

ITEM 7
TEST CLAIM
FINAL STAFF ANALYSIS

Elections Code Section 14310
Statutes 2000, Chapter 260 (SB 414)
Voter Identification Procedures
(03-TC-23)
County of San Bernardino, Claimant

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EXECUTIVE SUMMARY

Background

This test claim, filed by County of San Bernardino on October 1, 2003, addresses an amendment to Elections Code section 14310, regarding counting "provisional ballots." A provisional ballot is a regular ballot that has been sealed in a special envelope, signed by the voter, and then deposited in the ballot box. Provisional ballots can be required for several reasons, generally to prevent unregistered individuals from voting, or to prevent registered voters from voting twice. For example, provisional ballots may be required when poll workers cannot immediately verify an individual's name on the official roster, or if a voter requested an absentee ballot, but instead comes to the polling place without bringing the absentee ballot.

Statutes 2000, chapter 260, amended Elections Code section 14310, subdivision (c)(1), to add a requirement that elections officials "compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration."

Claimant alleges that prior to this amendment: "the county elections official was not legally required to perform provisional ballot signature comparison for voter identification purposes. ... Enactment of this statute has increased the duties of the county elections official, and requires the official to provide a higher-level of service for an existing program."

Department of Finance filed comments on November 14, 2003, agreeing with the claimant that Statutes 2000, chapter 260 "may have resulted in new state-mandated activities."

Staff finds that although prior law required that "the elections official shall examine the records with respect to all provisional ballots cast," the law did not require that each signature on a provisional ballot be directly compared to the signature on the voter's registration affidavit. This is akin to the analysis by the court in *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 173, which found a higher level of service was mandated when general law on a existing program is changed to require performance of activities in a very specific manner.

Conclusion

Staff concludes that Elections Code section 14310, subdivision (c)(1), as amended by Statutes 2000, chapter 260, mandates a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution, and imposes costs mandated by the state pursuant to Government Code section 17514, for performing the following specific new activity as part of statutorily-required elections:

- Using the procedures that apply to the comparison of signatures on absentee ballots, the elections official shall compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration. If the signatures do not compare, the ballot shall be rejected. (Elec. Code, § 14310, subd. (c)(1).)

Staff concludes that in a case where 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.

Recommendation

Staff recommends that the Commission adopt this analysis and partially approve the test claim.

STAFF ANALYSIS

Claimant

County of San Bernardino

Chronology

10/01/03 Claimant files test claim with the Commission
10/15/03 Commission staff issues completeness review letter
11/14/03 Department of Finance (DOF) files comments on the test claim
07/21/06 Commission staff issues the draft staff analysis
08/07/06 Claimant comments on the draft staff analysis received
08/17/06 DOF comments on the draft staff analysis received

Background

This test claim addresses an amendment to Elections Code section 14310, regarding counting "provisional ballots." A provisional ballot is a regular ballot that has been sealed in a special envelope, signed by the voter, and then deposited in the ballot box. According to information from the Secretary of State's website:¹

A voter is asked to vote a provisional ballot at the polls due to one of the following reasons:

- **The voter's name is not on the official roster of voters and the election officer cannot verify the voter's voting eligibility on Election Day.** The Elections Official's Office will check the registration records. If further research determines that the voter is eligible to vote in the election, the provisional ballot will be counted.
- **A voter has moved within the county, but did not re-register to vote.** The Elections Official will verify the voter's prior registration before the provisional ballot will be counted. The voter's registration will then be updated with the voter's current address.
- **Records indicate that the voter requested an absentee ballot and the voter fails to turn in the absentee ballot at the polls on Election Day.** The Elections Official's Office will check the records, and if the voter did not vote an absentee ballot, the voter's provisional ballot will be counted.
- **The voter is a first-time Federal Election voter in the county and was unable to provide the required proof of identification.** The Elections Official's Office will verify the voter's eligibility to vote by comparing the signature on the voter's registration with the signature on the provisional ballot envelope.

¹ At < http://www.ss.ca.gov/elections/elections_provisional.htm> (as of July 5, 2006.)

Provisional ballots are counted during the official canvass² when:

Prior to the completion of the official canvass (the vote tally), the Elections Official's Office establishes, from voter registration records, the claimant's right to vote the ballot.

Statutes 2000, chapter 260, amended Elections Code section 14310, subdivision (c)(1), to add a requirement that elections officials "compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration."

Claimant's Position

Claimant, County of San Bernardino, filed this test claim on October 1, 2003.³ Claimant contends that Elections Code section 14310, as amended by Statutes 2000, chapter 260, constitutes a reimbursable state-mandated program, "by requiring the elections official to compare signatures on provisional ballot envelopes with the signatures on the voter's affidavit of registration for voter identification purposes."

Claimant's written comments, dated August 3, 2006, state that "The County of San Bernardino concurs with the draft staff analysis as written and has no further comment."

Department of Finance's Position

DOF filed comments on November 14, 2003, agreeing with the claimant that Statutes 2000, chapter 260 "may have resulted in new state-mandated activities." Comments on the draft staff analysis, dated August 14, 2006, concur with the analysis, stating:

County elections officials were required to examine the voter's affidavit of registration and establish the provisional ballot-casting voter's right to vote. This was commonly performed by examining the voter's physical/computer-scanned registration card (affidavit of registration), but officials were not required to use a specific method of verification. Chapter 260 mandated a higher level of service by specifying that a signature comparison is the method of verification.

² Elections Code section 335.5 defines "official canvass," as follows:

The "official canvass" is the public process of processing and tallying all ballots received in an election, including, but not limited to, provisional ballots and absentee ballots not included in the semifinal official canvass. The official canvass also includes the process of reconciling ballots, attempting to prohibit duplicate voting by absentee and provisional voters, and performance of the manual tally of 1 percent of all precincts.

Elections Code section 318 provides: "'Election' means any election including a primary that is provided for under this code."

³ Potential reimbursement period for this claim begins no earlier than July 1, 2002, based on the filing date of the test claim. (Current Gov. Code, § 17557, subd. (e).)

Discussion

The courts have found that article XIII B, section 6, of the California Constitution⁴ recognizes the state constitutional restrictions on the powers of local government to tax and spend.⁵ “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”⁶ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.⁷ In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.⁸

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.⁹ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.¹⁰ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”¹¹

⁴ Article XIII B, section 6, subdivision (a), provides: (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

⁵ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

⁶ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁷ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

⁸ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.*); *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 (*Lucia Mar*).

⁹ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra*, 44 Cal.3d 830, 835.)

¹⁰ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

¹¹ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.¹²

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹³ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."¹⁴

Issue 1: Is the test claim statute subject to article XIII B, section 6, of the California Constitution?

In order for the test claim statute to be subject to article XIII B, section 6 of the California Constitution, it must constitute a "program." In *County of Los Angeles v. State of California*, the California Supreme Court defined the word "program" within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.¹⁵ The court has held that only one of these findings is necessary.¹⁶

Staff finds that verifying provisional ballots imposes a program within the meaning of article XIII B, section 6 of the California Constitution under both tests. Local elections officials provide a service to the members of the public by verifying that those who vote provisional ballots are eligible to cast a ballot. The test claim statute also requires local elections officials to engage in administrative activities solely applicable to local government, thereby imposing unique requirements that do not apply generally to all residents and entities of the state.

Accordingly, staff finds that the test claim statute constitutes a "program" and, thus, may be subject to subvention pursuant to article XIII B, section 6 of the California Constitution if the statute also mandates a new program or higher level of service, and costs mandated by the state.

¹² *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 (*County of Sonoma*); Government Code sections 17514 and 17556.

¹³ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

¹⁴ *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹⁵ *County of Los Angeles, supra*, 43 Cal.3d at page 56.

¹⁶ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

Issue 2: Does the test claim statute mandate a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution?

Elections Code Section 14310:

As background, Elections Code section 14310, subdivision (a), provides:

(a) At all elections, a voter claiming to be properly registered but whose qualification or entitlement to vote cannot be immediately established upon examination of the index of registration for the precinct or upon examination of the records on file with the county elections official, shall be entitled to vote a provisional ballot

The test claim legislation, Statutes 2000, chapter 260, amended Elections Code section 14310, subdivision (c)(1) as follows,¹⁷ indicated in underline and strikeout:

(c)(1) During the official canvass, the elections official¹⁸ shall examine the records with respect to all provisional ballots cast. Using the procedures that apply to the comparison of signatures on absentee ballots, the elections official shall compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration. If the signatures do not compare, the ballot shall be rejected. A variation of the signature caused by the substitution of initials for the first or middle name, or both, shall not invalidate the ballot.

Claimant alleges that prior to this amendment: "the county elections official was not legally required to perform provisional ballot signature comparison for voter identification purposes. ... Enactment of this statute has increased the duties of the county elections official, and requires the official to provide a higher-level of service for an existing program."

Test claim legislation mandates a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not previously required.¹⁹ The courts have defined a "higher level of service" in conjunction with the phrase "new program" to give the subvention requirement of article XIII B, section 6 meaning. Accordingly, "it is apparent that the subvention requirement for increased or higher level of service is directed to state-mandated increases in the services provided by local agencies in

¹⁷ Elections Code section 14310 has been subsequently amended, but the later statutes have not been included in this test claim, and this particular provision has not changed.

¹⁸ Elections Code section 320 provides the following definition:

"Elections official" means any of the following:

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

¹⁹ *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 836.

existing programs.”²⁰ A statute mandates a reimbursable “higher level of service” when the statute, as compared to the legal requirements in effect immediately before the enactment of the test claim legislation, increases the actual level of governmental service to the public provided in the existing program.²¹

Although prior law required that “the elections official shall examine the records with respect to all provisional ballots cast,” the law did not require that each signature on a provisional ballot be directly compared to the signature on the voter’s registration affidavit. This is akin to the analysis by the court in *Long Beach Unified School Dist.*, *supra*, 225 Cal.App.3d 155, 173, which found a higher level of service was mandated when general law on an existing program is changed to require performance of activities in a very specific manner:

A mere increase in the cost of providing a service which is the result of a requirement mandated by the state is not tantamount to a higher level of service. [Citation omitted.] However, a review of the Executive Order and guidelines shows that a higher level of service is mandated because their requirements go beyond constitutional and case law requirements. Where courts have *suggested* that certain steps and approaches may be helpful, the Executive Order and guidelines *require* specific actions. For example, school districts are to conduct mandatory biennial racial and ethnic surveys, develop a “reasonably feasible” plan every four years to alleviate and prevent segregation, include certain specific elements in each plan, and take mandatory steps to involve the community, including public hearings which have been advertised in a specific manner. While all these steps fit within the “reasonably feasible” description of *Jackson* and *Crawford*, the point is that these steps are no longer merely being suggested as options which the local school district may wish to consider but are required acts.

Staff finds that Elections Code section 14310, subdivision (c)(1), as amended by Statutes 2000, chapter 260, mandates a new program or higher level of service within an existing program by compelling local elections officials to perform the following activity when conducting the official canvass for elections:

- Using the procedures that apply to the comparison of signatures on absentee ballots, the elections official shall compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration. If the signatures do not compare, the ballot shall be rejected.

However, although the procedures established by Elections Code section 14310, subdivision (c)(1) are required to be followed at all elections, some elections are held entirely at the discretion of the local agency and would not result in reimbursable costs.

²⁰ *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56; *San Diego Unified School District*, *supra*, 33 Cal.4th 859, 874.

²¹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

In *Kern High School Dist.*, *supra*, 30 Cal.4th 727, at page 743, the California Supreme Court affirmed the holding of *City of Merced v. State of California* (1984) 153 Cal.App.3d 777. The Court stated the following:

In *City of Merced*, the city was under no legal compulsion to resort to eminent domain—but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate. (Emphasis in original.)

Thus, the Court held as follows:

*[W]e reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, without regard to whether claimant's participation in the underlying program is voluntary or compelled. [Emphasis added.]*²²

The Court left undecided whether a reimbursable state mandate “might be found in circumstances short of legal compulsion—for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program.”²³

In *San Diego Unified School Dist.*, *supra*, the Court discusses the potential pitfalls of extending “the holding of *City of Merced* so as to preclude reimbursement ... whenever an entity makes an initial discretionary decision that in turn triggers mandated costs.”²⁴ In particular, the Court examines the factual scenario from *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, in which:

an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. (*Id.*, at pp. 537-538, 234 Cal.Rptr. 795.) The court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ—and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced*, *supra*, 153 Cal.App.3d 777, 200 Cal.Rptr. 642, such costs would not be reimbursable for the simple reason that the local agency's decision to employ

²² *Id.* at page 731.

²³ *Ibid.*

²⁴ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at page 887.

firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and *hence we are reluctant to endorse, in this case*, an application of the rule of *City of Merced* that might lead to such a result. [Emphasis added.]

Yet the Court did not rely on this analysis to reach its conclusions, thus the statements are considered dicta. However, staff recognizes that the Court was giving notice that the *City of Merced* "discretionary" rationale is not without limitation. What the Court did *not* do was disapprove either the *City of Merced*, or its own rationale and holding in *Kern High School Dist.*

Rather, the 2003 decision of the California Supreme Court in *Kern High School Dist.* remains good law, relevant, and its reasoning applies here. The Supreme Court explained, "the proper focus under a legal compulsion inquiry is upon the nature of the claimants' participation in the underlying programs themselves."²⁵ Likewise, compliance with *Voter Identification Procedures* is not a *reimbursable* state-mandated program for local special elections scheduled at the option of the local agency, *if* the issue could have legally been held for the next regular local or statewide election date.

Elections Code section 1000 provides that "The established election dates in each year are as follows:"

- (a) The second Tuesday of April in each even-numbered year.
- (b) The first Tuesday after the first Monday in March of each odd-numbered year.
- (c) The first Tuesday after the first Monday in June in each year.
- (d) The first Tuesday after the first Monday in November of each year.

Elections Code section 1001 provides that "Elections held in June and November of each even-numbered year are statewide elections and these dates are statewide election dates." Staff finds that eligible costs from the *Voter Identification Procedures* program for any statewide election dates, including special elections called by the Governor, are reimbursable.

Elections Code section 1002 provides that "Except as provided in Section 1003, notwithstanding any other provisions of law, all state, county, municipal, district, and school district elections shall be held on an established election date." Elections Code section 1003 provides a list of types of elections that may be held on dates other than established election dates, for example, "(e) County, municipal, district, and school district initiative, referendum, or recall elections."

Elections Code section 1300 et seq contain the general elections date provisions for local agencies and school districts. Elections Code section 1303, for example, 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." Staff finds that eligible costs from the *Voter Identification Procedures* program are reimbursable, for this type of regular, statutorily-required local election.

²⁵ *Kern High School Dist.*, *supra*, 30 Cal.4th at page 743.

An example where costs of complying with the *Voter Identification Procedures* program would not be reimbursable is found in Elections Code section 9222:

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. The election shall be held not less than 88 days after the date of the order of election.

Using this example, if city officials call for a special municipal election for a vote on such a proposition, at a time other than a scheduled statewide election, this is a voluntary election on the part of the city. There are many such examples found in the Elections Code, where special elections may be called at the option of a local government, or they can be held and consolidated with other elections.²⁶ In broad terms, staff finds that in a case where 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 under the *Kern* decision.

Issue 3: Does the test claim statute impose “costs mandated by the state” within the meaning of Government Code sections 17514 and 17556?

Reimbursement under article XIII B, section 6 is required only if any new program or higher-level of service is also found to impose “costs mandated by the state.” Government Code section 17514 defines “costs mandated by the state” as any *increased* cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service. The claimant estimated costs of \$1000 or more for the test claim allegations. The claimant also stated that none of the Government Code section 17556 exceptions apply. For the activity listed in the conclusion below, staff agrees and finds accordingly that it imposes costs mandated by the state upon local elections officials within the meaning of Government Code section 17514.

²⁶ Elections Code sections 1405, 1410, and 1415 hold three more examples.

CONCLUSION

Staff concludes that Elections Code section 14310, subdivision (c)(1), as amended by Statutes 2000, chapter 260, mandates a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution, and imposes costs mandated by the state pursuant to Government Code section 17514, for performing the following specific new activity as part of statutorily-required elections:

- Using the procedures that apply to the comparison of signatures on absentee ballots, the elections official shall compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration. If the signatures do not compare, the ballot shall be rejected. (Elec. Code, § 14310, subd. (c)(1).)²⁷

Staff concludes that in a case where 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.

Recommendation

Staff recommends that the Commission adopt this analysis and partially approve the test claim.

²⁷ As amended by Statutes 2000, chapter 260, operative January 1, 2001.

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State of California
 COMMISSION ON STATE MANDATES
 980 Ninth Street, Suite 300
 Sacramento, CA 95814
 (916) 323-3562
 CSM 1 (2/91)

TEST CLAIM FORM

For Official Use Only
RECEIVED
OCT 01 2003
COMMISSION ON STATE MANDATES
Claim No. 03-TC-23

Local Agency or School District Submitting Claim

COUNTY OF SAN BERNARDINO

Contact Person

Telephone No.

BONNIE TER KEURST

(909) 386-8850

Address

OFFICE OF THE AUDITOR/CONTROLLER-RECORDER
 222 W. HOSPITALITY LANE, SAN BERNARDINO, CA 92415-0018

Representative Organization to be Notified

None

This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.

Chapter 260, Statutes of 2000 (Sections 1 & 2); Elections Code Section 14310

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Telephone No.

BONNIE TER KEURST
 REIMBURSABLE PROJECTS MANAGER

(909) 386-8850

Signature of Authorized Representative

Date

Bonnie Ter Keurst

Sept 26, 2003

BEFORE THE
COMMISSION ON STATE MANDATES

Test Claim of
County of San Bernardino

VOTER IDENTIFICATION PROCEDURES

Chapter 260, Statutes of 2000

STATEMENT OF THE CLAIM

INTRODUCTION

On January 1, 2001, Chapter 260, Statutes of 2000 (Senate Bill No. 414) became operative (Exhibit A). This legislation amended Section 14310 of the Elections Code by requiring local elections official to identify voters casting provisional ballots by comparing the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration through applying the procedures used in comparing the signatures on absentee ballots. If the elections official determines that the signature does not match as specified, the cast provisional ballot is rejected entirely. The workload increase resulting from the mandated signature comparison for voter identification purpose has resulted in the development of additional procedures and increased labor costs for the local agencies working to provide higher level of service imposed by the State as defined in Section 14310 of the Elections Code.

A. MANDATE SUMMARY

The Elections Code, Section 14310, requires that whenever in any elections a voter is claiming to be properly registered but whose qualification or entitlement to vote cannot be immediately established upon examination of the index of registration for the precinct, or upon examination of the county elections official's records on file, the voter is entitled to cast a provisional ballot. After the ballots are cast, the elections official examines the records with respect to all provisional ballots cast during the official canvass.

Chapter 260, Statutes of 2000 (SB 414) amended Section 14310 of the Elections Code. As of January 1, 2001 Section 14310 requires the county elections official to compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration by using the procedures that apply to the comparison of signatures on the absentee ballots.

Elections Code Section 14310 reads, in pertinent part:

(c) (1) During the official canvass, the elections official shall examine the records with respect to all provisional ballots cast. Using the procedures that apply to the comparison of signatures on absentee ballots, the elections official shall compare the signature on each provisional ballot

**Test Claim of County of San Bernardino
Voter Identification Procedures**

envelope with the signature on the voter's affidavit of registration. If the signatures do not compare, the ballot shall be rejected. A variation of the signature caused by the substitution of initials for the first or middle name, or both, shall not invalidate the ballot.

Article XIII B, Section 6 of the California Constitution requires reimbursement whenever the State mandates local governments to implement and deliver services that constitute a "new program or higher level of service". The higher level of service for casting provisional ballots occurred when the State required the local elections official to compare and verify signatures on provisional ballot envelopes and voters' affidavit of registration using the signature-comparison procedures applied to absentee ballots. The requirement of comparison of signatures between provisional ballot envelope and voter's affidavit of registration constitutes a higher level of service upon local agencies.

In order to be reimbursable, the mandated legislation must be enacted by the State after 1975, per Article XIII B, Section 6 of the California Constitution. Since the legislation mandating the provisional ballot signature comparison with the voter's affidavit of registration was enacted in 2000, the reimbursement requirement of Article XIII B, Section 6 of the California Constitution applies.

Prior to the enactment of Chapter 260, Statutes of 2000, the county elections official was not legally required to perform provisional ballot signature comparison for voter identification purposes. The elections official was only required to examine the records, and establish the provisional ballot-casting voter's right to vote. Enactment of this statute has increased the duties of the county elections official, and requires the official to provide a higher-level of service for an existing program. Within the meaning of Section 6 of Article XIII B of the California Constitution, any costs incurred that are direct result of providing "higher level of service of an existing program" are reimbursable by the State to the local agencies incurring those costs.

In order to manage the increased workload imposed by this mandate, the County Registrar of Voters (ROV) has developed additional procedures and increased the staffing-level to meet the new voter identification requirements of Chapter 260, Statutes of 2000 (SB 414). The County of San Bernardino does not have the authority to charge fees to voters to recover these increased voter identification costs. Therefore these costs are deemed to be mandated and reimbursable by the State to the local agencies incurring these costs.

The identification of provisional ballot-casting voters by comparing their signatures on the provisional ballot envelopes with the signatures on the voters' affidavit of registration constitutes a higher level of service. Counties were not required to perform this service before the enactment of the statute, which is this test claim's subject. Since the signature comparison requirement became effective on January 1, 2001, the reimbursement requirement of Article XIII B, Section 6 of the California Constitution applies.

Test Claim of County of San Bernardino
Voter Identification Procedures

Section 2 of the Chapter 260, Statutes of 2000 (SB 414) reads as follows:

Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

B. SPECIFIC STATUTORY SECTIONS THAT CONTAIN THE MANDATED ACTIVITIES

Chapter 260, Statutes of 2000

An act to amend Section 14310 of the Elections Code relating to the voter identification procedures:

Elections Code, Section 14310 (c) (1) – provides that elections official compare the signature of each provisional ballot envelope with the signature on the voter's affidavit of registration using the procedures applied in absentee ballot signature comparison. If the signatures do not match as specified, the ballot should be rejected.

C. COST ESTIMATES

The costs fall into two categories: a) new workload costs, and b) administration costs.

There are no cost savings to the counties attributable to Chapter 260. The counties are unable to raise fees to pay for these costs, and they cannot reduce or lower the quality or availability of services. The costs are not subject to the funding disclaimers specified in Government Code Section 17556.

All of these mandated activities arise from Elections Code Section 14310 (Exhibit A), and will result in increased cost to local governmental entities in excess of \$1,000 per fiscal year.

D. REIMBURSABLE COSTS MANDATED BY THE STATE

The costs incurred by the County of San Bernardino as a result of the statutes included in the test claim are all reimbursable costs as such costs are "costs mandated by the State" under Article XIII B Section 6 of the California Constitution, and Section 17500 et seq. of the Government Code. Section 17514 of the Government Code defines "costs mandated

by the State", and specifies the following three requirements:

1. There are "increased costs which a local agency is required to incur after July 1, 1980."
2. The costs are incurred "as a result of any statute enacted on or after January 1, 1975."
3. The costs are the result of "a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution".

All three of the above requirements for finding costs mandated by the State are met as described previously herein.

E. MANDATE MEETS BOTH SUPREME COURT TESTS

The mandate created by these statutes clearly meets both tests that the Supreme Court created in the *County of Los Angeles v. State of California* (1987) for determining what constitutes a reimbursable state mandated local program. The two tests, which the Commission on State Mandates relies upon to determine if a reimbursable mandate exists, are the "unique to government" test and the "carry out a state policy" test. The tests' application to this test claim is discussed below.

Mandate is Unique to Local Government

The statutory scheme set forth above imposes a unique requirement on local government. Counties, rather than public/private entities, are responsible for administering the provisional ballot casting, and comparing the voter signatures on the provisional ballot envelopes and the voters' affidavit of registration. This mandate only applies to the local government.

Mandate Carries Out a State Policy

From the legislation, it is clear that the State intended that the local elections official identify provisional ballot casting voters by comparing their signatures on the provisional ballot envelopes with the signatures on the voters' affidavit of registration. Prior to the enactment of the Chapter 260, Statutes of 2000, comparison of voter signatures by the elections official was not a requirement by the State.

Both of these tests are met.

F. STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code, Section 17556 which could serve to bar recovery of "costs mandated by the State", as defined in Government Code, Section 17556. **None of the seven disclaimers apply to this test claim.**

1. The claim is submitted by a local agency or school district, which requests legislative authority for that local agency or school district to implement the program specified in the statutes, and that statute imposes costs upon the local agency or school district requesting the legislative authority.
2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.
3. The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs, which exceed the mandate in that federal law or regulation.
4. 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.
5. The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate.
6. The statute or executive order imposed duties, which were expressly included in a ballot measure approved by the voters in a statewide election.
7. The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

None of the above disclaimers have any application to the County of San Bernardino's test claim.

G. CONCLUSION

The enactment of Chapter 260, Statutes of 2000 imposed a new state mandated program and cost on the County of San Bernardino, by requiring the elections official to compare signatures on provisional ballot envelopes with the signatures on the voters' affidavit of registration for voter identification purposes.

**Test Claim of County of San Bernardino
Voter Identification Procedures**

The mandated program meets all of the criteria and tests for the Commission on State Mandates to find a reimbursable state mandated program. None of the disclaimers or other statutory or constitutional provisions that would relieve the State from its constitutional obligation to provide reimbursement has any application to this claim.

Government Code Section 17514 defines "costs mandated by the state" as:

"Any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The activities required by the Elections Code as added or amended or both by the statute of this test claim, result in increased costs that local agencies were required to incur after July 1, 1980, as a result of a statute enacted on or after January 1, 1975.

Therefore, based on the foregoing, the County of San Bernardino respectfully requests that the Commission on State Mandates determine that Chapter 260, Statutes of 2000, impose reimbursable state-mandated costs for the increased voter identification procedures pursuant to Section 6 of Article XIII B of the California Constitution.

H. CLAIM REQUIREMENTS

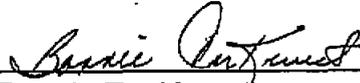
The following elements of this test claim are provided pursuant to Section 1183, Title 2, of the California Code of Regulations:

Exhibit A: Chapter 260, Statutes of 2000

CLAIM CERTIFICATION

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 26th day of September, 2003, at San Bernardino, California, by:



Bonnie Ter Keurst
Reimbursable Projects Manager
Office of the Auditor/Controller-Recorder
222 W. Hospitality Lane, 4th Floor
San Bernardino, CA 92415-0018

Phone: (909) 386-8850
Fax: (909) 386-8830

EXHIBIT

A

Senate Bill No. 414

CHAPTER 260

An act to amend Section 14310 of the Elections Code, relating to elections.

[Approved by Governor August 25, 2000. Filed with
Secretary of State August 28, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 414, Knight. Voting procedures: voter identification.

Existing law requires that, at all elections, a voter claiming to be properly registered but whose qualification or entitlement to vote cannot be immediately established upon specified examination is entitled to vote a provisional ballot. During the official canvass, existing law requires the elections official to examine the records with respect to all provisional ballots cast.

This bill would further require the elections official to compare the signature of each provisional ballot envelope with the signature on the voter's affidavit of registration. The bill would require that if the signatures do not compare, as specified, the ballot would be rejected.

This bill would impose a state-mandated local program by imposing new duties on local elections officials.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 14310 of the Elections Code is amended to read:

14310. (a) At all elections, a voter claiming to be properly registered but whose qualification or entitlement to vote cannot be immediately established upon examination of the index of registration for the precinct or upon examination of the records on file with the county elections official, shall be entitled to vote a provisional ballot.

(b) Once voted, the voter's ballot shall be sealed in a provisional ballot envelope, and the ballot in its envelope shall be deposited in the ballot box. All provisional ballots voted shall remain sealed in their envelopes for return to the elections official in accordance with the elections official's instructions. The provisional ballot envelopes specified in this subdivision shall be a color different than the color of, but printed substantially similar to, the envelopes used for absentee ballots, and shall be completed in the same manner as absentee envelopes.

(c) (1) During the official canvass, the elections official shall examine the records with respect to all provisional ballots cast. Using the procedures that apply to the comparison of signatures on absentee ballots, the elections official shall compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration. If the signatures do not compare, the ballot shall be rejected. A variation of the signature caused by the substitution of initials for the first or middle name, or both, shall not invalidate the ballot.

(2) Provisional ballots shall not be included in any semiofficial or official canvass, except upon: (A) the elections official's establishing prior to the completion of the official canvass, from the records in his or her office, the claimant's right to vote; or (B) the order of a superior court in the county of the voter's residence. A voter may seek the court order specified in this paragraph regarding his or her own ballot at any time prior to completion of the official canvass. Any judicial action or appeal shall have priority over all other civil matters.

(3) A precinct board member shall notify the voter of the contents of this subdivision at the time of receiving the provisional ballot of the voter.

(4) The provisional ballot of a voter who is otherwise entitled to vote shall not be rejected because the voter did not cast his or her ballot in the precinct to which he or she was assigned by the elections official, provided the ballot cast by the voter contained only the candidates and measures on which the voter would have been entitled to vote in his or her assigned precinct.

(d) The Secretary of State may adopt appropriate regulations for purposes of ensuring the uniform application of this section.

(e) This section shall apply to any absent voter described by Section 3015 who is unable to surrender his or her unvoted absent voter's ballot.

(f) Any existing supply of envelopes marked "special challenged ballot" may be used until the supply is exhausted.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant

to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.



DEPARTMENT OF
FINANCE

GRAY DAVIS, GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

November 14, 2003

RECEIVED

NOV 18 2003

**COMMISSION ON
STATE MANDATES**

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms Higashi:

As requested in your letter of October 15, 2003, the Department of Finance has reviewed the test claim submitted by the County of San Bernardino (claimant) asking the Commission to determine whether specified costs incurred under Chapter 260, Statutes of 2000 (SB 414) are reimbursable state mandated costs (Claim No. CSM 03-TC-23 "Voter Identification Procedures"). Commencing with page 1 of the test claim, the claimant has identified the following new duty, which it asserts constitutes a reimbursable state mandate:

- Comparing signatures between provisional ballot envelopes and voter's affidavits of registration.

As the result of our review, we have concluded that Chapter 260 may have resulted in new state-mandated activities.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your October 15, 2003 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Keith Gmeinder, Principal Program Budget Analyst at (916) 445-8913, or Rachael LaFlam, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Tilton".

James E. Tilton
Program Budget Manager

Attachments

Attachment A

DECLARATION OF
DEPARTMENT OF FINANCE
CLAIM NO.

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

November 14, 2003
at Sacramento, CA

Keith Gmeinder
Keith Gmeinder

PROOF OF SERVICE

Test Claim Name: Voter Identification Procedures
Test Claim Number: 03-TC-23

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, eighth Floor, Sacramento, CA 95814.

On November 14, 2003, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and non-state agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, eighth Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

B-8

State Controller's Office
Division of Accounting & Reporting
Attention: Michael Havey
3301 C Street, Room 500
Sacramento, CA 95816

Spector, Middleton, Young & Minney, LLP
Attention: Paul Minney
7 Park Center Drive
Sacramento, CA 95825

SB 90 Service
C/O David M. Griffiths & Associates
Attention: Allan Burdick
4320 Auburn Boulevard, Suite 200
Sacramento, CA 95841

County of Los Angeles
Department of Auditor-Controller
Attention: Leonard Kaye, Esq.
500 West Temple Street, Suite 603
Los Angeles, CA 90012

County of San Bernardino
Office of Auditor/Controller/Recorder
Attention: Bonnie Ter Keurst
222 West Hospitality Lane, Fourth Floor
San Bernardino, CA 92415-0018

Wellhouse and Associates
Attention: David Wellhouse
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

MAXIMUS
Attention: Allan Burdick
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Cost Recovery Systems
Attention: Annette Chin
705-2 East Bidwell Street, #294
Folsom, CA 95630

Mandate Resource Services
Attention: Harmeet Barkschat
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Mandated Cost Systems, Inc.
Attention: Steve Smith
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95760

D-15
Secretary of State
Attention: John Mott-Smith
1500 11th Street
Sacramento, CA 95814

Centration, Inc.
Attention: Cindy Sconce
12150 Tributary Point Drive, Suite 140
Gold River, CA 95670

Department of Finance
Attention: Keith Gmeinder
915 L Street, 8th Floor
Sacramento, CA 95814

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 November 14, 2003 at Sacramento, California.



Mary Latorre

COMMISSION ON STATE MANDATES

880 NINTH STREET, SUITE 300

SACRAMENTO, CA 95814

PHONE: (916) 323-3662

FAX: (916) 445-0278

E-mail: csminfo@csm.ca.gov



July 21, 2006

Ms. Bonnie Ter Keurst
Reimbursable Projects Manager
County of San Bernardino
Office of the Auditor/Controller-Recorder
222 W. Hospitality Lane
San Bernardino, CA 92415-0018

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: Draft Staff Analysis and Hearing Date
Voter Identification Procedures (03-TC-23)
County of San Bernardino, Claimant
Elections Code Section 14310, as amended by Statutes 2000, Chapter 260

Dear Ms. Ter Keurst:

The draft staff analysis of this test claim is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by **August 14, 2006**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This test claim is set for hearing on **Thursday, September 28, 2006**. The final staff analysis will be issued on or about September 15, 2006. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Please contact Katherine Tokarski at (916) 445-9429 with any questions regarding the above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paula Higashi".

PAULA HIGASHI
Executive Director

Enc. Draft Staff Analysis

MAILED: Mail List
FAXED: _____
INITIAL: *jd*
DATE: *7/21/04*
FILE: _____
CHRON: _____
WORKING BINDER: _____

ITEM ____

**TEST CLAIM
DRAFT STAFF ANALYSIS**

Elections Code Section 14310

Statutes 2000, Chapter 260 (SB 414)

Voter Identification Procedures (03-TC-23)

County of San Bernardino, Claimant

EXECUTIVE SUMMARY

The Executive Summary will be included with the Final Staff Analysis.

STAFF ANALYSIS

Claimant

County of San Bernardino

Chronology

10/01/03 Claimant files test claim with the Commission
10/15/03 Commission staff issues completeness review letter
11/14/03 Department of Finance (DOF) files comments on the test claim
07/21/06 Commission staff issues the draft staff analysis

Background

This test claim addresses an amendment to Elections Code section 14310, regarding counting "provisional ballots." A provisional ballot is a regular ballot that has been sealed in a special envelope, signed by the voter, and then deposited in the ballot box. According to information from the Secretary of State's website:¹

A voter is asked to vote a provisional ballot at the polls due to one of the following reasons:

- **The voter's name is not on the official roster of voters and the election officer cannot verify the voter's voting eligibility on Election Day.** The Elections Official's Office will check the registration records. If further research determines that the voter is eligible to vote in the election, the provisional ballot will be counted.
- **A voter has moved within the county, but did not re-register to vote.** The Elections Official will verify the voter's prior registration before the provisional ballot will be counted. The voter's registration will then be updated with the voter's current address.
- **Records indicate that the voter requested an absentee ballot and the voter fails to turn in the absentee ballot at the polls on Election Day.** The Elections Official's Office will check the records, and if the voter did not vote an absentee ballot, the voter's provisional ballot will be counted.
- **The voter is a first-time Federal Election voter in the county and was unable to provide the required proof of identification.** The Elections Official's Office will verify the voter's eligibility to vote by comparing the signature on the voter's registration with the signature on the provisional ballot envelope.

¹ At < http://www.ss.ca.gov/elections/elections_provisional.htm > (as of July 5, 2006.)

Provisional ballots are counted during the official canvass² when:

Prior to the completion of the official canvass (the vote tally), the Elections Official's Office establishes, from voter registration records, the claimant's right to vote the ballot.

Statutes 2000, chapter 260, amended Elections Code section 14310, subdivision (c)(1), to add a requirement that elections officials "compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration."

Claimant's Position

Claimant, County of San Bernardino, filed this test claim on October 1, 2003.³ Claimant contends that Elections Code section 14310, as amended by Statutes 2000, chapter 260, constitutes a reimbursable state-mandated program, "by requiring the elections official to compare signatures on provisional ballot envelopes with the signatures on the voter's affidavit of registration for voter identification purposes."

Department of Finance's Position

DOF filed comments on November 14, 2003, agreeing with the claimant that Statutes 2000, chapter 260 "may have resulted in new state-mandated activities."

² Elections Code section 335.5 defines "official canvass," as follows:

The "official canvass" is the public process of processing and tallying all ballots received in an election, including, but not limited to, provisional ballots and absentee ballots not included in the semifinal official canvass. The official canvass also includes the process of reconciling ballots, attempting to prohibit duplicate voting by absentee and provisional voters, and performance of the manual tally of 1 percent of all precincts.

Elections Code section 318 provides: "'Election' means any election including a primary that is provided for under this code."

³ Potential reimbursement period for this claim begins no earlier than July 1, 2002, based on the filing date of the test claim. (Gov. Code, § 17557, subd. (c).)

Discussion

The courts have found that article XIII B, section 6, of the California Constitution⁴ recognizes the state constitutional restrictions on the powers of local government to tax and spend.⁵ "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."⁶ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.⁷ In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.⁸

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.⁹ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.¹⁰ A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."¹¹

⁴ Article XIII B, section 6, subdivision (a), provides: (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

⁵ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

⁶ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁷ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

⁸ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.*); *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 (*Lucia Mar*).

⁹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.)

¹⁰ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

¹¹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.¹²

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹³ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."¹⁴

Issue 1: Is the test claim legislation subject to article XIII B, section 6, of the California Constitution?

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program." In *County of Los Angeles v. State of California*, the California Supreme Court defined the word "program" within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.¹⁵ The court has held that only one of these findings is necessary.¹⁶

Staff finds that verifying provisional ballots imposes a program within the meaning of article XIII B, section 6 of the California Constitution under both tests. County elections officials provide a service to the members of the public by verifying that those who vote provisional ballots are eligible to cast a ballot. The test claim legislation also requires local elections officials to engage in administrative activities solely applicable to local government, thereby imposing unique requirements upon counties that do not apply generally to all residents and entities of the state.

Accordingly, staff finds that the test claim legislation constitutes a "program" and, thus, may be subject to subvention pursuant to article XIII B, section 6 of the California Constitution *if* the legislation also mandates a new program or higher level of service, and costs mandated by the state.

¹² *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 (*County of Sonoma*); Government Code sections 17514 and 17556.

¹³ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

¹⁴ *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹⁵ *County of Los Angeles, supra*, 43 Cal.3d at page 56.

¹⁶ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

Issue 2: Does the test claim legislation mandate a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution?

Elections Code Section 14310:

As background, Elections Code section 14310, subdivision (a), provides:

(a) At all elections, a voter claiming to be properly registered but whose qualification or entitlement to vote cannot be immediately established upon examination of the index of registration for the precinct or upon examination of the records on file with the county elections official, shall be entitled to vote a provisional ballot

The test claim legislation, Statutes 2000, chapter 260, amended Elections Code section 14310, subdivision (c)(1) as follows,¹⁷ indicated in underline and strikeout:

(c)(1) During the official canvass, the elections official shall examine the records with respect to all provisional ballots cast. Using the procedures that apply to the comparison of signatures on absentee ballots, the elections official shall compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration. If the signatures do not compare, the ballot shall be rejected. A variation of the signature caused by the substitution of initials for the first or middle name, or both, shall not invalidate the ballot.

Claimant alleges that prior to this amendment: "the county elections official was not legally required to perform provisional ballot signature comparison for voter identification purposes. ... Enactment of this statute has increased the duties of the county elections official, and requires the official to provide a higher-level of service for an existing program."

Test claim legislation mandates a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not previously required.¹⁸ The courts have defined a "higher level of service" in conjunction with the phrase "new program" to give the subvention requirement of article XIII B, section 6 meaning. Accordingly, "it is apparent that the subvention requirement for increased or higher level of service is directed to state-mandated increases in the services provided by local agencies in existing programs."¹⁹ A statute mandates a reimbursable "higher level of service" when the statute, as compared to the legal requirements in effect immediately before the enactment of the test claim legislation, increases the actual level of governmental service to the public provided in the existing program.²⁰

¹⁷ Elections Code section 14310 has been subsequently amended, but the later statutes have not been included in this test claim, and this particular provision has not changed.

¹⁸ *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 836.

¹⁹ *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56; *San Diego Unified School District*, *supra*, 33 Cal.4th 859, 874.

²⁰ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

Although prior law required that "the elections official shall examine the records with respect to all provisional ballots cast," the law did not require that each signature on a provisional ballot be directly compared to the signature on the voter's registration affidavit. This is akin to the analysis by the court in *Long Beach Unified School Dist.*, *supra*, 225 Cal.App.3d 155, 173, which found a higher level of service was mandated when general law on an existing program is changed to require performance of activities in a very specific manner:

A mere increase in the cost of providing a service which is the result of a requirement mandated by the state is not tantamount to a higher level of service. [Citation omitted.] However, a review of the Executive Order and guidelines shows that a higher level of service is mandated because their requirements go beyond constitutional and case law requirements. Where courts have *suggested* that certain steps and approaches may be helpful, the Executive Order and guidelines *require* specific actions. For example, school districts are to conduct mandatory biennial racial and ethnic surveys, develop a "reasonably feasible" plan every four years to alleviate and prevent segregation, include certain specific elements in each plan, and take mandatory steps to involve the community, including public hearings which have been advertised in a specific manner. While all these steps fit within the "reasonably feasible" description of *Jackson* and *Crawford*, the point is that these steps are no longer merely being suggested as options which the local school district may wish to consider but are required acts.

Staff finds that Elections Code section 14310, subdivision (c)(1), as amended by Statutes 2000, chapter 260, mandates a new program or higher level of service within an existing program by compelling county elections officials to perform the following activity when conducting the official canvass for elections:

- Using the procedures that apply to the comparison of signatures on absentee ballots, the elections official shall compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration. If the signatures do not compare, the ballot shall be rejected.

Issue 3: Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

Reimbursement under article XIII B, section 6 is required only if any new program or higher-level of service is also found to impose "costs mandated by the state." Government Code section 17514 defines "costs mandated by the state" as any *increased* cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service. The claimant estimated costs of \$1000 or more for the test claim allegations. The claimant also stated that none of the Government Code section 17556 exceptions apply. For the activity listed in the conclusion below, staff agrees and finds accordingly that it imposes costs mandated by the state upon counties within the meaning of Government Code section 17514.

CONCLUSION

Staff concludes that Elections Code section 14310, subdivision (c)(1), as amended by Statutes 2000, chapter 260, mandates a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for performing the following specific new activity:

- Using the procedures that apply to the comparison of signatures on absentee ballots, the elections official shall compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration. If the signatures do not compare, the ballot shall be rejected. (Elec. Code, § 14310, subd. (c)(1).)²¹

Recommendation

Staff recommends that the Commission adopt this analysis and approve the test claim.

²¹ As amended by Statutes 2000, chapter 260.

Commission on State Mandates

Original List Date: 10/8/2003
Last Updated: 7/19/2006
List Print Date: 07/21/2006
Claim Number: 03-TC-23
Issue: Voter Identification Procedures

Mailing Information: Draft Staff Analysis

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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**AUDITOR/CONTROLLER-RECORDER
COUNTY CLERK**

EXHIBIT D

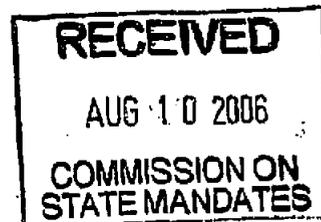


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RECORDER • COUNTY CLERK • 222 West Hospitality Lane, First Floor
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LARRY WALKER
Auditor/Controller-Recorder
County Clerk

ELIZABETH A. STARBUCK
Assistant Auditor/Controller-Recorder
Assistant County Clerk

August 3, 2006



Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

RE: Draft Staff Analysis and Hearing Date
Voter Identification Procedures (03-TC-23)
County of San Bernardino, Claimant
Statutes of 2000, Chapter 260
Elections Code Section 14310

Dear Ms. Higashi:

This letter is being submitted in response to the Draft Staff Analysis for the Voter Identification Procedures test claim dated July 21, 2006. The County of San Bernardino concurs with the Staff position that the test claim legislation imposes a reimbursable state-mandated program on local governments within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, for performing the following new activity:

- Using the procedures that apply to the comparison of signatures on absentee ballots, the elections official shall compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration. If the signatures do not compare, the ballot shall be rejected.

The County of San Bernardino concurs with the draft staff analysis as written and has no further comment.

If you have any questions, please feel free to call me at (909) 386-8850.

Sincerely,

A handwritten signature in cursive script that reads "Bonnie Ter Keurst".

Bonnie Ter Keurst
Reimbursable Projects Section Manager



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COUNTY OF SAN BERNARDINO

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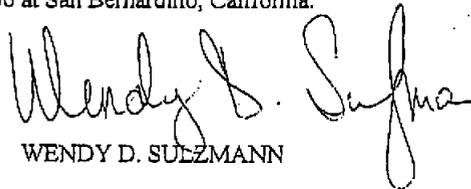
PROOF OF SERVICE

I, the undersigned, declare as follows:

I am employed by the County of San Bernardino, State of California. My business address is 222 W. Hospitality Lane, San Bernardino, CA 92415. I am 18 years of age or older.

On August 7, 2006, I faxed the letter dated August 3, 2006 to the Commission on State Mandates in response to draft staff analysis and hearing date, Voter Identification Procedures (03-TC-23). I faxed and/or mailed it also to the other parties listed on this 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 August 7, 2006 at San Bernardino, California.


WENDY D. SUEZMANN

Original List Date: 10/8/2003
Last Updated: 7/19/2006
List Print Date: 07/21/2006
Claim Number: 03-TC-23
Issue: Voter Identification Procedures

Mailing Information: Draft Staff Analysis

Mailing List

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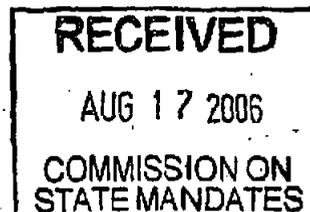
DEPARTMENT OF
FINANCE

ARNOLD SCHWARZENEGGER, GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3708 ■ WWW.DOF.CA.GOV

August 14, 2006

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814



Dear Ms Higashi:

As requested in your letter of July 21, 2006, the Department of Finance has reviewed the draft staff analysis of Claim No. CSM-03-TC-23 "Voter Identification Procedures".

Consistent with our November 14, 2003, comments that Chapter 260, Statutes of 2000, may have resulted in new state mandated activities, we concur with the staff analysis finding that comparing the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration is a reimbursable state mandate:

Prior to the enactment of Chapter 260, paragraph (1) of subdivision (c) of Elections Code Section 14310 read:

During the official canvass, the elections official shall examine the records with respect to all provisional ballots cast.

County elections officials were required to examine the voter's affidavit of registration and establish the provisional ballot-casting voter's right to vote. This was commonly performed by examining the voter's physical/computer-scanned registration card (affidavit of registration), but officials were not required to use a specific method of verification. Chapter 260 mandated a higher level of service by specifying that a signature comparison is the method of verification.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your July 21, 2006 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact, Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Thomas E. Dithridge
Program Budget Manager

Attachments

Attachment A

DECLARATION OF
DEPARTMENT OF FINANCE
CLAIM NO. CSM-03-TC-23

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the Chapter 260, Statutes of 2000 sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

8/15/08
at Sacramento, CA

Carla Castañeda
Carla Castañeda

PROOF OF SERVICE

Test Claim Name: Voter Identification Procedures
Test Claim Number: CSM-03-TC-23

I, the undersigned, declare as follows:

I am employed in the Department of Finance, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12th Floor, Sacramento, CA 95814.

On August 14, 2006, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12th Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300

B-08

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State Controller's Office
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

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B-08

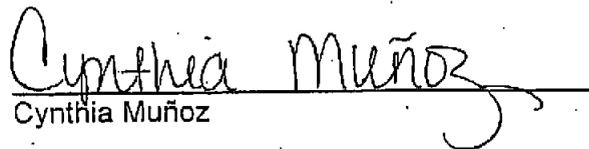
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P.O. Box 1768
Newport Beach, CA 92659-1768

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 August 11, 2006 at Sacramento, California.


Cynthia Muñoz