impose unique requirements on local government that do not apply generally to all residents and entities in the state.¹⁵⁵ The term “program,” therefore, has “two alternative meanings,” and “only one of these [alternatives] is necessary to trigger reimbursement.”¹⁵⁶

Finance argues that the test claim statute merely imposes increased costs on local government, but does not impose a new program or higher level of service:

The requirement to provide prepaid postage does not amount to a new program or higher level of service. Increased costs alone will not result in a reimbursable state mandate (*City of Anaheim v. State* (1987) 189 Cal.App.3d 1478). Reimbursement is not required if the test claim statute merely implements some change that increases the cost of providing a service. (*San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859). Accordingly, the Commission should deny the test claim because AB 216 does not impose a new program or higher level of service.¹⁵⁷

The Commission disagrees and finds that the test claim statute imposes a new program or higher level of service.

The test claim statute imposes a mandate only on county and city “elections officials,” which are broadly defined in Elections Code section 320 to include various local government officials. Therefore, the requirement to provide prepaid postage on identification envelopes is uniquely imposed on government.

Moreover, the requirement provides a governmental service to the public. As indicated in the Background, the requirement for prepaid postage on the identification envelope was intended to make the vote-by-mail process more equitable and less costly for voters. According to the legislative history:

As of June 2016, 52.3% 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

¹⁵⁵ *County of Los Angeles v. State of California* (1987) 43 Cal.3d at 56.

¹⁵⁶ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

¹⁵⁷ Exhibit B, Finance’s Comments on the Test Claim, page 1.

postage is pre-paid for mail ballots... With a stamp currently costing 0.47\$ 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.¹⁵⁸

The legislative history also indicates that because the required postage can vary depending on the size of the ballot, the prepaid identification envelope may reduce potential confusion for vote-by-mail voters, thereby providing a governmental service to the public.¹⁵⁹

Furthermore, the test claim statute is not like the statutes at issue in cases where the courts have found no new program or higher level of service. For example, *County of Los Angeles v. State of California* concerned whether local governments are entitled to reimbursement for costs incurred to provide the same increased level of workers' compensation benefits for their employees as private individuals or organizations were required to provide to employees.¹⁶⁰ The Court held that that law did not meet either test for a “program or higher level of service” because it did not implement a state policy by imposing unique requirements on local governments, but instead applied workers' compensation contribution rules generally to all employers in the state. Nor did the law meet the first test for a “program.” The law increased the cost of employing public servants, but did not in any tangible manner increase the level of service provided by those employees to the public.¹⁶¹

Similarly, in *City of Sacramento v. State of California*, the court considered whether a state law implementing federal “incentives” that encouraged states to extend unemployment insurance coverage to all public employees constituted a program or higher level of service under article XIII B, section 6.¹⁶² The court concluded that it did not because:

(1) providing unemployment compensation protection to a city's own employees was not a service to the public; and (2) the statute did not apply uniquely to local governments—indeed, the same requirements previously had been applied to most employers, and extension of the requirement (by eliminating a prior

¹⁵⁸ Exhibit C, County of San Diego’s Comments on the Test Claim, pages 8-9. (Assembly Committee on Elections and Reapportionment, Analysis of AB 216 as introduced January 24, 2017.) Ellipses in original.

¹⁵⁹ Exhibit X, Assembly Floor, Analysis of AB 216 as amended September 1, 2017, page 1.

¹⁶⁰ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.

¹⁶¹ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 57-58. The court said “Workers’ compensation is not a program administered by local agencies to provide service to the public.”

¹⁶² *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 67-68.

exemption for local governments) merely placed local government employers on the same footing as most private employers.¹⁶³

In *County of Los Angeles v. Department of Industrial Relations*, counties sought reimbursement for elevator fire and earthquake safety regulations that applied to all elevators, not just those that were publicly owned.¹⁶⁴ The court found that the regulations were plainly not unique to government.¹⁶⁵ The court also found that the regulations did not carry out the governmental function of providing a service to the public, despite declarations by the county that without those elevators, “no peculiarly governmental functions and no purposes mandated on County by State law could be performed in those County buildings”¹⁶⁶ The court held that the regulations did not constitute an increased or higher level of service, because “[t]he regulations at issue do not mandate elevator service; they simply establish safety measures.”¹⁶⁷ The court continued:

In determining whether these regulations are a program, the critical question is whether the mandated program carries out the governmental function of providing services to the public, not whether the elevators can be used to obtain these services. Providing elevators equipped with fire and earthquake safety features simply is not “a governmental function of providing services to the public.” [FN 5 This case is therefore unlike *Lucia Mar, supra*, 44 Cal.3d 830, in which the court found the education of handicapped children to be a governmental function (44 Cal.3d at p. 835) and *Carmel Valley, supra*, where the court reached a similar conclusion regarding fire protection services. (190 Cal.App.3d at p. 537.)¹⁶⁸

The cases where courts found no new program or higher level of service involved either costs and activities related to local governments’ capacity as an employer;¹⁶⁹ or generally-applicable laws that impacted local government due to circumstances not relating to any identifiable governmental service (i.e., the award of attorneys’ fees for litigants successful against local

¹⁶³ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876 summarizing the holding of *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 67-68.

¹⁶⁴ *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538.

¹⁶⁵ *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 1545.

¹⁶⁶ *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 1545.

¹⁶⁷ *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 1546.

¹⁶⁸ *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 1546, Footnote 5.

¹⁶⁹ *City of Sacramento v. State of California* (1990) 50 Cal.3d 51; *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190. See also, *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.

government, and the applicability of elevator safety regulations in public buildings).¹⁷⁰ The required costs and activities in this test claim statute are unlike any of those.

Rather, the test claim statute, which was intended to provide simpler, standardized, postage-free voting, as well as more equity and less confusion in the vote-by-mail process, is more like the regulations in *Carmel Valley Fire Protection Dist. v. State of California* that were designed to result in more effective fire protection.¹⁷¹ It makes voting easier and more accessible. In this way, the test claim statute provides “an increase in the actual level or quality of governmental services” and “an enhanced service to the public.”¹⁷²

Therefore, the Commission finds that the test claim statute imposes a new program or higher level of service.

4. Elections Code section 3010, as amended by Statutes 2018, chapter 120 imposes increased costs mandated by the state on counties and cities within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, and any potential offsetting revenues must be identified and reduced from claims for reimbursement.

For the mandated activity to constitute a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, it must result in local agencies incurring increased costs mandated by the state. Government Code section 17514 defines “costs mandated by the state” as any increased cost that a local agency or school district incurs as a result of any statute or executive order that mandates a new program or higher level of service. Government Code section 17564(a) further requires that no claim shall be made nor shall any payment be made unless the claim exceeds \$1,000. In addition, a finding of costs mandated by the state means that none of the exceptions in Government Code section 17556 apply to deny the claim.

The claimant filed a declaration signed under penalty of perjury by the Fiscal Operations Branch Manager for the Los Angeles County Registrar Recorder/County Clerk's Office, stating:

. . . [L]ocal agencies will incur cost from the mandated activity that will exceed \$1,000.

☐ . . . ☐

FY 2018-2019 was the fiscal year the alleged mandate in AB 216 was implemented and the Test Claim was filed for. The actual cost of providing prepaid postage to the Vote By Mail applicant during the FY 2018-19 was \$688,639, covering the period from 7/1/18 through 6/30/19.

☐ . . . ☐

¹⁷⁰ *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538; *County of Fresno v. Lehman* (1991) 229 Cal.App.3d 340.

¹⁷¹ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537–538.

¹⁷² *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 877-878.

RR/CC [Register Recorder/County Clerk] estimates that it will incur \$620,791 in increased prepaid postage cost to comply with the AB 216 mandate in FY 2019-20. FY 2019-20 is the FY following the implementation of the mandate. The cost is summarized below:

Registrar-Recorder/County Clerk Financial Services Section Fiscal Year 2019-20 Estimated Cost of AB 216				
		A	B	C
Election Date	Election Name	Vote-by-mail (1)	$B=A \times 0.38$ (2)	$C=B \times \$0.605$ (3)
Various	Presidential Primary	2,700,266	1,026,101	\$620,791

Primary

(1) It is the number of Vote By Mail applicants in 2018 election 2,571,682 plus 5% (2,571,682 x 1.05 is 2,700,266).

(2) Percentage of Vote By Mail responses for the 11/2018 election is 0.38 (2,571,682 x 0.38 is 1,026,101).

(3) \$0.605 is the average cost for FY 2018-19.¹⁷³

The Department of Finance argues that the claimant’s asserted fiscal year 2018-2019 costs were overstated:

Claimant reports a cost of \$668,939 to comply with the AB 216 mandate in fiscal year 2018-19. However, \$584,909 of the cost was invoiced on November 6, 2018, which is prior to AB 216 becoming law. AB 216 went into effect on January 1, 2019.¹⁷⁴

The claimant’s declaration for fiscal year 2018-2019 states that it incurred costs from “7/1/18 through 6/30/19.”¹⁷⁵ Any costs that were incurred before the effective date of the test claim statute and period of reimbursement for this claim (i.e., before January 1, 2019) would not be eligible for reimbursement. Specifically, of the \$688,638.92 claimed for fiscal year 2018-2019, any costs incurred before January 1, 2019 (\$584,908.55 indicated¹⁷⁶) would not be eligible for reimbursement.

For fiscal year 2019-2020, the claimant estimated its costs by multiplying the number of vote-by-mail applicants in the 2018 election plus five percent, by the percentage of vote-by-mail

¹⁷³ Exhibit A, Test Claim, pages 12-15 (Declaration of Margaret Palacios).

¹⁷⁴ Exhibit B, Finance’s Comments on the Test Claim, page 1.

¹⁷⁵ Exhibit A, Test Claim, page 17 (Declaration of Margaret Palacios).

¹⁷⁶ Exhibit A, Test Claim, page 17 (Declaration of Margaret Palacios).

responses for the November 2018 election, by the average cost of postage per ballot. Thus, the claimant estimates \$620,791 in increased 2019-2020 costs attributable to the mandate.¹⁷⁷

The claimant also quoted the Assembly Appropriations Committee's estimate of statewide costs at \$5.5 million.¹⁷⁸

Thus, the record contains sufficient evidence that the claimant incurred increased costs to comply with the mandate, and the costs in fiscal year 2018-2019 exceeded \$1,000 (because the \$688,638.92 claimed minus ineligible costs of \$584,908.55 is \$103,730.37).

However, counties and cities may recover some of the costs for prepaid postage on identification envelopes, by charging fees to other local governments. Government Code section 17556(d) states:

The Commission shall not find costs mandated by the state, as defined in section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the Commission finds that: [¶]...[¶]

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

Under state law, counties have fee authority and may be reimbursed for conducting or administering elections on behalf of cities, school districts, community college districts, and special districts. For example, Elections Code section 10002 requires cities to reimburse the county in full for county services to conduct a city election:

The governing body of any city or district may by resolution request the board of supervisors of the county to permit the county elections official to render specified services to the city or district relating to the conduct of an election. Subject to approval of the board of supervisors, these services shall be performed by the county elections official. The resolution of the governing body of the city or district shall specify the services requested. [¶]...[¶]

Unless other arrangements satisfactory to the county have been made, the city or district shall reimburse the county in full for the services performed upon presentation of a bill to the city or district.

Under Education Code sections 5300 and 5303, county election officials conduct the elections of school districts and community college districts that are not governed by a city charter. In those cases, the election is governed by the Uniform District Election Law (Elec. Code, § 10500, et seq.), and section 10520 states:

Each district involved in a general district election in an affected county shall reimburse the county for the actual costs incurred by the county elections official thereof in conducting the general district election for that district. The county

¹⁷⁷ Exhibit A, Test Claim, page 18 (Declaration of Margaret Palacios).

¹⁷⁸ Exhibit A, Test Claim, page 18 (Declaration of Margaret Palacios).

elections official of the affected county shall determine the amount due from each district and shall bill each district accordingly.¹⁷⁹

With respect to school districts that are included within the boundaries of a chartered city, “the city shall be reimbursed by the district or districts for its actual cost and expense incurred in the conduct of the election or elections.”¹⁸⁰ The costs to conduct a school district election “may include, but need not be limited to” the “cost of printing official ballots, sample ballots, indexes, arguments, statements, official notices, and card notices,” and also include “mailing charges.”¹⁸¹ Thus, the costs for prepaid postage on vote-by-mail ballots are included as costs to conduct an election.

However, in 2002, Elections Code section 3024 was enacted to prohibit fees charged to school districts and community college districts to administer vote-by-mail ballots where the issues and elective offices related to school districts are included on a ballot with non-education issues and other elective offices. According to Elections Code section 3024:

The cost to administer vote by mail ballots where issues and elective offices related to school districts, as defined by Section 17519 of the Government Code, are included on a ballot election with noneducation issues and elective offices shall not be fully or partially prorated to a school district. The Commission on State Mandates shall delete school districts, county boards of education, and community college districts from the list of eligible claimants in the Parameters and Guidelines for the Absentee Ballot Mandates.¹⁸²

Because it involves vote-by-mail ballots, Elections Code section 3024 is a more specific code section and takes precedence over the general statutes cited above regarding school and community college districts covering the costs of their own elections.¹⁸³ Additionally, section 3024 “should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect.”¹⁸⁴ Since section 3024 is in the same chapter as the test claim statute and both govern the administration of vote-by-mail ballots, counties and cities may not prorate costs to school and community college districts for prepaid postage on vote-by-mail ballots unless the election is conducted solely on behalf of the district and non-educational issues or elective offices do not appear on the ballot.

¹⁷⁹ See also Education Code section 5420 et seq.

¹⁸⁰ Education Code section 5227.

¹⁸¹ Education Code section 5420; *County of Yolo v. Los Rios Community College District* (1992) 5 Cal.App.4th 1242, 1252, where the court finds the costs identified in Education Code section 5420 are costs incurred in actually conducting the election.

¹⁸² Statutes 2002, chapter 1032, amended by Statutes 2007, chapter 508.

¹⁸³ Civil Code section 1859; *State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 960-961.

¹⁸⁴ *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1184.

Similarly, with respect to special district elections, Elections Code section 10517 requires that “the county elections official of each affected county shall conduct the general district election for the portion of the district located within the county,” and section 10520 requires the special district to reimburse the county for the actual costs incurred by the county elections official.¹⁸⁵

In sum, counties may impose fees for prepaid postage on identification envelopes on cities and special districts when the county conducts the election for the city or special district. And cities and counties may impose a fee for prepaid postage on identification envelopes on school or community college districts only if the election is conducted solely on their behalf, and non-educational issues or elective offices do not appear on the ballot.

However, the fee authority is not sufficient to pay for all costs mandated by the state. There is no authority to charge fees when counties administer statewide elections, when counties and cities administer their own required municipal elections, or when counties and cities administer school and community college district elections consolidated with non-educational issues or elective offices. Accordingly, the fee authority is not “sufficient to pay for the mandated program or increased level of service” and Government Code section 17556(d) does not preclude the finding of “costs mandate by the state.”

Therefore, the Commission finds that the test claim statute results in increased costs mandated by the state on county and city elections officials within the meaning of article XIII B, section 6 and Government Code section 17514.

V. Conclusion

Based on the foregoing analysis, the Commission finds that Elections Code section 3010, as amended by Statutes 2018, chapter 120, imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution on county and city elections officials to provide prepaid postage on identification envelopes delivered to voters with their vote-by-mail ballots, beginning January 1, 2019, when a state or local election is called on an election date established by state law or by the Governor, or for elections that must be held by a statutory deadline that cannot be accommodated at the next established election date. If, however, a local government calls for a special local election authorized by law, but not required, this election is at the discretion of local government, and the downstream requirement to provide prepaid postage on the identification envelope is not mandated by the state and thus, not eligible for reimbursement. Any fee authority revenue that county and city elections officials are authorized to collect from other local governments for their share of the costs to comply with the mandate in accordance with applicable statutes, shall be identified as offsetting revenue and deducted from the costs claimed.¹⁸⁶

Accordingly, the Commission approves this Test Claim as specified and all other claims for reimbursement are denied.

¹⁸⁵ Also, Government Code section 53072 requires a special district to reimburse a county “in which all or a portion of the district is located” for an election when a special district is formed.

¹⁸⁶ Elections Code sections 10002, 10517, 10520, and Education Code section 5227.

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, 2020, I served the:

- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued May 6, 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 May 6, 2020 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/6/20

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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