

ITEM 4

PROPOSED DECISION AND PARAMETERS AND GUIDELINES

Elections Code Section 3010;

Statutes 2018, Chapter 120 (AB 216)

Vote by Mail Ballots: Prepaid Postage

19-TC-01

County of Los Angeles, Claimant

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July 24, 2020

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

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

Exhibit A

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

Re: Decision

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

Dear Ms. Gonzalez and Ms. Li:

On July 24, 2020, the Commission on State Mandates adopted the Decision partially approving the Test Claim on the above-captioned matter.

Sincerely,

Heather Halsey
Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM

Elections Code Section 3010

Statutes 2018, Chapter 120 (AB 216)

Filed on October 15, 2019

County of Los Angeles, Claimant

Case No.: 19-TC-01

Vote by Mail Ballots: Prepaid Postage

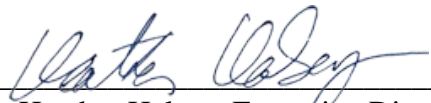
DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500 ET
SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.

(Adopted July 24, 2020)

(Served July 24, 2020)

TEST CLAIM

The Commission on State Mandates adopted the attached Decision on July 24, 2020.



Heather Halsey, Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

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

DECISION

The Commission in State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on July 24, 2020. Christina Snider appeared on behalf of interested party County of San Diego. Chris Hill appeared on behalf of the Department of Finance. The claimant submitted on the record, including its written comments, and did not appear.

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 the Proposed Decision to partially approve the Test Claim by a vote of 6-0, as follows:

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

Summary of the Findings

This Test Claim addresses 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 Commission finds that the test claim statute was timely filed within one year of the effective date of the statute, and that the reimbursement period begins on January 1, 2019, based on the effective date of the statute.

The Commission also finds that Elections Code Section 3010, as amended by Statutes 2018, chapter 120, imposes a reimbursable state-mandated program on county and city elections officials for state and local elections except for those held at the discretion of the local governing body, or elections for which counties or cities have fee authority within the meaning of Government Code section 17556(d).

Specifically, the Commission finds that the test claim statute imposes a new requirement on city and county elections officials to provide prepaid postage on identification envelopes delivered with vote-by-mail ballots for all state and local elections. 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. The requirement to provide prepaid postage on identification envelopes is mandated only on counties and on cities that conduct elections.

The Commission further finds that counties and cities are compelled by state law to conduct the following elections: (1) statewide general elections, statewide direct primary elections, and the presidential primary elections conducted by counties;¹ (2) regular local elections compelled by state law;² (3) special elections called by the Governor or required by state law, including recall elections of local officers, special elections forced by a petition of the voters to issue school bonds or to replace an appointee and fill a vacant school board position, and elections required by state law that are conducted by charter cities and counties;³ and, (4) local elections called by a

¹ Elections Code sections 1200-1202, 13001.

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

³ For example, Elections Code section 10700 (vacancy in a congressional or legislative office), 11110 (recall of state elected officers), 11200 et seq. (recall of local officers); Education Code section 15100 (voter petition for school bonds); Education Code section 5091(c) (voter petition to replace an appointee and fill a vacant board position); Elections Code sections 8026 (death of incumbent or challenger for a nonpartisan statewide, countywide, or citywide office, or for a nonpartisan office that is elected by division, area, or district, before an election); Education Code section 5093 (special elections consolidated with the next regular election when the vacancy occurs during the period between six months and 130 days prior to a regularly scheduled governing board election).

school district, community college district, or special district.⁴ Thus, the requirement to include prepaid postage on identification envelopes delivered to vote-by-mail voters for these required elections is mandated by the state.⁵

However, state law does not compel counties or cities to call their own discretionary local elections, and there is no evidence in the record that cities and counties are practically compelled to call discretionary local elections. As explained in the Decision, these elections generally include those called to raise local taxes or to issue bonds;⁶ advisory special elections;⁷ elections called by local government to repeal, amend, or enact local ordinances;⁸ local elections called to address a petition for an initiative or referendum that was not adopted by the local governing board;⁹ and some local discretionary elections to fill city council or school board vacancies that could have been filled by appointment.¹⁰ Therefore, the requirement to provide prepaid postage on the identification envelopes for the vote-by-mail ballots when a county or city conducts its own discretionary local election is not mandated by the state.¹¹

Additionally, required local special elections that are held at the option of the local agency, if the election could have legally been held for the next regular local or statewide established election date within statutory deadlines, are not compelled by state law. Where a local government calls a special election that could have otherwise been legally consolidated with the next local or statewide election or held on an established election date, holding the special election is a voluntary decision on the part of the local government, and the downstream costs for pre-paid postage in that case, is not reimbursable under the reasoning of the *Kern* decision.

Finally, although the legislative history of the test claim statute indicates that some counties were already providing prepaid postage on the identification envelopes at their own discretion,¹² the requirement is now mandated by the state. 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.”

⁴ Education Code sections 5300 and 5303; See also, Elections Code section 10517; *County of Yolo v. Los Rios Community College Dist.* (1992) 5 Cal.App.4th 1242.

⁵ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 743.

⁶ Government Code sections 53723 and 54380.

⁷ Elections Code section 9603. Government Code section 61008(d).

⁸ Elections Code sections 9140 and 9222.

⁹ Elections Code section 1405(b).

¹⁰ Government Code section 36512(b). Education Code section 5091.

¹¹ *Department of Finance v. Commission (POBRA)* (2009) 170 Cal.App.4th 1355, 1367.

¹² 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 Reg. Sess.) as introduced January 24, 2017.)

The Commission 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.¹³ 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.¹⁴

Finally, the Commission finds that the mandated activity imposes costs mandated by the state on cities and counties when counties administer statewide elections and when counties and cities administer their own legally compelled municipal elections or school and community college district elections consolidated with non-educational issues or elective offices.

However, when counties conduct elections for cities or special districts; or when cities and counties conduct an election solely on behalf of a school district or community college district (with no other non-educational issues or elective offices on the ballot), then cities and counties have fee authority sufficient to cover the cost of the mandate and, thus, there are no costs mandated by the state pursuant to Government Code section 17556(d).¹⁵

Therefore, the Commission partially 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, for the following elections:

- Statewide general elections, statewide direct primary elections, and the presidential primary elections conducted by counties.¹⁶
- Regular local elections compelled by state law.¹⁷
- Special elections called by the Governor or required by state law, including recall elections of local officers, special elections forced by a petition of the voters to issue

¹³ 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.)

¹⁴ Exhibit H, Assembly Floor, Analysis of AB 216 (2017-2018 Reg. Sess.), as amended September 1, 2017, page 1.

¹⁵ Elections Code section 3024, last amended by Statutes 2007, chapter 508.

¹⁶ Elections Code sections 1200-1202, 13001.

¹⁷ For example, California Constitution, article 6, section 16(b), and article 11, section 1; Elections Code sections 1300 et seq., 10517; Education Code sections 5300, 5303; Government Code section 24200, 25304.5.

school bonds or replace an appointee and fill a vacant school board position, and elections required by state law that are conducted by charter cities and counties.¹⁸

- School district and community college district discretionary elections required by state law to be conducted by counties and cities when the election is consolidated with non-educational issues or elective offices.¹⁹

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

- When a county or city conducts its own discretionary local elections or holds a required special election that could have been consolidated with a regular election within statutory deadlines; or
- When counties conduct elections for cities or special districts; or when cities and counties conduct an election solely on behalf of a school district or community college district (with no other non-educational issues or elective offices on the ballot). In these elections, there is fee authority sufficient to cover the costs of the mandate pursuant to Government Code section 17556(d) so there are no costs mandated by the state.²⁰

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.²¹
- 01/02/2020 The Department of Finance (Finance) filed comments on the Test Claim.²²
- 02/03/2020 The County of San Diego filed comments on the Test Claim.²³

¹⁸ For example, Elections Code section 10700 (vacancy in a congressional or legislative office), 11110 (recall of state elected officers), 11200 et seq. (recall of local officers); Education Code section 15100 (voter petition for school bonds); Education Code section 5091(c) (voter petition to replace an appointee and fill a vacant board position); Elections Code sections 8026 (death of incumbent or challenger for a nonpartisan statewide, countywide, or citywide office, or for a nonpartisan office that is elected by division, area, or district, before an election); Education Code section 5093 (special elections consolidated with the next regular election when the vacancy occurs during the period between six months and 130 days prior to a regularly scheduled governing board election).

¹⁹ Education Code sections 5300 and 5303. Elections Code section 10517.

²⁰ Elections Code sections 10002, 10517, 10520, and Education Code section 5227.

²¹ Exhibit A, Test Claim.

²² Exhibit B, Finance's Comments on the Test Claim.

²³ Exhibit C, County of San Diego's Comments on the Test Claim.

02/27/2020 The claimant filed late rebuttal comments on the Test Claim.²⁴
05/06/2020 Commission staff issued the Draft Proposed Decision.²⁵
05/27/2020 The claimant filed comments on the Draft Proposed Decision.²⁶
05/27/2020 The County of San Diego filed comments on the Draft Proposed Decision.²⁷

II. Background

A. Vote-by-Mail 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.”²⁸

Voting by mail was authorized in California by a constitutional amendment ratified at the November 7, 1922 General Election (Prop. 22)²⁹ and is governed by statutes enacted in 1923.³⁰ Originally, 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.³¹ 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 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:

²⁴ Exhibit D, Claimant’s Late Rebuttal Comments.

²⁵ Exhibit E, Draft Proposed Decision.

²⁶ Exhibit F, Claimant’s Comments on the Draft Proposed Decision.

²⁷ Exhibit G, County of San Diego’s Comments on the Draft Proposed Decision.

²⁸ 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”).

²⁹ *Peterson v. City of San Diego* (1983) 34 Cal.3d 225, 228. “Between 1930 and 1972, article II, section 1 of our state Constitution provided in part: “[T]he Legislature may, by general law, provide for the casting of votes by duly registered voters who expect to be absent from their respective precincts or unable to vote therein, by reason of physical disability, on the day on which any election is held.” In addition, article II, section 5 until 1972 gave the Legislature broad authority to regulate the method of voting, providing: “All elections by the people shall be by ballot or by such other method as may be prescribed by law; provided, that secrecy in voting is preserved.”

³⁰ Former Elections Code sections 1357-1364 (Stats. 1923, ch. 283).

³¹ Former Elections Code section 1357(b) (Stats. 1923, ch. 283).

*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....*³²

The earlier vote-by-mail law required ballots be 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.³³ In 1978, however, the Legislature declared that vote-by-mail ballots “shall be available to any registered voter.”³⁴

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).³⁵ 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.³⁶ 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.”³⁷ Any applications received by the elections official before the 29th day are kept and processed during the application period.³⁸

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.³⁹

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

³² Former Elections Code section 1357(c) (Stats. 1923, ch. 283). Emphasis in original.

³³ Former Elections Code section 1003 (Stats. 1976, ch. 1275).

³⁴ Elections Code section 3003 (Stats. 1994, ch. 920); former Elections Code section 1003 (Stats. 1978, ch. 77).

³⁵ 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).

³⁶ Elections Code section 3006(b)(4) (as last amended by Stats. 2014, ch. 596).

³⁷ 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).

³⁸ Elections Code section 3001 (as last amended by Stats. 2013, ch. 501.)

³⁹ 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.

ballot together with a notice informing the voter how to correct the defect in order for the ballot to be counted.⁴⁰

If the elections official deems the applicant entitled to a vote-by-mail ballot, then the ballot is delivered to the voter.⁴¹ 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.”⁴² 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.⁴³

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.⁴⁴ 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.⁴⁵ In addition, the identification envelope is not opened and the ballot is not counted unless the voter completes a signature verification process.⁴⁶ If the identification envelope is returned unsigned, the ballot is not counted unless the voter completes an unsigned ballot statement.⁴⁷ 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.”⁴⁸ Vote by mail ballots are generally counted and canvassed in the same manner as ballots cast in a precinct polling place.⁴⁹

Permanent vote-by-mail voting became available in California in 1982 for voters with specified conditions or disabilities.⁵⁰ In 2001, this law was expanded to allow any voter in California to

⁴⁰ Elections Code section 3009(c) (as last amended by Stats. 2015, ch. 728).

⁴¹ Elections Code section 3009(b) (as last amended by Stats. 2015, ch. 728).

⁴² Elections Code section 3010 (as amended by Stats. 2015, ch. 728); see also, former Elections Code section 1357(c) (Stats. 1923, ch. 283).

⁴³ Elections Code section 3011 (as amended by Stats. 2015, ch. 278).

⁴⁴ Elections Code sections 3017(a)(3) (as amended by Stats. 2017, ch. 806).

⁴⁵ Elections Code section 3019 (as amended by Stats. 2017, ch. 820).

⁴⁶ Elections Code section 3019(c) and (d).

⁴⁷ Elections Code section 3019(e) and (f) (as amended by Stats. 2017, ch. 820).

⁴⁸ Elections Code section 3019(g) (as amended by Stats. 2017, ch. 820).

⁴⁹ Elections Code section 15109.

⁵⁰ 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

apply for permanent vote-by-mail status regardless of condition or disability.⁵¹ Permanent vote-by-mail applications are processed in the same manner as an application for a vote-by-mail ballot.⁵²

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.⁵³

County elections officials administer almost every aspect of voting in California including vote-by-mail voting.⁵⁴ 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.⁵⁵

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.

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

absentee voter statutes in Elections Code sections 1450 through 1456, and reenacted those provisions as Elections Code sections 3200 through 3206.

⁵¹ Statutes 2001, chapter 922, Elections Code sections 3201-3202,

⁵² Elections Code section 3203 (Stats. 2013, ch. 560).

⁵³ Statutes 2016, chapter 832.

⁵⁴ Elections Code section 3000 et seq.

⁵⁵ Exhibit H, 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.

free for voters who vote by mail.⁵⁶ 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.⁵⁷

C. Past Commission Decisions on Election Laws

The Commission has not received a prior Test Claim on Elections Code section 3010,⁵⁸ but has heard and decided the following Test Claims on election laws, most of which have been suspended by the Legislature for many years.⁵⁹

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)⁶⁰ 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.⁶¹ Thus, the costs associated with the increase in absentee ballot filings was determined to be reimbursable, based on specified formulas for counties administering the

⁵⁶ 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.)

⁵⁷ Exhibit H, Assembly Floor, Analysis of AB 216 (2017-2018 Reg. Sess.) as amended September 1, 2017, page 1.

⁵⁸ 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.

⁵⁹ Exhibit H, 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.

⁶⁰ 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.

⁶¹ Former Elections Code section 1003 (Stats. 1976, ch. 1275).

elections for other local agencies, and for local agencies and school districts administering their own elections.⁶²

The *Absentee Ballots*, CSM-3713 mandate has been suspended every year since 2011-12.⁶³

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.⁶⁴

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.⁶⁵ Additionally, the *Permanent Absent Voter*, CSM-4358 mandate has been suspended in the state budget in every year beginning 2011-12.⁶⁶

*Absentee Ballots, Tabulation by Precinct, 00-TC-08*⁶⁷

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

⁶² Exhibit H, Commission on State Mandates, Amendment to the Parameters and Guidelines for *Absentee Ballots*, 02-PGA-02, adopted February 27, 2003.

⁶³ Exhibit H, LAO, "Analysis of Other Budget Issues," March 13, 2013. Exhibit H, LAO, "Considering the State's Role in Elections, the 2017-2018 Budget," March 30, 2017.

⁶⁴ Exhibit H, Commission on State Mandates, Statement of Decision for *Permanent Absentee Voters*, CSM-4358, adopted September 21, 1989, page 4.

⁶⁵ Exhibit H, Commission on State Mandates, Final Staff Analysis for Proposed Amendment to the Parameters and Guidelines for *Permanent Absent Voters II*, 03-TC-11, adopted December 1, 2011, page 2.

⁶⁶ Exhibit H, LAO, "Analysis of Other Budget Issues," March 13, 2013; LAO, "Considering the State's Role in Elections, the 2017-2018 Budget," March 30, 2017.

⁶⁷ 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, 2001.⁶⁸ 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.⁶⁹

The *Absentee Ballots, Tabulation by Precinct*, 00-TC-08 mandate has been suspended every year since 2011-12.⁷⁰

Permanent Absentee Voters II, 03-TC-11⁷¹

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.⁷²

The *Permanent Absent Voters II*, 03-TC-11 mandate has been suspended each year beginning with the 2013-2014 budget.⁷³

⁶⁸ Exhibit H, 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.

⁶⁹ Exhibit H, 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.

⁷⁰ Exhibit H, LAO "Analysis of Other Budget Issues," March 13, 2013; LAO, "Considering the State's Role in Elections, the 2017-2018 Budget," March 30, 2017.

⁷¹ 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.

⁷² Exhibit H, Commission on State Mandates, Statement of Decision for *Permanent Absent Voters II*, 03-TC-11, adopted July 28, 2006, pages 2, 15.

⁷³ Exhibit H, LAO "Analysis of Other Budget Issues," March 13, 2013; Exhibit H, LAO, "Considering the State's Role in Elections, the 2017-2018 Budget," March 30, 2017.

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.⁷⁴

The *Voter Identification Procedures, 03-TC-23* mandate has been suspended each year beginning with the 2013-2014 budget.⁷⁵

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.⁷⁶ 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.⁷⁷

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 "supplies necessary for the use and

⁷⁴ Exhibit H, Commission on State Mandates, Statement of Decision, *Voter Identification Procedures, 03-TC-23*, adopted October 4, 2006, page 2, 8-10, 11.

⁷⁵ Exhibit H, LAO "Analysis of Other Budget Issues," March 13, 2013; LAO, "Considering the State's Role in Elections, the 2017-2018 Budget," March 30, 2017.

⁷⁶ 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.

⁷⁷ Exhibit H, Commission on State Mandates, Parameters and Guidelines for *Post-Election Manual Tally, 10-TC-08*, corrected December 19, 2014, pages 2-3.

return of the ballot, including an identification envelope with prepaid postage for return of the envelope by mail ballot.”⁷⁸ 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.⁷⁹

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 2019-20.⁸⁰

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.⁸¹ 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.⁸²

The claimant also quotes the Assembly Appropriations Committee estimate of statewide costs at \$5.5 million.⁸³

In its rebuttal comments, the claimant disagrees with Finance's assertion 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.”⁸⁴ The claimant also argues that the cases cited by Finance are distinguishable from the test claim statute. In *City of Anaheim v. State*,⁸⁵ the test claim statute did not require local governments to do anything. Regarding *San Diego Unified School Dist.*,⁸⁶ the claimant states:

⁷⁸ Exhibit A, Test Claim, page 12 (Declaration of Margaret Palacios).

⁷⁹ Exhibit A, Test Claim, page 6.

⁸⁰ 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.”

⁸¹ Exhibit A, Test Claim, page 18 (Declaration of Margaret Palacios).

⁸² Exhibit A, Test Claim, pages 6-7, 12-15 (Declaration of Margaret Palacios).

⁸³ Exhibit A, Test Claim, page 18 (Declaration of Margaret Palacios).

⁸⁴ Exhibit D, Claimant's Late Rebuttal Comments, page 1.

⁸⁵ *City of Anaheim v. State* (1987) 189 Cal.App.3d 1478.

⁸⁶ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859.

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.⁸⁷

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.”⁸⁸

In comments on the Draft Proposed Decision, the claimant agrees with approving the Test Claim, but disagrees with the staff conclusion to “deny reimbursement for prepaid postage used in special local elections.”⁸⁹ The claimant distinguishes this test claim statute from the statute in the *Kern High School Dist.* case, where the Supreme Court determined that there was no reimbursable mandate for the notice and agenda requirements associated with school site council programs because districts voluntarily participate in those programs, so they were not compelled to incur any notice and agenda costs.⁹⁰ By contrast, this test claim statute requires pre-paid postage on vote-by-mail ballots, and the Legislature did not specify the types of elections requiring pre-paid postage because the nature of the elections is not relevant. The claimant also disagrees with the application of *Kern* to the extra elections it conducts for cities and districts because those entities are not equipped to conduct their own elections. If the claimant did not conduct them, it argues that the cities and districts for which it conducts elections would face “certain draconian consequences such as disenfranchisement.”⁹¹

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.⁹²

⁸⁷ Exhibit D, Claimant’s Late Rebuttal Comments, page 1.

⁸⁸ Exhibit D, Claimant’s Late Rebuttal Comments, page 1.

⁸⁹ Exhibit F, Claimant’s Comments on the Draft Proposed Decision, page 1.

⁹⁰ *Dept. of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 743.

⁹¹ Exhibit F, Claimant’s Comments on the Draft Proposed Decision, page 2.

⁹² Exhibit B, Finance’s Comments on the Test Claim, page 1.

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, 2019.⁹³

Finance did not file comments on the Draft Proposed Decision.

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 vote by mail (“VBM”) ballots; after the passage of AB 216, they are.”⁹⁴ 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.”⁹⁵ 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.⁹⁶ The County also argues that paying for 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.”⁹⁷ 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 before the enactment of the statute.⁹⁸

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.⁹⁹

In comments on the Draft Proposed Decision, the County of San Diego “appreciates the proposed decision largely in the local agencies’ favor,” but disagrees with the staff conclusion

⁹³ Exhibit B, Finance’s Comments on the Test Claim, page 1.

⁹⁴ Exhibit C, County of San Diego’s Comments on the Test Claim, page 1.

⁹⁵ Exhibit C, County of San Diego’s Comments on the Test Claim, page 2.

⁹⁶ Exhibit C, County of San Diego’s Comments on the Test Claim, pages 4-5.

⁹⁷ Exhibit C, County of San Diego’s Comments on the Test Claim, page 5.

⁹⁸ Exhibit C, County of San Diego’s Comments on the Test Claim, pages 2-3.

⁹⁹ Exhibit C, County of San Diego’s Comments on the Test Claim, page 6.

regarding prepaid postage in special elections because “on its face, the [test claim] statute requires Counties to provide prepaid postage in special elections.”¹⁰⁰ The County asserts that the holding of the *Kern High School District* case “is not a bright-line rule that any time a local agency makes a voluntary choice which results in incurring costs pursuant to a state mandate, the costs are mandated by the local agency instead of the state.”¹⁰¹ The County, relying in part on *San Diego Unified School Dist.*¹⁰² and *Coast Community College Dist.*,¹⁰³ argues:

[T]he question is not whether the local agencies made any initial discretionary choice that resulted in incurring state-mandated costs, but whether the subject of that purported choice was critical to their core functions. The County respectfully submits that calling special elections falls within the latter category. In certain cases, it is mandatory that a local agency call a special election. Cal. Elec. Code § 8026 (death of a candidate or incumbent); Cal. Elec. Code § 11242 (certain recall elections). Special elections can also be called to fill vacancies on boards or offices (Cal. Gov’t Code § 1780(e), Cal. Gov’t Code § 36512) or so that the electorate can vote on initiatives or referendums. Cal. Elec. Code §§ 1405-1410. Broadly stated, local agencies can call special elections for purposes related to their essential duties of basic governance. See Cal. Const. art. XI, § 7 (“A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws”); see also Cal. Gov’t Code § 23004 (enumerated powers of a county).

Thus the decision to call special elections is similar to the decision to hire firefighters (as in the *Carmel Valley* case) or peace officers (as in the *City of Sacramento* [typically referred to as *Peace Officer’s Bill of Rights Act or POBRA*] case). That is, the County or other local agencies may need to make an initial discretionary decision about how many special elections to hold, but a local agency’s core duty of basic governance is not discretionary.¹⁰⁴

The County also distinguishes the *Kern* decision on the basis of the costs to comply with the notice and agenda requirements being “rather modest.” Under the test claim statute,

¹⁰⁰ Exhibit G, County of San Diego’s Comments on the Draft Proposed Decision, page 1.

¹⁰¹ Exhibit G, County of San Diego’s Comments on the Draft Proposed Decision, page 1.

¹⁰² *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal. 4th 859, 887–888, where the California Supreme Court questions the holding in *City of Merced* to preclude reimbursement under article XIII B, section 6 and Government Code section 17514, whenever an entity makes an initial discretionary decision that in turn triggers mandated costs.

¹⁰³ The decision in *Coast Community College Dist. v. Commission on State Mandates* (2020) 7 Cal.App.5th 415, 433, which relied on the core functions of community college districts to find that minimum conditions to the receipt of state aid are mandated by the state, has been appealed to the California Supreme Court and, therefore, the decision has no binding or precedential effect. (California Rules of Court, Rule 8.1115(e); Petitions for review filed June 10, 2020; California Supreme Court, Case No. S262663.

¹⁰⁴ Exhibit G, County of San Diego’s Comments on the Draft Proposed Decision, pages 3-4.

however, the cost to comply is not modest. The County states that it issued 1,297,557 vote-by-mail ballots in the November 2018 election. At \$0.65 per envelope cited in the legislative history of the test claim statute, the cost would be \$843,012.05, and in reality could be higher because a two-card ballot weighing two ounces would cost \$0.699 per ballot. The County “requests the Commission to reconsider its proposed conclusion regarding special elections and include special elections within the purview of the reimbursable state mandate.”¹⁰⁵

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 articles XIII A and XIII B impose.”¹⁰⁶ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”¹⁰⁷

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.¹⁰⁸
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.¹⁰⁹
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.¹¹⁰

¹⁰⁵ Exhibit G, County of San Diego’s Comments on the Draft Proposed Decision, page 5.

¹⁰⁶ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

¹⁰⁷ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

¹⁰⁸ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

¹⁰⁹ *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).

¹¹⁰ *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.

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.¹¹¹

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.¹¹² The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.¹¹³ In making its decisions, the Commission must strictly construe 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.”¹¹⁴

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.”¹¹⁵

The effective date of Statutes 2018, chapter 12 is January 1, 2019. The Test Claim was filed on October 15, 2019,¹¹⁶ 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.

¹¹¹ *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.

¹¹² *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

¹¹³ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

¹¹⁴ *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].

¹¹⁵ Government Code section 17551(c).

¹¹⁶ Exhibit A, Test Claim, page 1.

B. Elections Code Section 3010, as Amended by Statutes 2018, Chapter 120, Imposes a Reimbursable State-Mandated Program on County and City Elections Officials for State and Local Elections Except for Those Held at the Discretion of the Local Governing Body, or Elections for Which Counties or Cities Have Fee Authority Within the Meaning of Government Code Section 17556(d).

1. The Test Claim Statute Imposes a New Requirement Solely on City and County Elections Officials to Provide 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]:
- (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.¹¹⁷ 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 3010.¹¹⁸

¹¹⁷ 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.”

¹¹⁸ 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

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.’”¹¹⁹ Also, section 3010 “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.”¹²⁰

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.

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.”

¹¹⁹ *Commission on Peace Officer Standards and Training v. Superior Court* (2007) 42 Cal.4th 278, 294.

¹²⁰ *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1184.

- (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.¹²¹

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 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.¹²² “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.^{123, 124}

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 (statewide general election, statewide direct primary election, and the presidential primary election)¹²⁵ and county and municipal elections discussed below.

¹²¹ 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.”

¹²² 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).

¹²³ Elections Code section 328.

¹²⁴ 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).

¹²⁵ Elections Code sections 1200-1202.

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.”¹²⁶ 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.”¹²⁷ 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.¹²⁸ 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”¹²⁹ The state has not 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.¹³⁰

Accordingly, school districts, community college districts, and special districts are not mandated by state law to provide prepaid postage on the identification envelopes. The requirement is imposed solely on counties and cities.

2. The Requirement for City and County “Elections Officials” to Provide Prepaid Postage on Identification Envelopes Delivered with Vote-by-Mail Ballots for All State and Local Elections Is Mandated by the State Only for Those Elections That the City or County Is Compelled by Law To Conduct.

Elections Code section 3010(a), as amended by the test claim statute, states that “[t]he elections official *shall* deliver all of the following to each qualified applicant . . . (2) All supplies for the

¹²⁶ Elections Code sections 10200 et seq., and 10240.

¹²⁷ See also, Elections Code section 10517; *County of Yolo v. Los Rios Community College Dist.* (1992) 5 Cal.App.4th 1242.

¹²⁸ Education Code sections 5200 et seq., 5220.

¹²⁹ 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 officer of the district to perform any of the functions required of the county elections official under this part.” (Emphasis added.)

¹³⁰ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1815.

use and return of the ballot, including an identification envelope with prepaid postage for the return of the vote by mail ballot.”¹³¹ 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.¹³² 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.”

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.”¹³³ 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 6.¹³⁴

- a. Cities and counties are compelled by state law to conduct statewide elections, local elections, including elections forced by a petition of the voters and special elections called by the Governor or required by state law and thus, are mandated by the state to provide prepaid postage on the identification envelopes for the vote-by-mail ballots for these elections.

There are many situations where cities and counties are compelled by state law to conduct an election and provide prepaid postage on the identification envelopes.

As indicated above, counties are required by state law to conduct statewide general elections, statewide direct primary elections, and the presidential primary elections.¹³⁵ These elections are required to be held on a “statewide election date,” defined as the first Tuesday after the first Monday in November in each even-numbered year (for statewide general elections), the first Tuesday after the first Monday in March in each even-numbered year (for statewide primary elections), and every four years on the first Tuesday after the first Monday in March (for presidential primary elections).¹³⁶

¹³¹ Emphasis added.

¹³² 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.)

¹³³ *Dept. of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 743.

¹³⁴ *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 (POBRA)* (2009) 170 Cal.App.4th 1355, 1365-1366.

¹³⁵ Elections Code sections 1200-1202, 13001.

¹³⁶ Elections Code sections 1200-1202.

In addition, there are many local elections required by state law. For example, elections for superior court judges shall be held during county general elections.¹³⁷ Counties are also required to conduct elections for their county officers.¹³⁸ In addition, if on the first Monday after January 1 following a general election, the person elected to an elective county office resigns or dies, the county is required to fill the vacancy at the next regularly scheduled election.¹³⁹ State law also requires elections for governing board members of special districts, and school and community college districts that are not governed by a city charter.¹⁴⁰ And state law requires elections for city councilmembers and mayors.¹⁴¹

State law requires these local elections to be conducted on “established election dates” defined as either the first Tuesday after the first Monday in March of each year, or the second Tuesday of April in each even-numbered year, or the first Tuesday after the first Monday in November of each year, and these dates include the statewide election dates, discussed above.¹⁴² For example, 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. Except for the first election after incorporation, section 1301 generally requires municipal elections to be held on “an established election date pursuant to section 1000.” Section 1302 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.” State law also establishes these same election dates for special district governing board members.¹⁴³ However, school districts and special districts may consolidate their governing-body elections with statewide elections, all of which are in even numbered years.¹⁴⁴

Beginning January 1, 2018, Elections Code section 14052 through 14057 require 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.¹⁴⁵ The legislative history states that this code section will result in almost all local jurisdictions holding their regularly scheduled elections at the same time as a statewide election.¹⁴⁶ Even if a local prior election did *not* result in a significant

¹³⁷ California Constitution, article 6, section 16(b).

¹³⁸ California Constitution, article 11, section 1. Government Code section 24200.

¹³⁹ Government Code section 25304.5. The board of supervisors may fill the vacancy by appointment until the results of the next regularly scheduled election.

¹⁴⁰ Education Code sections 5300, 5303, and Elections Code section 10517.

¹⁴¹ Government Code section 36503.

¹⁴² Elections Code sections 1000 and 1001.

¹⁴³ Elections Code section 1303.

¹⁴⁴ Elections Code sections 1302(b) and 1303 (b).

¹⁴⁵ Elections Code sections 14052–14057 (Stats. 2015, ch. 235, sec. 1. (SB 415)).

¹⁴⁶ Exhibit H, Assembly Committee on Elections and Redistricting Analysis, Analysis of SB 415 (2015-2016 Reg. Sess.), as amended June 23, 2015, page 5.

decrease in voter turnout, the non-special local election must still generally be held on an established election date. Elections Code section 1002 states that “notwithstanding any other provisions of law,” all state, county, municipal, district, and school district elections shall be held on an established election date, *except* as provided in Elections Code section 1003.¹⁴⁷

Elections Code section 1003 identifies certain elections, including special elections,¹⁴⁸ that are *not* required to be held on an established election date, but some of these exceptions still require that an election be held, thereby mandating counties and cities to provide prepaid postage on the identification envelope. For example, Elections Code section 1003(a) states that “any special election called by the Governor” is not required to be held on an established election date.” A special election called by the Governor can occur when there is a vacancy in a congressional or legislative office,¹⁴⁹ or when a petition for recall of a state elected officer is filed by the voters and certified, which triggers the constitutional requirement for the Governor to call the election between 60 and 80 days from the date of certification of sufficient signatures.¹⁵⁰ Since “[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,” the counties would be required to conduct any special election called by the Governor for vacancies in a congressional or legislative office or the recall of a state elected official.¹⁵¹

State law requires recall elections of local officers upon receipt of a voter petition and have to be conducted within statutory deadlines. Therefore, Elections Code section 1003(e) does not require them to be held on an established election date pursuant to Elections Code section 1000.¹⁵² Once it is determined that the voters’ signatures on the recall petition are sufficient, state law requires the governing body to call the election to recall the local officer, which shall be held between 88 and 125 days after the issuance of the governing body’s 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.¹⁵³

¹⁴⁷ The courts have held that the phrase “notwithstanding any other provision of law,” when used in the Elections Code, declares the legislative intent to override all contrary law. (*Faulder v. Mendocino County Board of Supervisors* (2006) 144 Cal.App.4th 1362, 1373; *Ni v. Slocum* (2011) 196 Cal.App.4th 1636, 1647.)

¹⁴⁸ Special elections are defined as “an election, the specific time for holding of which is not prescribed by law.” (Elec. Code, § 356.) Elections Code section 1400 requires special elections to be held on “established election dates” except as provided in section 1003.

¹⁴⁹ Elections Code section 10700.

¹⁵⁰ California Constitution, article II, section 15(a). Elections Code section 11110.

¹⁵¹ Elections Code section 13001.

¹⁵² Elections Code sections 11200 et seq. govern the recall elections of local officers.

¹⁵³ Elections Code section 11242. The local governing body must issue an election order within 14 days after the meeting at which it received the certificate of sufficiency, which certificate

A voter petition can also force a school district or community college district governing board to order a special election to issue school bonds for specified purposes, including purchasing land, schoolbuses, and facilities.¹⁵⁴ Education Code section 15100 states in relevant part:

[T]he governing board of any school district or community college district . . . *shall*, upon a petition of the majority of the qualified electors residing in the school district or community college district, order an election and submit to the electors of the school district or community college district, as applicable, the question whether the bonds of the school district or community college district shall be issued and sold for the purpose of raising money for the following purposes. . . .¹⁵⁵

Pursuant to Elections Code section 1003(g), these school bond elections are not required to be held on established election dates.

In addition, Elections Code section 1003(c) does not require elections conducted pursuant to Education Code section 5091(c) for school board vacancies to be held on an established election date. Education Code section 5091(c) provides that when a vacancy on the governing board occurs longer than four months before the end of a board member's term, and the board fills the vacancy with a provisional appointment, voters can challenge the appointee by a petition within 30 days of the appointment. If the petition signatures are legally significant, the appointment is terminated and the “county superintendent shall order a special election to be conducted no later than the 130th day after the determination.” If an established election date occurs between the 130th and 150th day following the order of the election, however, “the county superintendent of schools may order the special election to be conducted on the established election date.”¹⁵⁶ Counties and cities, which conduct school district elections, are legally compelled to conduct these special elections,¹⁵⁷ but Elections Code section 1003(c) does not require them to be held on established election dates.

Elections Code section 1003(b) and (d) further provide that elections held in chartered cities or chartered counties that have charter provisions that are inconsistent with this chapter, including school district elections held within those chartered cities or counties, are not required to be held on an established election date. If, however, the election is for one of the legally compelled elections described above, then those elections are mandated by the state, regardless of the date of the election.

State law also requires that special elections be called within a statutory deadline upon the death of an incumbent or challenger of certain elected offices. Elections Code section 8026 provides in part that if an incumbent for statewide or local office dies, a special election must be called “by

must be issued by the elections official if the recall petition meets specified requirements (Elec. Code, §§ 11227, 11240).

¹⁵⁴ Education Code section 15100.

¹⁵⁵ Emphasis added.

¹⁵⁶ Education Code section 5091(c)(2).

¹⁵⁷ Education Code sections 5200 et seq., 5220, 5300, 5303; Education Code section 10517.

the appropriate governing body within 14 days after the death of the incumbent or challenger.” The special election shall be held no later than 88 days after calling the election.¹⁵⁸

Finally, Education Code section 5093 provides that if a school board vacancy occurs between six months and 130 days prior to a regularly scheduled governing board election and is not scheduled to be filled at such election, then a special election for that position shall be consolidated with the next regular election. Counties and cities, which conduct school district elections, are compelled by state law to conduct these special elections by the deadlines required by Education Code section 5093.¹⁵⁹

Thus, cities and counties are compelled by state law to conduct the following elections and are therefore mandated by the state to provide prepaid postage on the identification envelopes for:

- Statewide general elections, statewide direct primary elections, and the presidential primary elections conducted by counties.¹⁶⁰
- Regular local elections compelled by state law.¹⁶¹
- Special elections called by the Governor or required by state law, including recall elections of local officers, special elections forced by a petition of the voters to issue school bonds or replace an appointee and fill a vacant school board position, and elections required by state law that are conducted by charter cities and counties.¹⁶²
 - b. Providing prepaid postage on identification envelopes for the vote-by-mail elections is also mandated by the state when the city or county conducts a local discretionary election of school district, community college district, or special district, and when a county is required by state law to conduct a discretionary city election consolidated with a statewide election.

There are several instances where an election is not compelled by state law, but is based on the discretion of local governing body.

¹⁵⁸ Elections Code section 8026.

¹⁵⁹ Education Code sections 5200 et seq., 5220, 5300, 5303; Education Code section 10517.

¹⁶⁰ Elections Code sections 1200-1202, 13001.

¹⁶¹ For example, California Constitution, article 6, section 16(b), and article 11, section 1; Elections Code sections 1300 et seq., 10517; Education Code sections 5300, 5303; Government Code section 24200, 25304.5.

¹⁶² For example, Elections Code section 10700 (vacancy in a congressional or legislative office), 11110 (recall of state elected officers), 11200 et seq. (recall of local officers); Education Code section 15100 (voter petition for school bonds); Education Code section 5091(c) (voter petition to replace an appointee and fill a vacant board position); Elections Code sections 8026 (death of incumbent or challenger for a nonpartisan statewide, countywide, or citywide office, or for a nonpartisan office that is elected by division, area, or district, before an election); Education Code section 5093 (special elections consolidated with the next regular election when the vacancy occurs during the period between six months and 130 days prior to a regularly scheduled governing board election).

For example, Government Code sections 53723 and 54380 authorize local governing bodies to call an election to raise local taxes and to issue bonds to fund “the acquisition, construction, improving or financing of an enterprise.”¹⁶³

In addition, cities, counties, and districts are authorized, “at their discretion,” to hold advisory special elections on any date on which that jurisdiction is currently permitted to hold a regular or special election to allow voters to express their opinions on substantive issues, or to indicate to the local legislative body approval or disapproval of the ballot proposal.¹⁶⁴

Elections Code sections 9140 and 9222 authorize counties and cities to call an election for the repeal, amendment, or enactment of any county or city ordinance without a petition from the voters.¹⁶⁵

In addition, upon receipt of an initiative or referendum by the voters, counties and cities can either adopt or repeal the ordinance as requested by the voter’s petition, or conduct an election at the next regular election or call a special election for that purpose. Elections Code sections

¹⁶³ Government Code section 53723 states: “No local government, or district, whether or not authorized to levy a property tax, may impose any general tax unless and until such general tax is submitted to the electorate of the local government, or district and approved by a majority vote of the voters voting in an election on the issue.”

Government Code section 54380 states: “By resolution of its legislative body to take effect upon adoption, a local agency may submit to its qualified voters, at an election held for that purpose, the proposition of issuing bonds pursuant to this chapter to provide funds for the acquisition, construction, improving or financing of an enterprise, including any or all expenses incidental thereto or connected therewith or any combination of two or more of such purposes.”

Education Code section 15141 authorizes school districts and community college districts to adopt a resolution for the sale of bonds. Education Code sections 15120-15126 and Elections Code sections 9400-9409 identify the general requirements for bond elections (which applies to all bond issues proposed by a county, city and county, city, district, or other political subdivision of the state).

¹⁶⁴ Elections Code section 9603. Government Code section 61008(d).

¹⁶⁵ Section 9140 states: “The board of supervisors *may* submit to the voters, without a petition, an ordinance for the repeal, amendment, or enactment of any ordinance. The ordinance shall be voted upon at any succeeding regular or special election and, if it receives a majority of the votes cast, the ordinance shall be repealed, amended, or enacted accordingly.”

Section 9222 states:

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.

9100-9126 (for counties) and 9200-9226 (for cities) govern the initiative process, and allow the voters to petition the county or a city to adopt an ordinance. If the initiative petition has a sufficient number of signatures, the governing body of the county or city shall either adopt the ordinance *or* submit the ordinance, without alteration, to the voters pursuant to Elections Code section 1405.¹⁶⁶ Elections Code section 1405 gives cities and counties the option to submit the initiative measure to the voters at the next statewide or regular election, or the city or county may call a special election.

A similar process is established in Elections Code sections 9140-9147 (for counties) and 9235-9247 (for cities) for referendums, which allows voters to file a petition to protest an ordinance after adoption by the local government. If a petition protesting the adoption of an ordinance is filed before the effective date of the ordinance, and has a sufficient number of signatures by the voters, “the ordinance shall be suspended and the legislative body shall reconsider the ordinance.”¹⁶⁷ If the legislative body does not entirely repeal the ordinance against which the petition is filed, the legislative body is then required to submit the ordinance to the voters, either at the next regular municipal election or at a special election called for that purpose.¹⁶⁸ As the California Supreme Court said regarding initiative elections (that also applies to referendum elections):

The Legislature was authorized to establish procedures for city and county voters to exercise their right of initiative. (Cal. Const., art. II, § 11; *Associated Home Builders, supra*, 18 Cal.3d at p. 591, 135 Cal.Rptr. 41, 557 P.2d 473.) It has done so. In contrast to statewide initiatives, which may be placed directly on the ballot, the Legislature created an indirect process for city and county initiatives. These can only be submitted to voters if they have been presented to, but not enacted by, the local legislative body. (*Thompson v. Board of Supervisors* (1986) 180 Cal.App.3d 555, 561, 225 Cal.Rptr. 640.) “The intent of the Legislature in granting solely indirect initiative power to voters at the county level was to create the opportunity to spare the expense of a public vote. [Citation.]”¹⁶⁹

¹⁶⁶ Elections Code sections 9118, 9215.

¹⁶⁷ Elections Code sections 9144, 9237.

¹⁶⁸ Elections Code sections 1410, 9145, 9241.

¹⁶⁹ *Tuolumne Jobs and Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1036. According to the *Thompson* case cited, “The author’s comments are specifically directed toward the indirect referendum. (§ 3753–3754.) However, we believe they are equally applicable to the indirect initiative. (See *Ortiz v. Board of Supervisors* (1980) 107 Cal.App.3d 866, 870, fn. 3, 166 Cal.Rptr. 100.)” *Thompson v. Board of Supervisors* (1986) 180 Cal.App.3d 555, 564, fn. 3. According to footnote 3 of the *Ortiz* case, “because the nature of the initiative and the referendum are identical insofar as the power reserved is concerned any discussion in the decisional law regarding the initiative also applies to the referendum.”

School and community college district governing boards may also order elections to issue school bonds for specified purposes.¹⁷⁰

Some local entities also have the authority to call special elections to fill vacancies when an appointment is not made. A city council must fill a vacancy “within 60 days” either by appointment or special election.¹⁷¹ If a city council calls a special election to fill a vacancy in lieu of an appointment, “the special election shall be held on the next regularly established election date not less than 114 days from the call of the special election.”¹⁷² The vacancy on a special district governing body can be filled either by appointment or by a special election “in lieu of making an appointment.”¹⁷³ If an election is chosen, it is held “on the next established election date” in Elections Code section 1000 “that is 130 or more days after the date the district calls the election.”¹⁷⁴ For school districts, when a vacancy occurs longer than four months before the end of a Board member's term, the Board shall, within 60 days of the vacancy, either order an election or make an appointment.¹⁷⁵

The above examples are not an exhaustive list of discretionary elections since the authority to conduct these elections are in the many separate codes governing local agencies.¹⁷⁶

Although these elections are called at the discretion of local government, the claimant and the County of San Diego argue that providing prepaid postage on identification envelopes for all vote-by-mail elections, including local special elections, is mandated by the state. The County of San Diego states that local decisions governing elections are critical to a county's core duty of basic governance, which is required to exercise their police powers under the California Constitution and the Government Code. Therefore, providing prepaid postage on the identification envelopes for all elections is mandated by the state:

[T]he question is not whether the local agencies made any initial discretionary choice that resulted in incurring state-mandated costs, but whether the subject of that purported choice was critical to their core functions. The County respectfully submits that calling special elections falls within the latter category. In certain cases, it is mandatory that a local agency call a special election. Cal. Elec. Code §

¹⁷⁰ Education Code section 15100, which states in part: “[T]he governing board of any school district or community college district may, when in its judgment it is advisable, . . . order an election and submit to the electors of the school district or community college district, as applicable, the question whether the bonds of the school district or community college district shall be issued and sold for the purpose of raising money for the following purposes. . . .”

¹⁷¹ Government Code section 36512(b).

¹⁷² Government Code section 36512(b)(1). See also Government Code section 34902.

¹⁷³ Government Code section 1780(e)(1).

¹⁷⁴ Government Code section 1780(e)(2).

¹⁷⁵ Education Code section 5091.

¹⁷⁶ For example, Public Utilities Code sections 53311 et seq. authorizes local agencies to establish a community facilities district under the Mello-Roos Community Facilities Act of 1982, which must be approved by the voters of the proposed district.

8026 (death of a candidate or incumbent); Cal. Elec. Code § 11242 (certain recall elections). Special elections can also be called to fill vacancies on boards or offices (Cal. Gov't Code § 1780(e), Cal. Gov't Code § 36512) or so that the electorate can vote on initiatives or referendums. Cal. Elec. Code §§ 1405-1410. Broadly stated, local agencies can call special elections for purposes related to their essential duties of basic governance. See Cal. Const. art. XI, § 7 (“A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws”); see also Cal. Gov't Code § 23004 (enumerated powers of a county).

Thus the decision to call special elections is similar to the decision to hire firefighters (as in the *Carmel Valley* case) or peace officers (as in the *City of Sacramento* [typically referred to as *Peace Officer's Bill of Rights Act or POBRA*] case). That is, the County or other local agencies may need to make an initial discretionary decision about how many special elections to hold, but a local agency's core duty of basic governance is not discretionary.¹⁷⁷

The claimant similarly argues that *Kern High School Dist.* does not apply to deny reimbursement, stating that the Legislature did not specify what types of vote-by-mail elections required pre-paid postage on envelopes because the nature of the election itself was not relevant. Rather, the objective of the test claim statute is to ensure that voting itself was made easier and more accessible to more Californians.¹⁷⁸ The claimant also contends that *Kern* should not apply to the extra elections it conducts for cities and districts because those entities are not equipped to conduct their own elections. If the claimant did not conduct them, it argues that the cities and districts for which it conducts elections would face “certain draconian consequences such as disenfranchisement.”¹⁷⁹

The Commission agrees that if a county or city is conducting a local election called by a school district, community college district, or special district, then the county or city has no choice but to conduct that local election. As indicated earlier, Education Code sections 5300 and 5303 require county election officials to conduct the elections of school and community college districts “in accordance with the Elections Code.”¹⁸⁰ If a school district is located within the boundaries of a chartered city, the board of education is elected under the laws governing that city.¹⁸¹ 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.” In addition, if a city election is consolidated with a statewide election, as is required for entities with low voter turnout pursuant to Elections Code sections 10402.5 and 14052 et seq., then the county is

¹⁷⁷ Exhibit G, County of San Diego's Comments on the Draft Proposed Decision, pages 3-4.

¹⁷⁸ Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 2.

¹⁷⁹ Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 2.

¹⁸⁰ See also, Elections Code section 10517; *County of Yolo v. Los Rios Community College Dist.* (1992) 5 Cal.App.4th 1242.

¹⁸¹ Education Code sections 5200 et seq., 5220.

required by state law to conduct that election. These circumstances are unlike the *City of San Jose* case, where the court found that an authorized local to local shift in costs was not reimbursable under article XIII B, section 6 of the California Constitution.¹⁸² In *City of San Jose*, the legislation authorized counties to charge cities and other local entities, such as school districts, for the costs of booking into county jails persons who had been arrested by employees of the cities and other entities.¹⁸³ The court held that the shift of costs from the county to the other local entities was not mandated by the state based on the plain language of the statute.¹⁸⁴ The court also found that the legislation did not impose a new program or higher level of service since the shift in costs was not from the state, but was triggered by the county's authority.¹⁸⁵ Here, state law requires counties and cities to conduct the elections of school districts, community college districts, and special districts. Thus, providing prepaid postage on identification envelopes for the vote-by-mail elections is mandated by state law when the city or county conducts a school district, community college district, or special district election, and when a county is required to conduct a city election consolidated with a statewide election.¹⁸⁶

Accordingly, the Commission finds that providing prepaid postage on identification envelopes for the vote-by-mail elections is also mandated by the state when the city or county conducts a local discretionary election of school district, community college district, or special district, and when a county is required by state law to conduct a discretionary city election consolidated with a statewide election.

- c. The requirement to provide prepaid postage on the identification envelopes for the vote-by-mail ballots when a county or city conducts their own discretionary local election, or sets a required special election date that could have been consolidated with a regular election or held on an established election date, is not mandated by the state, but is triggered by a voluntary decision.

However, state law does not compel counties or cities to call their own discretionary local elections, and there is no evidence in the record that cities and counties are practically compelled to call discretionary local elections. Therefore, the requirement to provide prepaid postage on the identification envelopes for the vote-by-mail ballots when a county or city conducts their own discretionary local elections is not mandated by the state.

In *Kern High School Dist.*, the court found that a state mandate could be found short of strict legal compulsion if local government faces certain and severe penalties. The *Kern* case involved state open meeting laws that were amended to require school site councils and advisory bodies formed under state and federal grant programs to post a notice and an agenda of their meetings,

¹⁸² *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802.

¹⁸³ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1806.

¹⁸⁴ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816-1817.

¹⁸⁵ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1814-1815.

¹⁸⁶ As explained in the next section, however, cities and counties have fee authority under most of these situations and, thus, there are no costs mandated by the state.

and school districts requested reimbursement for those costs pursuant to article XIII B, section 6.¹⁸⁷ The court rejected the claimants' assertion because:

The claimants could not show that they were legally compelled to incur notice and agenda costs, and hence entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions were mandatory elements of education-related programs in which the claimants participated, without regard to whether claimant's participation in the underlying program is voluntary or compelled.¹⁸⁸

The court determined that school districts elected to participate in the school site council programs to receive funding associated with the programs and were not legally compelled to incur the notice and agenda costs required.¹⁸⁹ The school districts then urged the court to define "state mandate" broadly to include situations where participation in the program is coerced as a result of severe penalties that would be imposed for noncompliance. After reflecting on the purpose of article XIII B, section 6, the court stated that it "would not foreclose the possibility that a reimbursable state mandate under article XIII B, section 6, properly might be found in some circumstances in which a local entity is not legally compelled to participate in a program that requires it to expend additional funds."¹⁹⁰ However, the circumstances in that case did not rise to the level of practical compulsion, since a school district that elects to discontinue participation in the programs does not face certain and severe penalties, such as double taxation or other draconian consequences, but simply must adjust to the withdrawal of grant money.¹⁹¹

In *POBRA*, the court determined that the Peace Officers Procedural Bill of Rights Act, which imposed requirements on all law enforcement agencies, did not constitute a state-mandated program on school districts. School districts are authorized, but not required by state law to hire peace officers and thus, the court recognized there was no legal compulsion to comply with *POBRA*.¹⁹² The court addressed the argument regarding "the need for local government entities to employ peace officers when necessary to carry out their basic functions."¹⁹³ In dismissing this argument, the court said "it is not manifest on the face of the statutes cited nor is there any

¹⁸⁷ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 730.

¹⁸⁸ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731.

¹⁸⁹ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 744-745.

¹⁹⁰ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 752.

¹⁹¹ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 754.

¹⁹² *Department of Finance v. Commission (POBRA)* (2009) 170 Cal.App.4th 1355, 1368.

¹⁹³ *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1366.

showing in the record that [a school district] hiring its own peace officers, rather than relying upon the county or city in which it is embedded, is the only way as a practical matter to comply.”¹⁹⁴ The court held there could be a state-mandate finding if, as a practical matter, exercising the authority to hire peace officers is the only reasonable means to carry out a school district’s core mandatory functions. However, the court emphasized that practical compulsion requires a *concrete* showing in the record that a failure to engage in the activities at issue will result in certain and severe penalties or other draconian consequences, leaving districts no choice but to comply in order to carry out their core essential functions.¹⁹⁵

The claimant contends that if local elections are not conducted, then draconian consequences and disenfranchisement will occur.¹⁹⁶ The County of San Diego argues that cities and counties would not be able to fulfill their core functions without holding special elections.¹⁹⁷ However, the plain language of these election statutes gives local governing bodies options and the discretion to call an election. In addition, the assertions by the claimant or County of San Diego are not supported by any evidence in the record. As the concurring opinion in *POBRA* emphasized, “instinct is insufficient to support a legal conclusion.”¹⁹⁸ Practical compulsion requires a concrete showing in the record.¹⁹⁹

Additionally, required local special elections that are held at the option of the local agency, if the issue could have legally been held at the next established election date are not compelled by state law. The Commission finds that if a local government calls a special election that could have otherwise been legally consolidated with the next regular or statewide election or held on an established election date, but is not, holding the special election is a voluntary decision on the part of the local government, and the downstream costs for pre-paid postage in that case, is not reimbursable under the reasoning of the *Kern* decision.

Accordingly, the requirement to provide prepaid postage on the identification envelopes for the vote-by-mail ballots, when a county or city conducts their own discretionary elections or sets dates for special elections that could have legally been held for the next regular local or statewide established election date, is not mandated by the state, but is triggered by a voluntary decision.

3. The Mandated Activity To Provide Prepaid Postage on Identification Envelopes Delivered with Vote-by-Mail Ballots for Those Elections That the City or County Is Compelled by Law To Conduct Constitutes a New Program or Higher Level of Service.

As discussed above, the mandate imposed on counties and cities to provide prepaid postage on identification envelopes for elections compelled by state law is new. For the mandate to

¹⁹⁴ *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1367.

¹⁹⁵ *Department of Finance v. Commission (POBRA)* (2009) 170 Cal.App.4th 1355, 1367.

¹⁹⁶ Exhibit F, Claimant’s Comments on the Draft Proposed Decision, page 2.

¹⁹⁷ Exhibit G, County of San Diego’s Comments on the Draft Proposed Decision, pages 3-4.

¹⁹⁸ *Department of Finance v. Commission (POBRA)* (2009) 170 Cal.App.4th 1355, 1369.

¹⁹⁹ *Department of Finance v. Commission (POBRA)* (2009) 170 Cal.App.4th 1355, 1367.

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.²⁰⁰ The term “program,” therefore, has “two alternative meanings,” and “only one of these [alternatives] is necessary to trigger reimbursement.”²⁰¹

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.²⁰²

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 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

²⁰⁰ *County of Los Angeles v. State of California* (1987) 43 Cal.3d at 56.

²⁰¹ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

²⁰² Exhibit B, Finance’s Comments on the Test Claim, page 1.

\$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.²⁰³

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.²⁰⁴

Furthermore, this 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.²⁰⁵ 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.²⁰⁶

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 6.²⁰⁷ 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 exemption for local governments) merely placed local government employers on the same footing as most private employers.²⁰⁸

²⁰³ 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.) Ellipses in original.

²⁰⁴ Exhibit H, Assembly Floor, Analysis of AB 216 (2017-2018 Reg. Sess.) as amended September 1, 2017, page 1.

²⁰⁵ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.

²⁰⁶ *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.”

²⁰⁷ *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 67-68.

²⁰⁸ *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.

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.²⁰⁹ The court found that the regulations were plainly not unique to government.²¹⁰ 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”²¹¹ 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.”²¹² 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.)²¹³

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;²¹⁴ 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 government, and the applicability of elevator safety regulations in public buildings).²¹⁵ The required costs for postage for vote-by-mail ballots in this test claim statute are unlike any of those.

²⁰⁹ *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538.

²¹⁰ *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 1545.

²¹¹ *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 1545.

²¹² *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 1546.

²¹³ *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 1546, Footnote 5.

²¹⁴ *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.

²¹⁵ *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.

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.²¹⁶ Pre-paid postage on ballots 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.”²¹⁷

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

4. The Mandated Activity Results in Cities and Counties Incurring Costs Mandated by the State, Within The Meaning Of Section 17514, Except For Elections For Which They Have Fee Authority Within The Meaning Of Government Code Section 17556(d).

For the mandated activity to constitute a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, it must also impose 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.

[¶] ... [¶]

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 2019-205. FY 2019-20 is the FY following the implementation of the mandate. The cost is summarized below:

<p>Registrar-Recorder/County Clerk Financial Services Section</p>
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²¹⁶ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537–538.

²¹⁷ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 877-878.

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% ($2,571,682 \times 1.05$ is 2,700,266).

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

(3) \$0.605 is the average cost for FY 2018-19.²¹⁸

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, 2019.²¹⁹

The claimant's declaration for fiscal year 2018-2019 states that it incurred costs from "7/1/18 through 6/30/19."²²⁰ 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 indicated²²¹) 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 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.²²²

The claimant also quoted the Assembly Appropriations Committee's estimate of statewide costs at \$5.5 million.²²³

Although the claimant did not identify the types of elections conducted in these fiscal years, the record contains sufficient evidence that the claimant incurred increased costs to comply with the

²¹⁸ Exhibit A, Test Claim, pages 12-15 (Declaration of Margaret Palacios).

²¹⁹ Exhibit B, Finance's Comments on the Test Claim, page 1.

²²⁰ Exhibit A, Test Claim, page 17 (Declaration of Margaret Palacios).

²²¹ Exhibit A, Test Claim, page 17 (Declaration of Margaret Palacios).

²²² Exhibit A, Test Claim, page 18 (Declaration of Margaret Palacios).

²²³ Exhibit A, Test Claim, page 18 (Declaration of Margaret Palacios).

mandate, which in fiscal year 2018-2019 exceeded \$1,000. General law and charter city elections were conducted by the claimant on March 5, 2019.²²⁴ The claimant's declaration states that 2,571,682 voters requested a vote-by-mail ballot in fiscal year 2018-2019, with an average cost of \$0.605 per identification envelope, which would exceed the minimum dollar amount of \$1,000. In fiscal year 2019-2020, local and municipal elections were held on November 5, 2019, and the presidential primary was held on March 3, 2020.²²⁵

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.), which in 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

²²⁴ Exhibit H, Los Angeles County Register-Recorder/County Clerk, "Past Election Info," <https://www.lavote.net/home/voting-elections/current-elections/election-results/past-election-info> (accessed June 24, 2020).

²²⁵ Exhibit H, Los Angeles County Register-Recorder/County Clerk, "Past Election Info," <https://www.lavote.net/home/voting-elections/current-elections/election-results/past-election-info> (accessed June 24, 2020).

thereof in conducting the general district election for that district. The county elections official of the affected county shall determine the amount due from each district and shall bill each district accordingly.²²⁶

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.”²²⁷ 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.”²²⁸ Thus, the costs for prepaid postage on vote-by-mail ballots are included as costs to conduct an election.

However, Elections Code section 3024 was enacted in 2002 to prohibit charging fees 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.²²⁹

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.²³⁰ 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.”²³¹ 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.

²²⁶ See also Education Code section 5420 et seq.

²²⁷ Education Code section 5227.

²²⁸ 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.

²²⁹ Statutes 2002, chapter 1032, amended by Statutes 2007, chapter 508.

²³⁰ Civil Code section 1859; *State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 960-961.

²³¹ *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1184.

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.²³²

In sum, counties may impose fees sufficient to pay 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. In these circumstances, there are no costs mandated by state pursuant to Government Code section 17556(d) and reimbursement is denied.

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 legally compelled municipal elections, or when counties and cities administer school and community college district elections consolidated with non-educational issues or elective offices. Accordingly, in these situations, 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 when counties administer statewide elections, when counties and cities administer their own mandated municipal elections, or when counties and cities administer school and community college district elections that are consolidated with non-educational issues or elective offices.

V. Conclusion

Based on the foregoing analysis, the Commission 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 the following elections:

- Statewide general elections, statewide direct primary elections, and the presidential primary elections conducted by counties.²³³
- Regular local elections compelled by state law.²³⁴

²³² 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.

²³³ Elections Code sections 1200-1202, 13001.

²³⁴ For example, California Constitution, article 6, section 16(b), and article 11, section 1; Elections Code sections 1300 et seq., 10517; Education Code sections 5300, 5303; Government Code section 24200, 25304.5.

- Special elections called by the Governor or required by state law, including recall elections of local officers, special elections forced by a petition of the voters to issue school bonds or replace an appointee and fill a vacant school board position, and elections required by state law that are conducted by charter cities and counties.²³⁵
- School district and community college district discretionary elections required by state law to be conducted by counties and cities when the election is consolidated with non-educational issues or elective offices.²³⁶

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

- When a county or city conducts its own discretionary local elections or holds a required special election that could have been consolidated with a regular election within statutory deadlines; or
- When counties conduct elections for cities or special districts; or when cities and counties conduct an election solely on behalf of a school district or community college district (with no other non-educational issues or elective offices on the ballot). In these elections, there is fee authority sufficient to cover the costs of the mandate pursuant to Government Code section 17556(d) so there are no costs mandated by the state.²³⁷

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

²³⁵ For example, Elections Code section 10700 (vacancy in a congressional or legislative office), 11110 (recall of state elected officers), 11200 et seq. (recall of local officers); Education Code section 15100 (voter petition for school bonds); Education Code section 5091(c) (voter petition to replace an appointee and fill a vacant board position); Elections Code sections 8026 (death of incumbent or challenger for a nonpartisan statewide, countywide, or citywide office, or for a nonpartisan office that is elected by division, area, or district, before an election); Education Code section 5093 (special elections consolidated with the next regular election when the vacancy occurs during the period between six months and 130 days prior to a regularly scheduled governing board election).

²³⁶ Education Code sections 5300 and 5303. Elections Code section 10517.

²³⁷ 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 July 24, 2020, I served the:

- **Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Hearing issued July 24, 2020**
- **Decision adopted July 24, 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 July 24, 2020 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/24/20

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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July 24, 2020

Exhibit B

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

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

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

Dear Ms. Gonzalez and Ms. Sidarous:

On July 24, 2020, the Commission on State Mandates (Commission) adopted the Decision partially approving the Test Claim on the above-entitled matter.

State law provides that reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program, approval of a statewide cost estimate, a specific legislative appropriation for such purpose, a timely-filed claim for reimbursement, and subsequent review of the reimbursement claim by the State Controller's Office.

Following is a description of the responsibilities of all parties and of the Commission during the parameters and guidelines phase.

Draft Expedited Parameters and Guidelines

Pursuant to California Code of Regulations, title 2, section 1183.9, Commission staff has expedited the parameters and guidelines process by preparing Draft Expedited Parameters and Guidelines to assist the claimant. The proposed reimbursable activities have been limited to those approved in the Decision by the Commission. Reasonably necessary activities to perform the mandated activities may be proposed by the parties. (Cal. Code Regs., tit. 2, §1183.7(d).) "Reasonably necessary activities" are those activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program (Cal. Code Regs., tit. 2, §1183.7(d).) Whether an activity is reasonably necessary is a mixed question of law and fact. All representations of fact to support any proposed reasonably necessary activities shall be supported by documentary evidence submitted in accordance with section 1187.5 of the Commission's regulations.

Review of Draft Expedited Parameters and Guidelines

Proposed modifications and comments may be filed on the Draft Expedited Parameters and Guidelines by **August 14, 2020**. (Cal. Code Regs., tit. 2, §1183.9(b).) 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

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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

Rebuttals

Written rebuttals may be filed within 15 days of service of comments. (Cal. Code Regs., tit. 2, § 1183.9(c).)

Draft Proposed Decision and Parameters and Guidelines

After review of the Draft Expedited Parameters and Guidelines, and any comments and rebuttals, Commission staff will prepare a Draft Proposed Decision and Parameters and Guidelines which will be issued for comment. If there are no substantive comments filed by the comment deadline, then no Draft Proposed Decision will be prepared or issued for comment and the matter will be set for the next regularly scheduled hearing, pursuant to section 1183.9(d) of the Commission's regulations.

Alternative Process: Joint Reasonable Reimbursement Methodology and Statewide Estimate of Costs

Test Claimant and Department of Finance Submission of Letter of Intent

Within 30 days of the Commission's adoption of a decision on a test claim, the test claimant and the Department of Finance may notify the executive director of the Commission in writing of their intent to follow the process described in Government Code sections 17557.1–17557.2 and section 1183.11 of the Commission's regulations to develop a *joint reasonable reimbursement methodology* and *statewide estimate of costs* for the initial claiming period and budget year for reimbursement of costs mandated by the state. The written notification shall provide all information and filing dates as specified in Government Code section 17557.1(a).

Test Claimant and Department of Finance Submission of Draft Reasonable Reimbursement Methodology and Statewide Estimate of Costs

Pursuant to the plan, the test claimant and the Department of Finance shall submit the *Draft Reasonable Reimbursement Methodology and Statewide Estimate of Costs* to the Commission. See Government Code section 17557.1 for guidance in preparing and filing a timely submission.

Review of Proposed Reasonable Reimbursement Methodology and Statewide Estimate of Costs

Upon receipt of the jointly developed proposals, Commission staff shall notify all recipients that they shall have the opportunity to review and provide written comments concerning the draft reasonable reimbursement methodology and proposed statewide estimate of costs within 15 days of service. The test claimant and Department of Finance may submit written rebuttals to Commission staff.

Adoption of Reasonable Reimbursement Methodology and Statewide Estimate of Costs

At least 10 days prior to the next hearing, Commission staff shall review comments and rebuttals and issue a staff recommendation on whether the Commission should approve the draft

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.

reasonable reimbursement methodology and adopt the proposed statewide estimate of costs pursuant to Government Code section 17557.2.

Alternative Process: Reasonable Reimbursement Methodology Proposed for Inclusion in Parameters and Guidelines

Government Code section 17518.5 provides a process for a reasonable reimbursement methodology to be proposed by the Department of Finance, the State Controller, an affected state agency, the claimant, or an interested party for inclusion in the parameters and guidelines of an amendment to parameters and guidelines. In this context, Government Code section 17518.5 defines “reasonable reimbursement methodology” as a formula for reimbursing local agencies and school districts for costs mandated by the state, as defined in Section 17514 which shall:

- Be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs.
- Consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner, and
- Whenever possible, be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.

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

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

Hearing

The Proposed Decision and Parameters and Guidelines for this matter are tentatively set for hearing on **Friday, September 25, 2020** at 10:00 a.m.

Sincerely,



Heather Halsey
Executive Director

DRAFT EXPEDITED PARAMETERS AND GUIDELINES

Elections Code Section 3010

Statutes 2018, Chapter 120 (AB 216)

Vote by Mail Ballots: Prepaid Postage

19-TC-01

Period of reimbursement begins January 1, 2019

I. SUMMARY OF THE MANDATE

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

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

¹ Elections Code sections 1200-1202, 13001.

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

³ For example, Elections Code section 10700 (vacancy in a congressional or legislative office), 11110 (recall of state officers), 11200 et seq. (recall of local officers); Education Code section 15100 (voter petition for school bonds); Education Code section 5091(c) (voter petition to replace an appointee and fill a vacant board position); Elections Code sections 8026 (death of incumbent or challenger for a nonpartisan statewide, countywide, or citywide office, or for a nonpartisan office that is elected by division, area, or district, before an election); Education Code section 5093 (special elections consolidated with the next regular election when the vacancy occurs during the period between six months and 130 days prior to a regularly scheduled governing board election).

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

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

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

II. ELIGIBLE CLAIMANTS

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

III. PERIOD OF REIMBURSEMENT

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

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

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller (Controller) within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)

⁴ Education Code sections 5300 and 5303. Elections Code section 10517.

⁵ Elections Code sections 10002, 10517, 10520, and Education Code section 5227.

5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event, or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

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

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

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

- Statewide general elections, statewide direct primary elections, and the presidential primary elections conducted by counties.⁶
- Regular local elections compelled by state law.⁷
- Special elections called by the Governor or required by state law, including recall elections of local officers, special elections forced by a petition of the voters to issue school bonds or replace an appointee and fill a vacant school board position, and elections required by state law that are conducted by charter cities and counties.⁸

⁶ Elections Code sections 1200-1202, 13001.

⁷ For example, California Constitution, article 6, section 16(b), and article 11, section 1; Elections Code sections 1300 et seq., 10517; Education Code sections 5300, 5303; Government Code section 24200, 25304.5.

⁸ For example, Elections Code section 10700 (vacancy in a congressional or legislative office), 11110 (recall of state elected officers), 11200 et seq. (recall of local officers); Education Code

- School district and community college district discretionary elections required by state law to be conducted by counties and cities when the election is consolidated with non-educational issues or elective offices.⁹

Reimbursement is not required in the following circumstances:

- When a county or city conducts its own discretionary local elections or holds a required special election that could have been consolidated with a regular election within statutory deadlines; or
- When counties conduct elections for cities or special districts;¹⁰ or when cities and counties conduct an election solely on behalf of a school district or community college district (with no other non-educational issues or elective offices on the ballot).¹¹ In these elections, there is fee authority sufficient to cover the costs of the mandate pursuant to Government Code section 17556(d) so there are no costs mandated by the state.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV., Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

section 15100 (voter petition for school bonds); Education Code section 5091(c) (voter petition to replace an appointee and fill a vacant board position); Elections Code sections 8026 (death of incumbent or challenger for a nonpartisan statewide, countywide, or citywide office, or for a nonpartisan office that is elected by division, area, or district, before an election); Education Code section 5093 (special elections consolidated with the next regular election when the vacancy occurs during the period between six months and 130 days prior to a regularly scheduled governing board election).

⁹ Education Code sections 5300 and 5303. Elections Code sections 3024, 10517.

¹⁰ Elections Code sections 10002, 10520.

¹¹ Elections Code section 10520, Education Code section 5227, 5420, and 3024; *County of Yolo v. Los Rios Community College District* (1992) 5 Cal.App.4th 1242, 1252.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets

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

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 Code of Federal Regulations (CFR) part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10 percent of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10 percent.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR part 225, appendices A and B (OMB Circular A-87 attachments A & B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR part 225, appendices A and B (OMB Circular A-87 attachments A & B)). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

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

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed pursuant to this chapter¹² is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

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

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local governments in claiming

¹² This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

costs to be reimbursed. The claiming instructions shall be derived from these parameters and guidelines and the decisions on the test claim and parameters and guidelines adopted by the Commission.

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

IX. REMEDIES BEFORE THE COMMISSION

Upon request of an eligible claimant, the Commission shall review the claiming instructions issued by the Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

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

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

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

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On July 24, 2020, I served the:

- **Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Hearing issued July 24, 2020**
- **Decision adopted July 24, 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 July 24, 2020 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

980 Ninth Street, Suite 300

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(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/24/20

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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County of San Diego

RECEIVED
August 14, 2020
**Commission on
State Mandates**

Exhibit C

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August 14, 2020

Via Drop Box

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

RE: Comments on Draft Expedited Parameters & Guidelines
Vote by Mail Ballots: Prepaid Postage, 19-TC-01
Elections Code Section 3010; Statutes 2018, Chapter 120 (AB 216)
Interested Party County of San Diego

Dear Ms. Halsey:

I represent interested party County of San Diego (the "County").

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

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

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

described this cost in its comments to the test claim. (County of San Diego's Comments on the Test Claim filed February 3, 2020, p. 6; *id.* Exhibit E (Declaration of Liliana Lau), ¶ 4.)

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

THOMAS E. MONTGOMERY, County Counsel

By:



CHRISTINA SNIDER, Senior Deputy

EXHIBIT “A”

DECLARATION OF LILIANA LAU IN SUPPORT OF
COUNTY OF SAN DIEGO'S COMMENTS ON DRAFT EXPEDITED
PARAMETERS AND GUIDELINES

I, Liliana Lau, declare as follows:

1. I make this declaration based upon my own personal knowledge and based upon my review of the records referenced herein.

2. If called upon to testify, I could and would competently testify to the matters set forth herein.

3. I am the Administrative Services Manager for the Registrar of Voters for San Diego County. In that capacity, I manage the acquisition of services and goods, as well as processing invoices, for the Registrar.

4. Due to the anticipated increase in mail after the passage of AB 216, the Registrar of Voters purchased a high volume mail subscription ("qualified business reply mail") from the United States Postal Service ("USPS").

5. This subscription costs the Registrar of Voters \$2,405 quarterly. Exhibit A is a true and correct copy of a receipt from USPS for the Registrar's payment of \$2,405 for one quarterly fee in 2020.

6. Prior to the passage of AB 216, the Registrar did not have this high volume mail subscription and did not incur this fee.

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

Executed this 13th day of August, 2020, in San Diego County.

Signed: 

Liliana Lau

EXHIBIT “A”

Account Information

Account Number [Redacted]
Permit [Redacted]
Company SAN DIEGO COUNTY REGISTRAR OF VOTERS
Address 5600 OVERLAND AVE STE 100
SAN DIEGO, CA 92123-1278
Where Issued n/a
Comments Ballots Po Box 85902 add on 9577

Current Balance [Redacted]
Contact [Redacted]
Phone Number [Redacted]
Finance Number [Redacted]

Fee Payment Transaction

Fee (Paid from Account Only)	Amount	Payment Date	Expiration Date	Transaction Number	Action
BRM Quarterly	\$2405	01/08/2020	03/31/2020	202000815142444F	

Payment Method: Account

Location: 0110

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Solano 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 August 14, 2020, I served the:

- **County of San Diego's Comments on the Draft Expedited Parameters and Guidelines filed August 14, 2020**

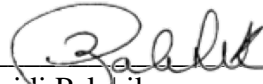
Vote by Mail Ballots: Prepaid Postage, 19-TC-01

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 August 14, 2020 at Sacramento, California.



Heidi Palchik

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/4/20

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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September 1, 2020

Exhibit D

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

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

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

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

County of Los Angeles, Claimant

Dear Ms. Gonzalez and Ms. Sidarous:

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

Written Comments

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

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

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

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.

Hearing

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

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

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

Sincerely,

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

Heather Halsey
Executive Director

ITEM__

DRAFT PROPOSED DECISION AND PARAMETERS AND GUIDELINES

Elections Code Section 3010

Statutes 2018, Chapter 120 (AB 216)

Vote by Mail Ballots: Prepaid Postage

19-TC-01

The period of reimbursement begins January 1, 2019.

County of Los Angeles, Claimant

EXECUTIVE SUMMARY

I. Summary of the Mandate

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

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

¹ Elections Code sections 1200-1202, 13001.

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

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

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

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

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

II. Procedural History

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

III. Discussion

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

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

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

⁴ Education Code sections 5300 and 5303. Elections Code section 10517.

⁵ Elections Code sections 10002, 10517, 10520, and Education Code section 5227.

⁶ Exhibit A, Test Claim Decision.

⁷ Exhibit B, Draft Expedited Parameters and Guidelines.

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

⁹ Exhibit A, Test Claim Decision, pages 20-23.

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

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

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

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

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

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

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

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

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

¹² Exhibit A, Test Claim Decision, pages 45-46.

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

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

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

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

¹³ Elections Code sections 1200-1202, 13001.

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

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

¹⁶ Education Code sections 5300 and 5303. Elections Code sections 3024, 10517.

¹⁷ Elections Code sections 1200-1202, 13001.

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

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

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

Reimbursement is not required in the following circumstances:

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

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

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

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

²⁰ Education Code sections 5300 and 5303. Elections Code sections 3024, 10517.

²¹ Elections Code sections 10002, 10520.

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

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

Therefore, Section VII. of the Proposed Parameters and Guidelines specifically identifies the state and federal funds appropriated in 2019 and 2020 as potentially offsetting revenue when used by the claimant to pay for the mandate. For example, the 2019 State Budget Act appropriated \$19.964 million in federal funds for local assistance for elections that could be used to pay for the mandate in fiscal year 2019-2020.²⁵ Also, the 2020 State Budget Act appropriates \$36.5 million in state funds and \$72,246,000 in federal funds for local election assistance.²⁶

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. Staff Recommendation

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

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

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES
FOR:

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

Case No.: 19-TC-01

Vote by Mail: Prepaid Postage

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

(Adopted December 4, 2020)

DECISION

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

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

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

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	

I. Summary of the Mandate

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

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

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

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

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

²⁹ Elections Code sections 1200-1202, 13001.

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

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

³² Education Code sections 5300 and 5303. Elections Code section 10517.

³³ Elections Code sections 10002, 10517, 10520, and Education Code section 5227.

II. Procedural History

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

III. Positions of the Parties

A. County of Los Angeles

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

B. County of San Diego

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

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

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

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

³⁴ Exhibit A, Test Claim Decision.

³⁵ Exhibit B, Draft Expedited Parameters and Guidelines.

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

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

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

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

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

C. Department of Finance

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

IV. Discussion

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

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

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

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

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

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

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

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

⁴⁰ Exhibit A, Test Claim Decision, pages 20-23.

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

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

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

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

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

Section IV. of the Parameters and Guidelines lists the activities that the Commission approved as reimbursable state-mandated activities. The mandate is to provide prepaid postage on identification envelopes delivered to voters with their vote-by-mail ballots for those elections required to be conducted by state law beginning January 1, 2019. Therefore, the cost of postage used for the mandate is eligible for reimbursement. As indicated in the Test Claim Decision, the claimant declared under penalty of perjury that the average cost of postage was \$0.605 per ballot for fiscal year 2018-2019.⁴²

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

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

⁴¹ California Code of Regulations, title 2, section 1183.7(d).

⁴² Exhibit A, Test Claim Decision, page 42.

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

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

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

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

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

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

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

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

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

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

⁴⁶ Exhibit A, Test Claim Decision, pages 45-46.

⁴⁷ Elections Code sections 1200-1202, 13001.

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

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

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

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

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

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

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

⁵⁰ Education Code sections 5300 and 5303. Elections Code sections 3024, 10517.

⁵¹ Elections Code sections 1200-1202, 13001.

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

and elections required by state law that are conducted by charter cities and counties.⁵³

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

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

Reimbursement is not required in the following circumstances:

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

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

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

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

⁵⁴ Education Code sections 5300 and 5303. Elections Code sections 3024, 10517.

⁵⁵ Elections Code sections 10002, 10520.

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

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

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

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

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

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

The 2019 State Budget Act (Stats. 2019, ch. 23 (AB 74)), in Item 0890-101-0890 appropriates \$19,964,000 for "local assistance" for elections from the Federal Trust Fund, which could be used to pay for the mandate in fiscal year 2019-2020.⁶⁰

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

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

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

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

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

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

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

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

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

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

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

then reimburse counties for the difference in costs by using \$23,133,000 provided in this item and a portion of the \$65,482,000 provided in Item 0890-101-0890.⁶⁴

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

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

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

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

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

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

⁶⁴ Emphasis added.

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

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

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

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

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

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

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

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

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

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

V. Conclusion

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

PARAMETERS AND GUIDELINES⁶⁸

Elections Code Section 3010

Statutes 2018, Chapter 120 (AB 216)

Vote by Mail Ballots: Prepaid Postage

19-TC-01

Reimbursement for this program begins January 1, 2019

I. SUMMARY OF THE MANDATE

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

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

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

⁶⁹ Elections Code sections 1200-1202, 13001.

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

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

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

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

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

II. ELIGIBLE CLAIMANTS

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

III. PERIOD OF REIMBURSEMENT

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

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

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

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

⁷² Education Code sections 5300 and 5303. Elections Code section 10517.

⁷³ Elections Code sections 10002, 10517, 10520, and Education Code section 5227.

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

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event, or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, “I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct,” and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

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

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

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

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

⁷⁴ Elections Code sections 1200-1202, 13001.

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

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

Reimbursement is not required in the following circumstances:

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

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

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

⁷⁷ Education Code sections 5300 and 5303. Elections Code sections 3024, 10517.

⁷⁸ Elections Code sections 10002, 10520.

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

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV., Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets

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

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 Code of Federal Regulations (CFR) part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10 percent of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10 percent.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR part 225, appendices A and B (OMB Circular A-87 attachments A & B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR part 225, appendices A and B (OMB Circular A-87 attachments A & B)). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

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

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed pursuant to this chapter⁸⁰ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be

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

retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

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

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

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

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

IX. REMEDIES BEFORE THE COMMISSION

Upon request of an eligible claimant, the Commission shall review the claiming instructions issued by the Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

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

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

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

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On September 1, 2020, I served the:

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

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

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

County of Los Angeles, Claimant

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

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



Jill L. Magee

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/14/20

Claim Number: 19-TC-01

Matter: Vote by Mail Ballots: Prepaid Postage

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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BETTY T. YEE
California State Controller

Exhibit E

RECEIVED
September 22, 2020
**Commission on
State Mandates**

September 22, 2020

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

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

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

Dear Ms. Halsey:

The State Controller's Office reviewed the Draft Proposed Decision and Parameters and Guidelines for the Vote by Mail Ballots: Prepaid Postage program and recommend no changes.

If you have any questions, please contact Lili Apgar of the Local Reimbursements Section in the Local Government Programs and Services Division, at LApgar@sco.ca.gov or (916) 323-0698.

Sincerely,

A handwritten signature in blue ink, reading "Debra Morton", is located below the "Sincerely," text.

DEBRA MORTON, Manager
Local Reimbursements Section

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On September 22, 2020, I served the:

- **Controller's Comments on the Draft Proposed Decision and Parameters and Guidelines filed September 22, 2020**

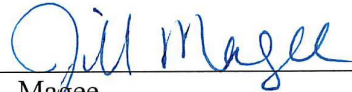
Vote by Mail Ballots: Prepaid Postage, 19-TC-01

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

County of Los Angeles, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 22, 2020 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

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Sacramento, CA 95814

(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/14/20

Claim Number: 19-TC-01

Matter: Vote by Mail Ballots: Prepaid Postage

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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Exhibit F

September 22, 2020

RECEIVED
September 22, 2020
**Commission on
State Mandates**

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Vote By Mail Ballots: Prepaid Postage (19-TC-01) – Eligible Claimants

Dear Ms. Halsey,

I am responding as an “Interested Party” to the Commission on State Mandates Draft Proposed Decision and Parameters and Guidelines (P’s & G’s) for the approved Test Claim “Vote By Mail Ballots: Prepaid Postage” (19-TC-01), dated September 1, 2020. In the Draft Proposed P’s & G’s, the Commission has identified eligible claimants as:

“Any city, county, or city and county that incurs increased costs as a result of this mandate is eligible to claim reimbursement. When counties conduct elections for cities or special districts; or when cities and counties conduct an election solely on behalf of a school district or community college district (with no other non-educational issues or elective offices on the ballot). In these elections, there is fee authority sufficient to cover the costs of the mandate pursuant to Government Code section 17556(d) so there are no costs mandated by the state.”

In the instances when counties and cities conduct elections for cities or special districts, the Commission staff is recommending the following limitations on reimbursement for counties and cities that conduct such elections:

“When counties conduct elections for cities or special districts; or when cities and counties conduct an election solely on behalf of a school district or community college district (with no other non-educational issues or elective offices on the ballot). In these elections, there is fee authority sufficient to cover the costs of the mandate pursuant to Government Code section 17556(d) so there are no costs mandated by the state.”

This “fee authority” limitation for Counties/Cities conducting elections for other local government agencies is understandable and makes perfect sense for the election conducting entities.

Cities/Special Districts Costs From a County/City Conducting an Election on Their Behalf

What I did not see addressed by the Commission in these Draft P's & G's are the increased costs for cities and special districts who are billed by the counties and cities (as required by their fee authority) who conduct their elections and in turn, bill the portion of elections costs related to "Vote By Mail: Prepaid Ballots" mandate on their election invoice.

"Racial and Identity Profiling" (18-TC-02)

Previously, the Commission has adopted decisions that approve reimbursement when costs are billed by counties (or other cities) to cities to provide a mandated activity as being reimbursable to the affected city. One has to look no further than the most recently approved Test Claim & the Adopted Statement of Decision (SOD) by the Commission for the program, "Racial and Identity Profiling" (18-TC-02) on May 22, 2022. In the adopted SOD for "Racial and Identity Profiling" the Commission approved:

" . . . the Commission partially approves this Test Claim, with a reimbursement period beginning November 7, 2017, and finds that Government Code section 12525.5, as added and amended by Statutes 2015, chapter 466 and Statutes 2017, chapter 328, and California Code of Regulations, title 11, sections 999.224- 999.229 (Register 2017, No. 46), constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution only on city and county law enforcement agencies that employ peace officers (other than probation officers and officers in a custodial setting) to perform the requirements of the test claim statute and regulations for stops within their own jurisdictions, and city and county law enforcement agencies that contract for officers from other cities or counties in order to carry out their basic and essential function of providing police protection services in their jurisdictions . . . "

Thus, cities that contract with county sheriff (and other city police departments) to provide law enforcement services to their cities are eligible for reimbursement for the approved reimbursable Test Claim activities for the "Racial and Identity Profiling" program.

"Absentee Ballots" (02-PGA-02)

The Commission on State Mandates has previously addressed the issue of mandated election costs billed by counties to cities and special districts for conducting the cities and special districts elections. Those affected cities and special districts were eligible to claim those costs in the program, "Absentee Ballots" (02-PGA-02). The Parameters & Guidelines (P's & G's) for "Absentee Ballots" were most recently amended in February 2003.

In these P's & G's, under "IV. Reimbursable Activities" Section A. "Elections Done by the County Election Official and Billed to the Local Agency" the Commission adopted three (3) separate methods for calculating reimbursement for instances "where a local agency election is done by the county election official and billed to the local agency."

Page 3

Comments on Draft Expedited Parameters and Guidelines - Test Claim I9-TC-01
September 22, 2020

Please let me know if you have any questions. I can be reached at (916) 455-3939 or via e-mail at andy@nichols-consulting.com. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Andy Nichols". The signature is written in a cursive, flowing style.

F. Andy Nichols
President

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On September 23, 2020, I served the:

- **Nichols Consulting's Comments on the Draft Proposed Decision and Parameters and Guidelines filed September 22, 2020**

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

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

County of Los Angeles, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 23, 2020 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/23/20

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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Exhibit G

September 25, 2020

RECEIVED
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State Mandates**

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LATE FILING

**RE: California Special Districts Association and League of California Cities Comments
Vote By Mail Ballots: Prepaid Postage (19-TC-01)**

Dear Ms. Halsey:

The comments below are submitted on behalf of the California Special Districts Association (CSDA) and League of California Cities (League) as “Interested Parties” to the Commission on State Mandates (Commission) Draft Proposed Decision and Parameters and Guidelines (P’s & G’s) for the approved Test Claim “Vote By Mail Ballots: Prepaid Postage” (19-TC-01). CSDA represents over 900 California special districts that deliver rural, suburban, and urban communities with critical infrastructure and quality of life services such as fire protection, water, health care, and utilities, to name a few. The League represents 477 cities and is a nonprofit statewide association that advocates for cities with the state and federal governments and provides education and training services to elected and appointed city officials.

Special Districts and Cities are Eligible Claimants

We are writing to express significant concern that special districts and cities are excluded as eligible claimants in the Commission’s Draft P’s & G’s for 19-TC-01. This is concerning because special districts and cities have experienced an increase of election costs as a result of the implementation of the requirements of Assembly Bill 216 (Gonzalez), given that our members are directly billed by counties for elections expenses, including mailing costs promulgated by AB 216. The increased costs incurred by special districts and cities as a result of AB 216 are reflected in election invoices they receive from their respective county registrar of voters, beginning with elections held following the effective date of AB 216 in January 2019.

**Prior Commission Precedent Identified by Nichols Consulting “Interested Party”
Comments (dated May 22, 2020)**

On Wednesday, May 22 Nichols Consulting submitted comments as an “Interested Party” regarding the eligible claimants identified in the Draft P’s & G’s for “Vote By Mail Ballots: Prepaid Postage” (19-TC-01). The comments provided by Nichols Consulting identified two analogous precedential decisions adopted by the Commission, whereby the Commission identified reimbursable costs to a local agency when a county performed a state mandated program or service and billed the local agency for the cost of the program or service delivery:

1. ***Adopted Statement of Decision, “Racial and Identity Profiling” (18-TC-02):***

On May 22, 2022, the Commission determined that cities who contract with their county sheriff (and other city police departments) to provide law enforcement services to their cities are eligible for reimbursement for the approved reimbursable activities associated the “Racial and Identity Profiling” program.

2. ***Parameters & Guidelines Amendment, “Absentee Ballots” (02-PGA-02):***

The Parameters & Guidelines (P’s & G’s) for “Absentee Ballots” were most recently amended on February 27, 2003. In these adopted P’s & G’s, the Commission adopted three (3) separate methods for calculating reimbursement for instances “where a local agency election is conducted by the county election official and billed to the local agency.”

Given this past precedent, the Commission should amend the draft proposed P’s & G’s to specifically include special districts and cities as eligible claimants. CSDA and the League agree with Nichols Consulting that these two past decisions by the Commission offer distinct analogous precedent of a county enacting “fee authority” and passing the costs of a state mandated activity to another local government agency, which in-turn was determined to be eligible for reimbursement.

Accordingly, CSDA and the League respectfully request the Commission to add local agencies (special districts and cities) where a local agency election is conducted by the county election official and billed to the local agency for the eligible costs associated with “Vote By Mail Ballots: Prepaid Postage” (19-TC-01).

Respectfully submitted,



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Nick Romo
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DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On September 25, 2020, I served the:

- **California Special Districts Association's (CSDA's) and California League of Cities' (League's) Late Comments on the Draft Proposed Decision and Parameters and Guidelines filed September 25, 2020**

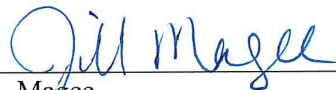
Vote by Mail Ballots: Prepaid Postage, 19-TC-01

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

County of Los Angeles, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 25, 2020 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/23/20

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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Exhibit H

July 17, 2020

County Clerk/Registrar of Voters (CC/ROV) Memorandum #20153

TO: All County Clerks/Registrars of Voters

FROM: /s/ Susan Lapsley
Deputy Secretary of State, HAVA Director and Counsel

RE: General Election: November 2020 Coronavirus Funding – July 2020

COVID-19 Funding

Assembly Bill 89 and Assembly Bill 100 were signed by Governor Newsom on June 29, 2020, to appropriate funding for the November 2020 election consistent with state requirements put in place to reduce the spread of COVID-19. These two budget bills did the following:

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

Additionally, by the state appropriating the \$35 million in state funds, the 20% match requirement for the federal CARES Act funding is satisfied. Therefore, counties no longer need to establish the county 20% match requirement for the federal COVID-19 funds.

Monthly Cost Reporting

For those counties that have not yet submitted the monthly cost reporting for July, please do so on the attached July Report form by July 24. The form is the same format and substance as last month’s report. Please update any election-related coronavirus costs previously reported as appropriate.

As of today, several counties have not submitted reports for June or July. These reports are essential to establishing amounts for the county contracts and for the report

due to the Election Assistance Commission and Congress 20 days after the November 2020 election.

County Allocations and Contracts

In allocating the funding, the Legislature indicated that the Secretary of State shall compile the remaining amounts from the state's voting system funding provided in the Budget Act of 2018 and the Budget Act of 2019 by county, calculate the difference between the costs related to conducting the November 2020 election and remaining state voting system funding by county, and then reimburse counties for the difference in costs.

Based on those considerations and reports provided by counties, the allocation of COVID-19 state and federal funding that will be reflected in contracts will be issued for each county next week.

Please submit the monthly cost report to Kathryn Chaney (KC) at kchaney@sos.ca.gov. Additionally, please contact KC if you have any questions about the status of your contract, allocation or reimbursement claims.

Link:

[July 24 County Report](#) (XLSX)



July 27, 2020

County Clerk/Registrar of Voters (CC/ROV) Memorandum #20160

TO: All County Clerks/Registrars of Voters

FROM: /s/ Susan Lapsley
Deputy Secretary of State, HAVA Director and Counsel

RE: General Election: November 2020 Coronavirus Funding – County Allocations

Assembly Bill 89 and Assembly Bill 100 were signed by Governor Newsom on June 29, 2020, to appropriate state and county funding for the November 2020 election consistent with state requirements put in place to reduce the spread of COVID-19.

Based on the considerations set forth in the budget bills, previous allocations, and reports provided by counties, the allocation of COVID-19 state and federal funding that will be reflected in contracts for each county is identified below. As indicated in CC/ROV Memorandum [#20153](#), no county match is required to receive these funds. These funds can be used for costs that are in addition to normal election costs and do not supplant funds already allocated under state or local budget authority, as part of the normal conduct of elections.

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

The final contracts will be issued to each county beginning next week and will set forth the county allocation, allowable costs and requirements for reimbursement.

County	General COVID-19 Funding	Outreach and Communication
Alameda	\$ 2,918,880.00	\$ 534,456.00
Alpine	\$ 2,500.00	\$ 458.00
Amador	\$ 56,305.00	\$ 13,775.00

Butte	\$	275,822.00	\$	67,481.00
Calaveras	\$	70,958.00	\$	17,360.00
Colusa	\$	28,844.00	\$	5,281.00
Contra Costa	\$	2,084,931.00	\$	381,757.00
Del Norte	\$	48,159.00	\$	8,818.00
El Dorado	\$	296,706.00	\$	72,590.00
Fresno	\$	1,119,088.00	\$	273,789.00
Glenn	\$	42,677.00	\$	7,814.00
Humboldt	\$	251,223.00	\$	46,000.00
Imperial	\$	244,603.00	\$	44,788.00
Inyo	\$	31,812.00	\$	5,825.00
Kern	\$	1,266,154.00	\$	231,836.00
Kings	\$	176,806.00	\$	32,374.00
Lake	\$	107,549.00	\$	19,693.00
Lassen	\$	44,498.00	\$	8,148.00
Los Angeles	\$	13,168,334.00	\$	3,221,681.00
Madera	\$	146,837.00	\$	35,924.00
Marin	\$	527,393.00	\$	96,567.00
Mariposa	\$	25,915.00	\$	6,340.00
Mendocino	\$	166,859.00	\$	30,552.00
Merced	\$	332,137.00	\$	60,815.00
Modoc	\$	15,810.00	\$	2,895.00
Mono	\$	22,506.00	\$	4,121.00
Monterey	\$	619,335.00	\$	113,402.00
Napa	\$	191,507.00	\$	46,853.00
Nevada	\$	161,794.00	\$	39,583.00
Orange	\$	3,880,161.00	\$	949,295.00
Placer	\$	786,463.00	\$	144,004.00
Plumas	\$	40,247.00	\$	7,369.00
Riverside	\$	3,541,061.00	\$	648,379.00
Sacramento	\$	1,943,529.00	\$	475,491.00
San Benito	\$	102,944.00	\$	18,849.00
San Bernardino	\$	3,223,449.00	\$	590,223.00
San Diego	\$	5,792,680.00	\$	1,060,657.00
San Francisco	\$	1,602,688.00	\$	293,457.00
San Joaquin	\$	1,035,593.00	\$	189,620.00
San Luis Obispo	\$	559,377.00	\$	102,423.00
San Mateo	\$	990,688.00	\$	242,375.00
Santa Barbara	\$	719,821.00	\$	131,801.00
Santa Clara	\$	2,258,413.00	\$	552,529.00
Santa Cruz	\$	518,967.00	\$	95,024.00

Shasta	\$	329,526.00	\$	60,337.00
Sierra	\$	6,734.00	\$	1,233.00
Siskiyou	\$	87,747.00	\$	16,067.00
Solano	\$	758,977.00	\$	138,971.00
Sonoma	\$	886,086.00	\$	162,245.00
Stanislaus	\$	828,950.00	\$	151,783.00
Sutter	\$	153,603.00	\$	28,125.00
Tehama	\$	111,299.00	\$	20,379.00
Trinity	\$	25,050.00	\$	4,587.00
Tulare	\$	580,765.00	\$	106,340.00
Tuolumne	\$	77,304.00	\$	18,913.00
Ventura	\$	1,469,400.00	\$	269,051.00
Yolo	\$	372,334.00	\$	68,175.00
Yuba	\$	116,438.00	\$	21,320.00

If you have any questions about your allocation, the status of your contract or reimbursement claims, please contact Kathryn Chaney at (916) 695-1657 or by email kchaney@sos.ca.gov.

ITEM 12
STAFF ANALYSIS AND PROPOSED
PARAMETERS AND GUIDELINES AMENDMENT

Elections Code Sections 3003 and 3024

Statutes 1978, Chapter 77
Statutes 2002, Chapter 1032

Absentee Ballots

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School Bus Safety II dated December 19, 2002 119

ITEM 12

STAFF ANALYSIS AND PROPOSED PARAMETERS AND GUIDELINES AMENDMENT

Elections Code Sections 3003 and 3024

Statutes 1978, Chapter 77
Statutes 2002, Chapter 1032

Absentee Ballots

EXECUTIVE SUMMARY

On June 17, 1981, the Board of Control, predecessor agency to the Commission on State Mandates (Commission), determined that the provisions of Elections Code section 3003, as added by Statutes 1978, chapter 77, imposed a new program or higher level of service upon school districts within the meaning of article XIII B, section 6 of the California Constitution and costs mandated by the state pursuant to Government Code section 17514.

Statutes 2002, chapter 1032,¹ enacted on September 28, 2002, requires the Commission to amend these parameters and guidelines to delete "school districts," as defined by Government Code section 17519, from the list of eligible claimants. AB 3005 specifies that the cost to administer absentee ballots when issues and elective offices related to school districts are included on a ballot election with non-education issues and elective offices shall not be fully or partially prorated to a school district.

Substantive changes were made to address AB 3005 and to conform to language in recently adopted parameters and guidelines. Non-substantive, technical changes were made for purposes of clarification and consistency with statutory language.

Staff Recommendation

Staff recommends that the Commission adopt the proposed amendments to the *Absentee Ballots* Parameters and Guidelines, beginning on page 7.

¹ Assembly Bill No. 3005 (2001-2002 Reg. Sess.) hereafter referred to as AB 3005.

REQUESTOR

The Legislature, Statutes 2002, chapter 1032, section 17 (AB 3005)

CHRONOLOGY

06/17/81	Board of Control determined that a reimbursable state mandate exists in Statutes 1978, Chapter 77.
08/12/82	Original parameters and guidelines adopted. ²
12/18/97	Commission on State Mandates (Commission) amended parameters and guidelines. ³
09/28/02	AB 3005 ⁴ added Elections Code section 3024, which requires the Commission to amend these parameters and guidelines to delete “school districts,” as defined by Government Code section 17519, from the list of eligible claimants.
02/06/03	Commission issued staff analysis.

BACKGROUND AND SUMMARY OF THE MANDATE

Elections Code section 3003, as added by Statutes 1978, chapter 77, and amended by Statutes 1994, chapter 920⁵, requires that absentee ballots be available to any registered voter. On June 17, 1981, the Board of Control, predecessor agency to the Commission, determined that Statutes 1978, chapter 77 imposed a new program or higher level of service upon school districts within the meaning of article XIII B, section 6 of the California Constitution and costs mandated by the state pursuant to Government Code section 17514.

On August 12, 1982, the Board of Control adopted the original parameters and guidelines, which provided reimbursement to local agencies for costs associated with the increase in absentee ballot findings. The Commission amended the parameters and guidelines on December 18, 1997, to include school districts as eligible claimants. AB 3005 was enacted on September 28, 2002, which requires the Commission to amend these parameters and guidelines to “delete school districts, county boards of education, and community college districts from the list of eligible claimants.” AB 3005 specifies that the cost to administer absentee ballots where issues and elective offices related to school districts, as defined by Government Code section 17519, are included on a ballot election with non-education issues and elective offices shall not be fully or partially prorated to a school district.

STAFF ANALYSIS

Non-substantive, technical changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to statutory language. Staff modified the parameters and guidelines, as discussed below:

² Exhibit A

³ Exhibit B

⁴ Exhibit C

⁵ Statutes 1994, chapter 920 only renumbered Election Code section 3003.

I. Summary of the Mandate

A paragraph explaining the requirements of AB 3005 was added to this section.

II. Eligible Claimants

AB 3005 requires the Commission to delete “school districts,” as defined by Government Code section 17519, from this section. However, AB 3005 specifies that only the cost to administer absentee ballots when issues and elective offices related to school districts are included on a ballot election with non-education issues and elective offices shall not be fully or partially prorated to a school district. In other words, rather than billing school districts when county election officials provide them with election services, the county can claim reimbursement for those costs.

Staff finds that AB 3005 makes no mention about the costs incurred by school districts to administer their own election, if they choose to do so. Therefore, staff modified this section to clarify that only those “school districts,” as defined in Government Code section 17519, that incur increased costs as a direct result of administering their *own* election program are eligible to claim reimbursement of those costs. School districts cannot claim reimbursement when the county election official administers a school district election.

III. Period of Reimbursement

Staff added that costs incurred by school districts to administer their own election program in compliance with Statutes 1978, chapter 77 are eligible for reimbursement on or after September 28, 2002.

On September 30, 2002, Statutes 2002, chapter 1124⁶ was enacted to increase the threshold dollar amount for filing reimbursement claims from \$200 to \$1000. Prior to this date, Government Code section 17564 stated that if the total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564. Staff made modifications accordingly.

IV. Reimbursable Activities

Staff modified this section by separating it into two subsections. Subsection A includes three methodologies intended for use when the county election official is administering the election of another local agency and bills that local agency for its pro rata share of the costs. References to school districts were deleted from subsection A pursuant to AB 3005. Subsection B includes one methodology intended for use where local agencies and school districts administer their own elections.

Sections IV through IX

On January 23, 2003, the Commission, upon request of the Legislature, adopted revisions to the parameters and guidelines for the *School Bus Safety II* program that detail the documentation necessary to support reimbursement claims. The State Controller’s Office (SCO) proposed revisions to address the documentation issue, and requested that these revisions be included in all parameters and guidelines.⁷

⁶ Assembly Bill No. 3000 (2001-2002 Reg. Sess.), hereafter referred to as AB 3000.

⁷ Exhibit D

Therefore, staff modified sections IV through IX to include the language recently adopted by the Commission. The following changes were made:

Section IV. Reimbursable Activities

Staff added a preamble to this section to specify that only actual costs may be claimed, and that documentation to support claimed costs must be developed at or near the same time that the reimbursable activity occurred.

Sections V through IX.

Technical amendments were made to these sections to match the recently adopted language described above. These revisions clarify recent statutory amendments to the period in which the SCO is authorized to audit reimbursement claims, and the SCO's authority to require certification, under penalty of perjury, for the reimbursement claims.

STAFF RECOMMENDATION

Staff recommends that the Commission adopt staff's proposed amendments to the *Absentee Ballots* Parameters and Guidelines, beginning on page 7.

STAFF'S PROPOSED PARAMETERS AND GUIDELINES AMENDMENT

Elections Code Sections 3003 and 3024

Statutes 1978, Chapter 77
Statutes 2002, Chapter 1032

Absentee Ballots

I. SUMMARY OF THE MANDATE

Elections Code section 3003, as added by ~~Chapter 77, Statutes of 1978, chapter 77,~~ and amended by ~~Chapter 920, Statutes of 1994, chapter 920,~~ requires that absentee ballots be available to any registered voter.⁸ The Board of Control, predecessor agency to the Commission on State Mandates, determined at its hearing of June 17, 1981, that a reimbursable state mandate requiring an "increased level of service" exists in Statutes 1978, chapter 77. Under prior law, absentee ballots were provided only when the following conditions were met:

- a. illness,
- b. absence from precinct at day of election,
- ~~c.e-~~physical handicap,
- d. conflicting religious commitments, or
- e. voter's residence is more than ten miles from his polling place.

Elections Code section 3024, as added by Statutes 2002, chapter 1032⁹ requires the Commission on State Mandates to amend these parameters and guidelines to "delete school districts, county boards of education, and community college districts from the list of eligible claimants." AB 3005 specifies that the cost to administer absentee ballots when issues and elective offices related to school districts, as defined by Government Code section 17519, are included on a ballot election with non-education issues and elective offices shall not be fully or partially prorated to a school district.

Board of Control Decision

The Board of Control, the predecessor agency to the Commission on State Mandates, determined, at its hearing of June 17, 1981, that a reimbursable mandate requiring an "increased level of service" exists in Chapter 77, Statutes of 1978.

II. ELIGIBLE CLAIMANTS

"Local agencies," as defined in Government Code section 17518, that have incurred increased costs as a direct result of this mandate are eligible to claim reimbursement of those costs. and
s"School districts," as defined in Government Code section 17519, that have incurred increased

⁸ Statutes 1994, chapter 920 only renumbered Elections Code section 3003.

⁹ Assembly Bill No. 3005 (2001-2002 Reg. Sess.), hereafter referred to as AB 3005.

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costs as a direct result of administering their an-own election program-are eligible claimants are eligible to claim reimbursement of those costs. School districts cannot claim reimbursement when the county election official administers a school district election.

III. PERIOD OF REIMBURSEMENT

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years costs shall be submitted within 120 days of issuance of the claiming instructions by the State Controller.

For initial claims and annual claims filed prior to September 30, 2002, including amendments thereof, if the total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564. For initial claims and annual claims filed on or after September 30, 2002, if the total costs for a given fiscal year do not exceed \$1000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.

A. Local Agencies

Government Code section 17557, prior to its amendment by Statutes 1998, chapter 681 (effective September 22, 1998) stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that fiscal year.

All eligible costs incurred on or after July 1, 1980 are reimbursable. The law Statutes 1978, chapter 77 became effective on January 1, 1979. The test claim was filed on January 2, 1981. Therefore, pursuant to Revenue and Taxation Code section 2253.8, Therefore, in accordance with Section 17557, as in effect on the date of the filing of the test claim, all costs incurred by local agencies in compliance with Statutes 1978, chapter 77 are eligible for reimbursement on or after July 1, 1980-are reimbursable. The first claim submitted will report costs incurred from July 1, 1980 through June 30, 1981. Pursuant to Revenue and Taxation Code section 2231-(d)(1), all claims for reimbursement costs shall be submitted within 120 days from the date of notification by the Controller of the enactment of the claims bill.

If total costs incurred in a single fiscal year do not exceed \$200, no reimbursement shall be allowed except as otherwise provided by Government Code section 17564.

B. School Districts

Pursuant to section 1185.3, of Title 2, California Code of Regulations, title 2, section 1185.3, prior to its amendment (effective September 13, 1999), stated that a parameters and guidelines amendment filed after the initial claiming deadline must be submitted on or before November 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. This-An amendment was filed on August 25, 1997. Therefore, in accordance with Section 1185.3, as in effect on the date of the filing of the parameters and guidelines amendment, all costs incurred by school districts in compliance with Statutes 1978, chapter 77 are eligible for reimbursement, on or after July 1, 1996 through September 27, 2002, are eligible for reimbursement. Pursuant to section 17561, subdivision (d), of the Government Code, all initial reimbursement claims shall be submitted within 120 days from the date of issuance of claiming instructions by the Controller.

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~~If total costs incurred in a single fiscal year do not exceed \$200, no reimbursement shall be allowed except as otherwise provided by Government Code section 17564.~~

Effective September 13, 1999, California Code of Regulations, title 2, section 1183.2, states that a parameters and guidelines amendment filed after the initial claiming deadline must be submitted on or before January 15 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. This amendment, as required by AB 3005, was effective September 28, 2002. Therefore, only those costs incurred by school districts to administer their own election program in compliance with Statutes 1978, chapter 77 are eligible for reimbursement on or after September 28, 2002.

IV. REIMBURSABLE ~~COSTS~~ ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge." Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

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

~~Chapter 77, Statutes of 1978 mandated an increased level of service for local agencies, special districts, and school districts that administer election programs.~~

~~When county election officials provide election services to other local agencies and school districts, the costs of those services which are billed to local agencies and school districts pursuant to the Uniform District Election Law (Elections Code section 10500 et seq.) shall not be included in the county's reimbursement claim. Consequently,~~

For each eligible claimant, these parameters and guidelines shall provide reimbursement only for costs associated with the increase in absentee ballot filings, as determined under the following formulas below.

A. Local Agencies

1. ~~Base Year Calculation (remains the same for all fiscal years claimed)~~

~~w) Number of ballots cast from January 1, 1975 through December 30, 1978 (w)~~

~~x) Number of absentee ballots cast from January 1, 1975 through December 30, 1978 (x)~~

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2. Calculation for Fiscal Year Claimed (compute for each claim)

y) Number of ballots cast in fiscal year claimed (y)

z) Number of absentee ballots cast in fiscal year claimed (z)

3. Formula for Calculating Number of Reimbursable Absentee Ballots Filed

$$\frac{z - (x \cdot y)}{w} = \text{Number of reimbursable absentee ballots (n)}$$

4. Calculation of Cost Per Absentee Ballot Filing (See Guidelines for Claim Preparation)

a. Material _____ \$

b. Postage _____ \$

c. Labor _____ \$

d. Overhead _____ \$

e. Cost per Absentee Ballot _____ \$

_____ (a+b+c+d)

5. Computation of Reimbursement

A. Number of reimbursable filings (Item 3)(n) _____

B. Cost per filing (Item 4) _____ \$ _____

Total Reimbursement (A • B) _____ \$ _____

B. School Districts or Local Agencies

A. Elections Done by the County Election Official and Billed to the Local Agency

Methods 1, 2 and 3, below, are intended for use where a ~~school district or~~ local agency election is done by the county election official and billed to the ~~district or~~ local agency. When county election officials provide election services to other local agencies, the costs of those billed services pursuant to the Uniform District Election Law (Elections Code section 10500 et seq.) shall not be included in the county's reimbursement claim.

The simplest, method 1 applies when the county election official does all calculations and provides a billing which distinguishes the reimbursable amount and the non-reimbursable amount billed. Method 2 assumes that the percentage increase in absentee ballots is uniform throughout the county, and uses the county-wide figures to determine the percentage of reimbursable costs. Method 3 is more complex, and requires the school district or local agency to have data on numbers of ballots and absentee ballots filed in the district or local agency area. Method 3 requires the collection of more data, which may or may not be readily available. Method 4 is the most complex. It is intended for use where school districts or local agencies do their own elections and thus have the information on both numbers of ballots and absentee ballots, as well as the per ballot cost information needed for item 4.

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Method 1

This method applies when the county election official does all calculations and provides a billing that distinguishes the reimbursable amount and the non-reimbursable amount billed.

If the county election official determines the claimant's pro rata share of reimbursable costs and reports the pro rata share of these costs in a separate bill or as a line item on a bill, the claimant may claim the amount paid to the county for the reimbursable costs.

Method 2

This method assumes that the percentage increase in absentee ballots is uniform throughout the county, and uses the countywide figures to determine the percentage of reimbursable costs.

1. Obtain data from county election official on the number of reimbursable absentee ballots (n), the number of absentee ballots cast (z) for the fiscal year, and the amount billed to the ~~school district or~~ local agency by the county for total absentee ballot costs.
2. Calculate the Reimbursable Cost Percentage

$$\frac{n}{z} \cdot 100 = \text{Reimbursable Cost Percentage (p)}$$

3. Calculate the Reimbursable Costs

$$\frac{p}{100} \cdot \text{amount billed by county} = \text{Amount of Reimbursable Costs}$$

Method 3

This method is more complex, and requires the local agency to have data on numbers of ballots and absentee ballots filed in the local agency area. It requires the collection of more data, which may or may not be readily available.

1. Base Year Calculation (remains the same for all fiscal years claimed)
 - w) Number of ballots cast in the district or local agency area from January 1, 1975 through December 30, 1978 (w)
 - x) Number of absentee ballots cast in the district or local agency area from January 1, 1975 through December 30, 1978 (x)
2. Calculation for Fiscal Year Claimed (compute for each fiscal year claimed)
 - y) Number of ballots cast in the district or local agency area in fiscal year claimed (y)
 - z) Number of absentee ballots cast in the district or local agency area in fiscal year claimed (z)

3. Formula for Calculating Number of Reimbursable Absentee Ballots Filed

$$z - \frac{(x \cdot y)}{w} = \text{Number of reimbursable absentee ballots (n)}$$

4. Calculation of Reimbursable Cost Percentage

$$\frac{n}{z} \cdot 100 = \text{Reimbursable Cost Percentage (p)}$$

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5. Calculation of Reimbursable Costs

$$\frac{p}{100} \cdot \text{amount billed by county} = \text{Amount of Reimbursable Costs}$$

B. Local Agencies or School Districts that Administer their Own Elections

Method 4, below, is intended for use where local agencies and school districts do their own elections and thus have the information on both numbers of ballots and absentee ballots, as well as the per-ballot cost information needed for item 4.

Method 4

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1. Base Year Calculation (remains the same for all fiscal years claimed)

w) Number of ballots cast in the district or local agency area from January 1, 1975 through December 30, 1978 (w)

x) Number of absentee ballots cast in the district or local agency area from January 1, 1975 through December 30, 1978 (x)

2. Calculation for Fiscal Year Claimed (compute for each claim)

y) Number of ballots cast in the district or local agency area in fiscal year claimed (y)

z) Number of absentee ballots cast in the district or local agency area in fiscal year claimed (z)

3. Formula for Calculating Number of Reimbursable Absentee Ballots Filed

$$z - \frac{(x \cdot y)}{w} = \text{Number of reimbursable absentee ballots (n)}$$

4. Calculation of Cost Per Absentee Ballot Filing (See ~~Guidelines for section V.~~ Claim Preparation and Submission)

a. Material \$ _____

b. Postage \$ _____

c. Labor \$ _____

d. Overhead \$ _____

e. Cost per Absentee Ballot (a+b+c+d) \$ _____

5. Computation of Reimbursement

A. Number of reimbursable filings (Item 3)(n) _____

B. Cost per Absentee Ballot filing (Item 4)(e) \$ _____

Total Reimbursement (A • B) \$ _____

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V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

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A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

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

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

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Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Local Agencies

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Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the following methodologies:

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

School Districts

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School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

V. CLAIM PREPARATION

~~Each claim for reimbursement pursuant to this mandate must be timely filed and provide documentation in support of the reimbursement claimed for this mandate. Claim detail should include the following:~~

~~A. — Salaries and Benefits~~

~~Claimed reimbursement for employee costs should be supported by name, position, productive hourly rate, hours worked, fringe benefits amount, and a brief description of assigned unit and function relative to the mandate.~~

~~The source documents required to be maintained by the claimant may include, but are not limited to, employee time cards and/or cost allocation reports.~~

~~B. — Services and Supplies~~

~~The claimant should identify all direct costs for materials, services and supplies which have been purchased, leased, consumed or expended for purposes of compliance with the mandate.~~

~~Source documents required to be maintained by the claimant may include, but are not limited to, invoices, lease documentation and other documents evidencing the validity of the expenditure.~~

~~C. — Contract Services~~

~~Give the name(s) of the contractor(s) who performed the service(s). Describe the activities performed by each named contractor, and give the number of actual hours spent on the activities. Describe the activities performed by the county election official and include a copy of the billing or show the data used to determine the reimbursable cost percentage. Show the inclusive dates when services were performed and itemize all costs for those services.~~

~~D. — Training~~

~~Includes the costs of training personnel. Specialized training must be justified by the claimant.~~

~~E. — Fixed Assets~~

~~List the cost of fixed assets that have been acquired specifically for the purposes of this mandate. If a fixed asset is acquired for the absentee ballots program, but is utilized in some way not directly related to the program, only the pro-rata portion of the asset which is used for purposes of the mandated program is reimbursable.~~

~~F. — Allowable Overhead Cost~~

~~Government Code section 17564, subdivision (b), provides that claims for indirect costs shall be filed in the manner prescribed by the State Controller's Office.~~

VI. RECORD RETENTION

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Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹⁰ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VI.—SUPPORTING DATA

~~For auditing purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs. All documentation in support of claimed costs shall be made available to the State Controller or his/her agent, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).~~

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

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

VII.—OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

~~Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source (e.g., service fees collected, federal funds, other state funds, or school districts, etc.), shall be identified and deducted from this claim.~~

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

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

¹⁰ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

~~VIII. REQUIRED CERTIFICATION~~

~~An authorized representative of the claimant will be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained therein.~~

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (a), and California Code of Regulations, title 2, section 1183.2.

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May 22, 2020

Captain Jeffrey Jordon
City of San Diego
San Diego Police Department
1401 Broadway
San Diego, CA 92101

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

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

Re: Decision

Racial and Identity Profiling, 18-TC-02

Government Code Section 12525.5 and Penal Code Sections 13012 and 13519.4; Statutes 2015, Chapter 466 (AB 953); Statutes 2017, Chapter 328 (AB 1518); California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228, and 999.229, Register 2017, No. 46, effective November 7, 2017¹

City of San Diego, Claimant

Dear Captain Jordon and Ms. Li:

On May 22, 2020, the Commission on State Mandates adopted the Decision partially approving the Test Claim on the above-captioned matter.

Sincerely,

Heather Halsey
Executive Director

¹ Although the claimant incorrectly pled Notice Register Number 2016, 50-2 regarding changes to California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228, and 999.229 with a file and effective date of November 7, 2017, the Commission can take judicial notice of Register 2017, No. 46. In this case, Westlaw incorrectly indicates in the history of each of these sections that the update appears in Register 2017, No. 45 when in fact the adoption of these changes appears in Register 2017, No. 46.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM

Government Code Section 12525.5 and Penal Code Sections 13012 and 13519.4; as added or amended by Statutes 2015, Chapter 466 (AB 953) and Statutes 2017 Chapter 328 (AB 1518)

California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228 and 999.229; as added by Register 2017, No. 46¹

Filed on June 14, 2019

City of San Diego, Claimant

Case No.: 18-TC-02

Racial and Identity Profiling

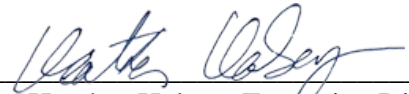
DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500 ET
SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.

(Adopted May 22, 2020)

(Served May 22, 2020)

TEST CLAIM

The Commission on State Mandates adopted the attached Decision on May 22, 2020.



Heather Halsey, Executive Director

¹ Note that Register 2016, 50-2 was incorrectly cited in the test claim filing. The correct register is Register 2017, No. 46.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM

Government Code Section 12525.5 and Penal Code Sections 13012 and 13519.4; as added or amended by Statutes 2015, Chapter 466 (AB 953) and Statutes 2017 Chapter 328 (AB 1518)

California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228 and 999.229; as added by Register 2017, No. 46¹

Filed on June 14, 2019

City of San Diego, Claimant

Case No.: 18-TC-02

Racial and Identity Profiling

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

(Adopted May 22, 2020)

(Served May 22, 2020)

DECISION

The Commission in State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on May 22, 2020. Captain Jeffrey Jordon appeared on behalf of the claimant, City of San Diego. Donna Ferebee appeared on behalf of the Department of Finance.

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 the Proposed Decision to partially approve the Test Claim by a vote of 7-0, as follows:

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

¹ Note that Register 2016, 50-2 was incorrectly cited in the test claim filing. The correct register is Register 2017, No. 46.

Summary of the Findings

This Test Claim addresses the Racial and Identity Profiling Act of 2015 and the 2017 amendments thereto (Stats. 2015, ch. 466; Stat. 2017, ch. 46), which added and amended Government Code section 12525.5, and amended Penal Code sections 13012 and 13519.4; and the regulations adopted by the Department of Justice (DOJ) to implement Government Code section 12525.5, California Code of Regulations, title 11, sections 999-224-999.229 (Register 2017, No. 46). The test claim statutes and regulations, with respect to local governments, require that each reporting agency, as defined, that employs peace officers to annually report to the Attorney General data in electronic format on all “stops” conducted by the agency’s peace officers. The data required to be reported includes the following: the time, date, and location of the stop; the reason for the stop; the perceived race or ethnicity, gender, LGBT status, and approximate age and English fluency of the person stopped; the actions taken by the officer during the stop; and the result of the stop. Also required to be reported are the officer’s identification number, years of experience, and type of assignment.

The Commission finds that Test Claim is timely filed pursuant to Government Code section 17551(c).

The Commission further finds that Penal Code sections 13012 and 13519.4, as amended by Statutes 2015, chapter 466 and Statutes 2017, chapter 328, do not impose any activities on local government, and thus, do not constitute a reimbursable state-mandated program within the meaning of article XIII B, Section 6 of the California Constitution.

The Commission also finds that Government Code section 12525.5, as added and amended by Statutes 2015, chapter 466 and Statutes 2017, chapter 328, and Title 11, California Code of Regulations sections 999-224-999.229 (Register 2017, No. 46), constitute a state-mandated new program or higher level of service, and impose costs mandated by the state, beginning November 7, 2017, *only* on city and county law enforcement agencies that employ peace officers (other than probation officers and officers in a custodial setting) who perform the requirements of the test claim statute and regulations for stops within their own jurisdictions, and cities and counties that contract for officers from other city or county reporting agencies in order to carry out their basic and essential function of providing police protection services in their jurisdictions, for the following mandated stop data collection and reporting activities:

1. Identification of the peace officers required to report stops, and maintenance of a system to match individual officers to their Officer I.D. number.
 - a. On January 1 of each year until the agency begins reporting data to the DOJ, each reporting agency shall count the number of peace officers it employs who are required to report stops to determine the date that agency must start collecting stop data and reporting to the DOJ pursuant to Government Code section 12525.5(a)(1)(2). (Cal. Code Regs, tit. 11, § 999.227(a)(8) [Register 2017, No. 46].)
 - b. Reporting agencies shall create the Officer’s I.D. Number for each officer required to report stops. (Cal. Code Regs, tit. 11, § 999.227(a)(11) [Register 2017, No. 46].)

- c. Reporting agencies shall maintain a system to match an individual officer required to report stops to his or her Officer's I.D. Number. (Cal. Code Regs., tit. 11, § 999.227(a)(11) [Register 2017, No. 46].)
2. Collection and reporting data on all stops, as defined,² conducted by that agency's peace officers for the preceding calendar year in accordance with sections 999.226(a) and 999.227 of the regulations.
 - a. Begin collecting and reporting data on all stops on or before the following dates:
 - (1) An agency that employs 1,000 or more peace officers shall begin collecting data on or before July 1, 2018, and shall issue its first round of reports on or before April 1, 2019.
 - (2) An agency that employs 667 or more but less than 1,000 peace officers shall begin collecting data on or before January 1, 2019, and shall issue its first round of reports on or before April 1, 2020.
 - (3) An agency that employs 334 or more but less than 667 peace officers shall begin collecting data on or before January 1, 2021, and shall issue its first round of reports on or before April 1, 2022.
 - (4) An agency that employs one or more but less than 334 peace officers shall begin collecting data on or before January 1, 2022, and shall issue its first round of reports on or before April 1, 2023.

(Gov. Code, § 12525.5(a)(2), Stats. 2017, ch. 328).

The following are **not** reportable:

- Data elements described in section 999.226(a) for passengers in vehicles subject to a stop who have not been observed or suspected of violating the law, or who have not been subjected to the actions listed in section 999.226(a)(12)(A), excluding "Vehicle impounded" and "None."³
- Stops made during public safety mass evacuations,⁴ and
- Stops during an active shooter incident.⁵

² Government Code section 12525.5(g)(2) (Stats. 2015, ch. 466); see also, California Code of Regulations, title 11, section 999.224(a)(14), which defines a "stop" as "any detention by a peace officer of a person, or any peace officer interaction with a person in which the peace officer conducts a search, including a consensual search, of the person's body or property in the person's possession or control."

³ California Code of Regulations, title 11, section 999.227(b), Register 2017, No. 46.

⁴ California Code of Regulations, title 11, section 999.227(c)(1), Register 2017, No. 46.

⁵ California Code of Regulations, title 11, section 999.227(c)(2), Register 2017, No. 46.

- Stops that occur during or as a result of routine security screenings required of all persons to enter a building or special event, including metal detector screenings, including any secondary searches that result from the screening.⁶
 - The following interactions are **not** reportable unless a person is detained based upon individualized suspicion or personal characteristics, or the officer engages in the actions described in the data values in section 999.226(a)(12)(A)(1)-(22): Interactions during traffic control of vehicles due to a traffic accident or emergency situation that requires that vehicles are stopped for public safety purposes; any type of crowd control in which pedestrians are made to remain in a location or routed to a different location for public safety purposes; interactions during which persons are detained at a residence so that the officer may check for proof of age for purposes of investigating underage drinking; and checkpoints and roadblocks in which an officer detains a person as the result of a blanket regulatory activity or neutral formula that is not based on individualized suspicion or personal characteristics.⁷
 - Interactions that take place with a person in his or her residence who is the subject of a warrant or search condition.⁸
 - Interactions that take place with a person in his or her residence who is the subject of home detention or house arrest while an officer is on home detention or house arrest assignment.⁹
 - Stops in a custodial setting.¹⁰
 - Stops that occur while the officer is off-duty.¹¹
- b. The agency's peace officers shall collect the following required categories of stop data, and all applicable "data elements," "data values," and narrative explanatory fields described in section 999.226(a) for every person stopped, and in accordance with section 999.227(a)(4)-(6), (b) and (d) of the regulations, and complete all stop reports for stops made during the officer's shift by the end of the officer's shift, or if exigent circumstances preclude doing so, as soon as practicable. (Gov. Code, §12525.5(b), Stats. 2015, ch.

⁶ California Code of Regulations, title 11, section 999.227(c)(3), Register 2017, No. 46.

⁷ California Code of Regulations, title 11, section 999.227(d)(1).

⁸ California Code of Regulations, title 11, section 999.227(d)(2), Register 2017, No. 46.

⁹ California Code of Regulations, title 11, section 999.227(d)(3), Register 2017, No. 46.

¹⁰ California Code of Regulations, title 11, section 999.225(c), Register 2017, No. 46.

¹¹ Exhibit I, Final Statement of Reasons, Proposed Regulations, Title 11, Sections 999.224-999.229, pages 12-13, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/stop-data-reg-fsor-revised-110817.pdf> (accessed on November 8, 2019).

466; Cal Code Regs., tit. 11, §§999.226(a), 999.227(a)(1)(2)(4)(5)(6)(9), (b) and (d) [Register 2017, No. 46].)

- (1) “ORI number,” which is “the data element that refers to the reporting agency’s Originating Agency Identifier, a unique identification code number assigned by the Federal Bureau of Investigation.” (Cal Code Regs., tit. 11, § 999.226(a)(1) [Register 2017, No. 46].)
- (2) “Date, Time, and Duration of Stop.” (Gov. Code, §12525.5(b)(1), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(2) [Register 2017, No. 46].)
- (3) “Location of Stop.” (Gov. Code, §12525.5(b)(1), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(3) [Register 2017, No. 46].)
- (4) “Perceived Race or Ethnicity of Person Stopped.” (Gov. Code, § 12525.5(b)(6), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(4) [Register 2017, No. 46].)
- (5) “Perceived Gender of Person Stopped.” (Gov. Code, §12525.5(b)(6), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(5) [Register 2017, No. 46].)
- (6) “Person Stopped Perceived to be LGBT.” (Cal Code Regs., tit. 11, § 999.226(a)(6) [Register 2017, No. 46].)
- (7) “Perceived Age of Person Stopped.” (Gov. Code, §12525.5(b)(6), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(7) [Register 2017, No. 46].)
- (8) “Person Stopped Has Limited or No English Fluency.” (Cal Code Regs, tit. 11, § 999.226(a)(8) [Register 2017, No. 46].)
- (9) “Perceived or Known Disability of Person Stopped.” (Cal Code Regs., tit. 11, § 999.226(a)(9) [Register 2017, No. 46].)
- (10) “Reason for Stop.” (Gov. Code, §12525.5(b)(2), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(10) [Register 2017, No. 46].)
- (11) “Stop Made in Response to a Call for Service.” (Cal Code Regs., tit. 11, § 999.226(a)(11) [Register 2017, No. 46].)
- (12) “Actions Taken by Officer During Stop.” (Gov. Code, §12525.5(b)(7), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(12) [Register 2017, No. 46].)
- (13) “Result of Stop.” (Gov. Code, §12525.5(b)(3)(4)(5), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(13) [Register 2017, No. 46].)
- (14) “Officer’s Identification (I.D.) Number.” (Cal Code Regs., tit. 11, § 999.226(a)(14) [Register 2017, No. 46].)

- (15) “Officer's Years of Experience.” (Cal Code Regs., tit. 11, § 999.226(a)(15) [Register 2017, No. 46].)
 - (16) “Type of Assignment of Officer.” (Cal Code Regs., tit. 11, § 999.226(a)(16) [Register 2017, No. 46].)
 - c. The following additional data values shall be reported for stops (as defined in section 999.227(e)(3) of the regulations) at a K-12 school: the name of the school where the stop took place; indicate if the stop is of a student, whether there is a perceived disability related to hyperactivity or impulsive behavior of the student, the possible conduct warranting discipline under the Education Code, whether there was an admission or written statement obtained from the student, whether the student is suspected of violating school policy, and whether the student was referred to a school administrator or counselor. (Cal Code Regs., tit. 11, § 999.227(e)(3)(4) [Register 2017, No. 46].)
3. Electronic submission of data to DOJ and retention of stop data collected
- a. Submit all required stop data to the system developed by DOJ in electronic format that complies with the DOJ interface specifications via one of the three approved submission methods: (1) a web-browser based application developed by the DOJ; (2) a system-to-system web service; or (3) a secured file transfer protocol. (Cal Code Regs., tit. 11, § 999.228(a), (b) [Register 2017, No. 46].)
 - b. Authorize and remove users to the system as necessary. Automated systems handling stop data and the information derived therein shall be secure from unauthorized access, alteration, deletion or release. (Cal Code Regs., tit. 11, § 999.228(e) [Register 2017, No. 46].)
 - c. Each reporting agency, *except* those agencies that report stop data via the DOJ web-browser based application, shall keep a record of its source data for three years and to make it available for inspection by DOJ. (Cal Code Regs., tit. 11, § 999.228(h) [Register 2017, No. 46].)
4. Audits and validation of data collected
- a. Ensure that the technical specifications for data values are consistent with the regulations and follow the data dictionary prepared by DOJ. (Cal Code Regs., tit. 11, § 999.224(a)(5) [Register 2017, No. 46].)
 - b. Ensure that all data elements, data values, and narrative explanatory fields conform to the regulations and correct any errors in the data submission process through the DOJ's error resolution process. (Cal Code Regs., tit. 11, § 999.229(b) [Register 2017, No. 46].)
 - c. Agencies submitting records via the system-to-system web service or the secure file transfer protocol shall include a unique stop record number for each stop, so that DOJ can use the record number to relay information on errors when necessary. (Cal Code Regs., tit. 11, § 999.229(c) [Register 2017, No. 46].)

5. For stop data collected, ensure that the name, address, social security number, or other unique personally identifiable information of the individual stopped, searched, or subjected to property seizure, and the badge number or other unique identifying information of the peace officer involved, is not transmitted to the Attorney General in an open text field. (Gov. Code, § 12525.5, Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.228(d) [Register 2017, No. 46].)

The test claim statutes and regulations do not impose a state-mandated program for K-12 school districts or community college districts that are authorized, but not required, to employ peace officers, and for which the provision of police protection services is not an essential and basic function. Thus, K-12 school districts or community college districts are not eligible for reimbursement.¹²

In addition, the test claim statutes and regulations do not impose a state-mandated program when a city or county assigns their peace officer employees *out* to work for other government or private entities based on a contract or memorandum of understanding. The courts have made it clear that activities required by state law, but triggered by a local discretionary decision, do not result in a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.¹³ There is no requirement in law that a city or county contract *out* their law enforcement officers and any costs resulting from the discretionary decision to do so are not mandated by the State.

Accordingly, the Commission partially approves this Test Claim.

COMMISSION FINDINGS

I. Chronology

01/01/2016	Effective date of Statutes 2015, chapter 466.
11/17/2017	Effective date of California Code of Regulations, Title 11, sections 999.224, 999.225, 999.226, 999.227, 999.228, and 999.229 as added by Register 2017, No. 46.
01/01/2018	Effective date of Statutes 2017, chapter 328.
06/15/2018	The date that claimant alleges that it first incurred costs to implement the test claim statutes and regulations. ¹⁴
06/14/2019	The claimant filed the Test Claim. ¹⁵

¹² *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1357-1367.

¹³ *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 742.

¹⁴ Exhibit A, Test Claim, page 20 (Declaration of Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, July 30, 2019).

¹⁵ Exhibit A, Test Claim.

08/20/2019	Commission staff issued the Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date.
09/19/2019	The Department of Finance (Finance) filed comments on the Test Claim. ¹⁶
09/19/2019	The San Bernardino County Sheriff's Department filed comments on the Test Claim. ¹⁷
09/19/2019	The Riverside County Sheriff's Department filed comments on the Test Claim. ¹⁸
09/20/2019	The Peace Officers' Research Association of California (PORAC) filed late comments on the Test Claim. ¹⁹
09/27/2019	The San Diego County Sheriff's Department filed late comments on the Test Claim. ²⁰
10/16/2019	The claimant filed rebuttal comments. ²¹
12/31/2019	Commission staff issued the Draft Proposed Decision. ²²
03/12/2020	Commission staff issued the Proposed Decision, setting the matter for the March 27, 2020 Commission meeting. ²³

II. Background

This Test Claim addresses the Racial and Identity Profiling Act of 2015 and the 2017 amendments thereto (Stats. 2015, ch. 466; Stats. 2017, ch. 328), which added and amended Government Code section 12525.5, and amended Penal Code sections 13012 and 13519.4; and title 11, California Code of Regulations sections 999-224-999.229 (Register 2017, No. 46), adopted by the Department of Justice (DOJ) that implement Government Code section 12525.5. The Act and implementing regulations require, with respect to local government, each reporting agency, as defined, that employs peace officers to annually report to the Attorney General data in electronic format on all "stops" conducted by the agency's peace officers.²⁴ The data required to

¹⁶ Exhibit B, Finance's Comments on the Test Claim.

¹⁷ Exhibit C, San Bernardino County Sheriff's Department's Comments on the Test Claim.

¹⁸ Exhibit D, Riverside County Sheriff's Department's Comments on the Test Claim.

¹⁹ Exhibit E, PORAC's Comments on the Test Claim.

²⁰ Exhibit F, San Diego County Sheriff's Department's Late Comments on the Test Claim.

²¹ Exhibit G, Claimant's Rebuttal Comments.

²² Exhibit H, Draft Proposed Decision.

²³ The March 27, 2020 Commission meeting was postponed to May 22, 2020 due to scheduling conflicts.

²⁴ For purposes of local government, agencies required to report stop data include any city or county law enforcement agency that employs peace officers and the police departments of all California Community colleges established pursuant to Education Code section 72330 and K-12

be reported includes the following: the time, date, and location of the stop; the reason for the stop; the perceived race or ethnicity, gender, LGBT status, approximate age and English fluency of the person stopped; the actions taken by the officer during the stop; and the result of the stop. Also required to be reported are the officer's identification number, years of experience, and type of assignment.

A. Prior law

Since 1955, Penal Code section 13010(g) has required DOJ to present to the Governor an annual report containing the criminal statistics of the preceding calendar year.²⁵ The contents of the annual report are described in Penal Code section 13012, which requires the report to contain statistics showing the amount and type of offenses known to the public authorities; the personal and social characteristics of criminals and delinquents; the administrative actions taken by law enforcement; and the number of citizen complaints received.²⁶ State and local law enforcement agencies are required to report statistical data to DOJ at those times and in the manner that the Attorney General prescribes.²⁷ In addition, the Legislature has required local law enforcement agencies to report to the Attorney General certain specified information, including demographic information (age, gender, race, and ethnic background) about the victim and the person charged with homicide;²⁸ information that may be required relative to hate crimes;²⁹ and profiles by race, age, gender, and ethnicity of any person charged with a felony or misdemeanor for carrying a concealed firearm or carrying a loaded firearm in a public place.³⁰

In 1999, the Legislature approved Senate Bill 78, which directed the California Highway Patrol (CHP) and local law enforcement agencies to begin collecting data on the race and ethnicity of all motorists stopped for traffic enforcement or investigation, and required DOJ to include in its annual report on criminal justice statistics specified information regarding all motorists stopped by law enforcement officers. The Governor vetoed the bill, but directed CHP to begin collecting race, gender, and age data from all traffic stops made by its officers from 2000 through 2002 and to submit its findings to the Governor and the Legislature in three annual reports.³¹

school districts that employ peace officers pursuant to the authority provided by Education Code section 38000. (California Code of Regulations, Title 11, Section 999.224(a)(11), Register 2017, No. 46.) Special districts are not included.

²⁵ Statutes 1955, chapter 1128.

²⁶ As last amended by Statutes 2001, chapter 468.

²⁷ Penal Code section 13020, as last amended by Statutes 1996, chapter 872.

²⁸ Penal Code section 13014, as last amended by Statutes 2004, chapter 405.

²⁹ Penal Code section 13023, as last amended by Statutes 2004, chapter 700.

³⁰ Penal Code sections 12025 and 12031, as amended by Statutes 1999, chapter 571.

³¹ Exhibit I, Governor's Veto Message (SB 78, 1999-2000 Reg. Sess.) http://www.leginfo.ca.gov/pub/99-00/bill/sen/sb_0051-0100/sb_78_vt_19990928.html (accessed on December 6, 2019); Exhibit A, Test Claim, page 59 (Senate Committee on Appropriations Analysis of SB 953, 2015-2016 Reg. Sess., as amended August 27, 2015).

Statutes 2000, chapter 684 amended Penal Code section 13519.4 to prohibit law enforcement officers from engaging in racial profiling and to require every law enforcement officer in the state to participate in expanded mandatory training approved by the Commission on Peace Officer Standards and Training (POST) that examines the patterns, practices, and protocols that prevent racial profiling.³² “Racial profiling” was defined by Statutes 2000, chapter 684 as “the practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped.”³³ This legislation was enacted based on findings that racial profiling is a practice that presents a great danger to the fundamental principles of a democratic society, is abhorrent and cannot be tolerated.³⁴ The Legislature further found that motorists who have been stopped by the police for no reason other than the color of their skin or their apparent nationality or ethnicity are the victims of discriminatory practices.³⁵ POST developed a five-hour approved curriculum to meet the initial racial profiling training required by Penal Code section 13519.4, as amended by Statutes 2000, chapter 684, for peace officer applicants through the Basic Training Course, and for incumbent officers as well. A refresher racial profiling course for all officers was then required every five years.³⁶

In fiscal year 2000-2001, the Legislature established a \$5 million grant program for local law enforcement agencies to collect racial composition data with respect to their public contacts. Many local law enforcement agencies participated in the program in order to determine whether their officers engaged in racial profiling.³⁷ The Legislature, in former Penal Code section 13519.4(j), also charged the Legislative Analyst’s Office (LAO) with analyzing the data collected through these volunteer efforts and with preparing a report to the Legislature with recommendations.³⁸

The Legislative Analyst shall conduct a study of the data being voluntarily collected by those jurisdictions that have instituted a program of data collection

³² Penal Code section 13519.4(e), (f), and (h) (Stats. 2000, ch. 684).

³³ Penal Code section 13519.4(d) (Stats. 2000, ch. 684).

³⁴ Penal Code section 13519.4(c)(1) (Stats. 2000, ch. 684).

³⁵ Penal Code section 13519.4(c)(2) (Stats. 2000, ch. 684).

³⁶ Penal Code section 13519.4(i) (Stats. 2000, ch. 684).

³⁷ According to the LAO Report “To provide an incentive for local law enforcement agencies to collect racial composition data on their public contacts, the Legislature established a grant program in 2000-01. Funds were provided to local agencies to cover their costs of data collection. The 2000-01 budget provided a \$5 million appropriation for this purpose. Agencies were eligible for grants between \$5,000 and \$75,000, depending on their number of sworn officers, as well as supplemental allocations. . . In total, 16 sheriffs, 75 police departments, and 1 community college district were collecting data as of 2001.” (Exhibit I, LAO Report, *An Evaluation of Racial Profiling Data Collection and Training* (2002), page 9, https://lao.ca.gov/2002/racial_profiling/8-02_racial_profiling.html (accessed on October 22, 2019)).

³⁸ Penal Code section 13519.4(j) (Stats. 2000, ch. 684).

with regard to racial profiling, including, but not limited to, the California Highway Patrol, the City of San Jose, and the City of San Diego, both to ascertain the incidence of racial profiling and whether data collection serves to address and prevent such practices, as well as to assess the value and efficacy of the training prescribed with respect to preventing local profiling; and required the Legislative Analyst to provide to the Legislature a report and recommendations with regard to racial profiling by July 1, 2002.³⁹

On August 27, 2002, LAO released its report, titled “An Evaluation of Racial Profiling Data Collection and Training,” concluding that even though nearly 100 law enforcement agencies were collecting stop data, “the manner in which the data are gathered and analyzed remains fragmented.”⁴⁰ As relevant here, LAO recommended that the Legislature take the following actions:

- Revisit the definition of racial profiling and develop one which more explicitly defines what activities are acceptable under state law.
- Require all participating agencies to use the same standard format and definitions (for example, what racial categories to use and what constitutes a search) for the data collection.
- For any future program, select a state department better equipped to collect and analyze the data in a standardized manner.⁴¹

B. Prior Test Claims

Several test claims relating to this prior law have been filed with the Commission. In 2006, the Commission adopted its Decision in *Racial Profiling: Law Enforcement Training*, 01-TC-01, finding that Penal Code section 13519.4, as amended by Statutes 2000 chapter 684, imposed a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution with respect to the initial racial profiling training for incumbent law enforcement officers, as specified in the decision. The Commission denied reimbursement for the training in the Basic Training Course and for refresher training every five years on the ground that such costs did not result in costs mandated by the state.⁴²

In 2008, the Commission adopted its Test Claim Decision for *Crime Statistics Reports for the Department of Justice*, 02-TC-04 and 02-TC-11, finding that the following statutes imposed a reimbursable state-mandated program:

³⁹ Penal Code section 13519.4(j) (Stats. 2000, ch. 684).

⁴⁰ Exhibit I, LAO Report, *An Evaluation of Profiling Data Collection and Training* (2002), available at https://lao.ca.gov/2002/racial_profiling/8-02_racial_profiling.html (accessed on October 22, 2019).

⁴¹ Exhibit I, LAO Report, *An Evaluation of Profiling Data Collection and Training* (2002), available at https://lao.ca.gov/2002/racial_profiling/8-02_racial_profiling.html (accessed on October 22, 2019).

⁴² Exhibit I, Commission on State Mandates, Test Claim Decision, *Racial Profiling: Law Enforcement Training*, 01-TC-01, <https://csm.ca.gov/decisions/01tc01sod.pdf>.

- A local government entity responsible for the investigation and prosecution of a homicide case to provide DOJ with demographic information about the victim and the person or persons charged with the crime, including the victim's and person's age, gender, race, and ethnic background. (Pen. Code, §13014, Stats. 1992, ch. 1338.)
- Local law enforcement agencies to report, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability, or gender or national origin. (Pen. Code, §13023, Stats. 1989, ch. 1172.)
- For district attorneys to report annually on or before June 30, to the Attorney General, on profiles by race, age, gender, and ethnicity any person charged with a felony or misdemeanor under section 12025 (carrying a concealed firearm) or section 12031 of the Penal Code (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information. The Commission finds that this is a reimbursable mandate from July 1, 2001 (the beginning of the reimbursement period for this test claim) until January 1, 2005. (Pen. Code, §§ 12025(h)(1) & (h)(3) & 12031(m)(1) & (m)(3), Stats. 1999, ch. 571.)
- For local law enforcement agencies to support all domestic-violence related calls for assistance with a written incident report (Pen. Code, § 13730(a), Stats. 1993, ch. 1230).⁴³

In 2009, the Commission adopted its Test Claim Decision for *Crime Statistics Reports for the Department of Justice*, 07-TC-10, finding that Penal Code section 13023 (Stats. 2004, ch. 700) imposes a reimbursable state-mandated program, within the meaning of article XIII B, section 6 of the California Constitution, on local law enforcement agencies beginning January 1, 2004, to report the following in a manner to be prescribed by the Attorney General:

- Any information that may be required relative to hate crimes, as defined in Penal Code section 422.55 as criminal acts committed, in whole or in part, because of one or more of the following perceived characteristics of the victim: (1) disability, (2) gender, (3) nationality, (4) race or ethnicity, (5) religion, (6) sexual orientation.
- Any information that may be required relative to hate crimes, defined in Penal Code section 422.55 as criminal acts committed, in whole or in part, because of association with a person or group with one or more of the following actual or

⁴³ Exhibit I, Commission on State Mandates, Test Claim Decision, *Crime Statistics Reports for the Department of Justice*, 02-TC-04 and 02-TC-11, <https://csm.ca.gov/matters/02-TC-04/doc1.pdf>.

perceived characteristics: (1) disability, (2) gender, (3) nationality, (4) race or ethnicity, (5) religion, (6) sexual orientation.⁴⁴

C. **Test Claim Statutes and Regulations**

The Legislature enacted Statutes 2015, chapter 466 (AB 953), the Racial and Identity Profiling Act of 2015, to: “1) modify the definition of ‘racial profiling;’ 2) require local law enforcement agencies to report specified information on stops to the Attorney General's office; and, 3) establish the Racial and Identity Profiling Advisory Board (RIPA).”⁴⁵

The Senate Floor analysis of the bill states:

Although racial profiling is prohibited, studies show that racial profiling by law enforcement does occur. For example, according to a report by the Oakland Police Department, African-Americans, who compose 28 percent of Oakland’s population, accounted for 62 percent of police stops from last April to November. The figures also showed that stops of African-Americans were more likely to result in felony arrests. And, while African-Americans were more likely to be searched after being stopped, police were no more likely to find contraband from searching African-Americans than members of other racial groups.⁴⁶

The Senate Public Safety Committee analysis, quoting the author of the bill, states:

AB 953 will help eliminate the harmful and unjust practice of racial and identity profiling, and improve the relationship between law enforcement and the communities they serve. AB 953 promotes equal protection and prevents unreasonable searches and seizures.

[¶] . . . [¶]

AB 953 would prevent profiling by, among other things, clarifying and modernizing California's current prohibition against profiling to better account for the ways in which profiling occurs, establishing a uniform system for collecting and analyzing data on law enforcement-community interactions, and establishing

⁴⁴ Exhibit I, Commission on State Mandates, Test Claim Decision, *Crime Statistics Reports for the Department of Justice*, 07-TC-10, <https://csm.ca.gov/matters/02-TC-04/doc2.pdf>. (Emphasis in original.) The Corrected Statement of Decision was issued on April 12, 2010, to correct the operative and effective date of the test claim statute. (Exhibit I, Notice of Corrected Statement of Decision, *Crime Statistics Reports for the Department of Justice (Amendment to 02-TC-04 and 02-TC-11)*, 07-TC-10, <https://csm.ca.gov/matters/02-TC-04/07-tc-10correctedsodtrans041210.pdf>.)

⁴⁵ Exhibit I, Senate Committee on Public Safety Analysis of AB 953 (2015-2016 Reg. Sess.) as amended June 30, 2015, page 2.

⁴⁶ Exhibit I, Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 953 (2015-2016 Reg. Sess.), as amended August 31, 2015, page 5.

an advisory board that investigates profiling patterns and practices and provides recommendations on how to curb its harmful impact.⁴⁷

Accordingly, the Act added section 12525.5 to the Government Code and amended Penal Code sections 13012 and 13519.4. Subsequent amendments were made by Statutes 2017, chapter 328 to Government Code section 12525.5 and Penal Code section 13012. In addition, DOJ adopted regulations to implement the Act (Cal. Code Regs., tit. 11, §§ 999.224 - 999.228, Register 2017, No. 46), which became effective on November 7, 2017. These code sections and regulations are described below.

1. Penal Code section 13519.4, as amended by Statutes 2015, chapter 466

Penal Code section 13519.4 was amended by the 2015 Act to declare:

- (1) The working men and women in California law enforcement risk their lives every day. The people of California greatly appreciate the hard work and dedication of peace officers in protecting public safety. The good name of these officers should not be tarnished by the actions of those few who commit discriminatory practices.
- (2) Racial or identity profiling is a practice that presents a great danger to the fundamental principles of our Constitution and a democratic society. It is abhorrent and cannot be tolerated.
- (3) Racial or identity profiling alienates people from law enforcement, hinders community policing efforts, and causes law enforcement to lose credibility and trust among the people whom law enforcement is sworn to protect and serve.
- (4) Pedestrians, users of public transportation, and vehicular occupants who have been stopped, searched, interrogated, and subjected to a property seizure by a peace officer for no reason other than the color of their skin, national origin, religion, gender identity or expression, housing status, sexual orientation, or mental or physical disability are the victims of discriminatory practices.⁴⁸

The Legislature renamed “racial profiling” as “racial or identity profiling” and redefined it in Penal Code section 13519.4(e) as:

... the consideration of or reliance on, to any degree, actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability in deciding which persons to subject to a stop or in deciding upon the scope and substance of law enforcement activities following a stop, except that an officer may consider or rely on characteristics listed in a specific suspect description. The activities include, but are not limited to, traffic or pedestrian stops, or actions during a stop, such as, asking questions, frisks, consensual and nonconsensual searches of a person or

⁴⁷ Exhibit I, Senate Committee on Public Safety Analysis of AB 953 (2015-2016 Reg. Sess.), as amended June 30, 2015, page 7.

⁴⁸ Penal Code section 13519.4(d) (Stats. 2015, ch. 466).

any property, seizing any property, removing vehicle occupants during a traffic stop, issuing a citation, and making an arrest.⁴⁹

In addition, Statutes 2015, chapter 466 amended Penal Code section 13519.4(j) to require the Attorney General to establish the Racial and Identity Profiling Advisory Board (RIPA) beginning July 1, 2016, for the purpose of eliminating racial and identity profiling, and improving diversity and racial sensitivity in law enforcement.⁵⁰ The members of RIPA include the Attorney General; the President of the California Public Defenders Association; the President of the California Police Chiefs Association; the President of the California State Sheriff's Association; the President of the Peace Officers Research Association of California; the Commissioner of the CHP; a university professor who specializes in policing and racial and identity profiling; two representatives of human or civil rights tax exempt organizations; two representatives of community organizations who specialize in civil or human rights and criminal justice and work with victims of racial and identity profiling; two religious clergy members; and appointees of the Governor, the President Pro Tempore of the Senate, and the Speaker of the Assembly.⁵¹

RIPA is directed to analyze the racial and identity data provided under Government Code section 12525.5 (racial and identity stop data reported to the Attorney General by state and local agencies that employ peace officers) and Penal Code section 13012 (DOJ's annual report to the Governor), and issue an annual report that includes detailed findings and policy recommendations for eliminating racial and identity profiling.⁵²

Penal Code section 13519.4(h) was also amended to require that POST training for peace officers on racial profiling prescribe evidence-based patterns, practices, and protocols that prevent racial and identity profiling, and directed POST to consult with RIPA in developing that training.⁵³

2. Penal Code section 13012, as amended by Statutes 2015, chapter 466, and Statutes 2017, chapter 328

Penal Code section 13012 was amended by Statutes 2015, chapter 466, to expand the content of the DOJ annual report to the Governor on criminal statistics to include citizen complaints alleging racial or identity profiling. These statistics are required to be disaggregated by the specific type of racial or identity profiling alleged.⁵⁴ In addition, section 13012(c) was added to require RIPA to analyze the statistics reported by DOJ.⁵⁵

Section 13012 was further amended by Statutes 2016, chapter 99 and Statutes 2016, chapter 418, neither of which have been pled in this Test Claim, to require that criminal

⁴⁹ Penal Code section 13519.4(e) (Stats. 2015, ch. 466).

⁵⁰ Penal Code section 13519.4(j) (Stats. 2015, ch. 466).

⁵¹ Penal Code section 13519.4(j)(2) (Stats. 2015, ch. 466).

⁵² Penal Code section 13519.4(j)(3) (Stats. 2015, ch. 466).

⁵³ Penal Code section 13519.4(h) (Stats. 2015, ch. 466).

⁵⁴ Penal Code section 13012(a)(5)(iii) (Stats. 2015, ch. 466).

⁵⁵ Penal Code section 13012(c) (Stats. 2015, ch. 466).

statistics collected by DOJ and the RIPA's annual report be made available to the public through the DOJ's OpenJustice Web portal.

Finally, section 13012 was again amended by Statutes 2017, chapter 328 to delete references to "*citizen*" complaints and instead include reference to "*civilian*" complaints, and to make several minor changes.

3. Government Code section 12525.5, as added by Statutes 2015, chapter 466, and amended by Statutes 2017, chapter 328

Statutes 2015, chapter 466 added section 12525.5 to the Government Code to require the CHP, city or county law enforcement agencies, and California state or university educational institutions that employ peace officers to annually report to the Attorney General data on all stops by peace officers for the preceding calendar year.⁵⁶ Each agency that employs 1,000 or more peace officers shall issue its first round of reports on or before April 1, 2019. Each agency that employs 667 or more but less than 1,000 peace officers shall issue its first round of reports on or before April 1, 2020. Each agency that employs 334 or more but less than 667 peace officers shall issue its first round of reports on or before April 1, 2022. And each agency that employs one or more but less than 334 peace officers shall issue its first round of reports on or before April 1, 2023.⁵⁷

Section 12525.5(g) defines a "stop" as "any detention by a peace officer of a person, or any peace officer interaction with a person in which the peace officer conducts a search, including a consensual search, of the person's body or property in the person's possession or control."⁵⁸ Peace officers subject to these requirements include "members of the California Highway Patrol, a city or county law enforcement agency, and California state or university educational institutions," but "does not include probation officers and officers in a custodial setting."⁵⁹

The reporting shall include, at a minimum, the following information for each stop:

- (1) The time, date, and location of the stop.
- (2) The reason for the stop.
- (3) The result of the stop, such as, no action, warning, citation, property seizure, or arrest.
- (4) If a warning or citation was issued, the warning provided or violation cited.
- (5) If an arrest was made, the offense charged.
- (6) The perceived race or ethnicity, gender, and approximate age of the person stopped.
- (7) Actions taken by the peace officer during the stop, including, whether the peace officer asked for consent to search the person, and, if so, whether

⁵⁶ Government Code section 12525.5(a)(1), (g)(1) (Stats. 2015, ch. 466).

⁵⁷ Government Code section 12525.5(a)(2) (Stats. 2015, ch. 466).

⁵⁸ Government Code section 12525.5(g)(2) (Stats. 2015, ch. 466).

⁵⁹ Government Code section 12525.5(g)(1) (Stats. 2015, ch. 466).

consent was provided, whether the officer searched the person or any property, and whether any property was seized and the basis for seizing the property.⁶⁰

Section 12525.5(f) further provides that all data and records required by the code section are public records. However, subdivision (d) states that law enforcement agencies shall not report the name, address, social security number, or other unique personal identifying information of persons stopped, searched, or subjected to a property seizure.⁶¹

Finally, section 12525.5(e) requires the Attorney General, in consultation with RIPA and other stakeholders, to issue regulations for the collection and reporting of data required by section 12525.5. The regulations shall specify all data to be reported, and provide standards, definitions, and technical specifications to ensure uniform reporting practices across all reporting agencies. To the best extent possible, the regulations should be compatible with any similar federal data collection or reporting program.⁶²

Statutes 2017, chapter 328 amended section 12525.5 (e) to extend the date by which the Attorney General is required to issue regulations for the collection and reporting of data to January 1, 2018, and to identify the dates in section 12525.5(a)(2) for law enforcement agencies to begin collecting data after the regulations are adopted as follows (amendments are indicated in underline and strikeout):

Each agency that employs 1,000 or more peace officers shall begin collecting data on or before July 1, 2018, and shall issue its first round of reports on or before April 1, 2019. Each agency that employs 667 or more but less than 1,000 peace officers shall begin collecting data on or before January 1, 2019, and shall issue its first round of reports on or before April 1, 2020. Each agency that employs 334 or more but less than 667 peace officers shall begin collecting data on or before January 1, 2021, and shall issue its first round of reports on or before April 1, 2022. Each agency that employs one or more but less than 334 peace officers shall begin collecting data on or before January 1, 2022, and shall issue its first round of reports on or before April 1, 2023.

In addition, Statutes 2017, chapter 328 amended Section 12525.5(d) to clarify that law enforcement agencies are solely responsible for ensuring that personally identifiable information of the individual stopped or any other information that is exempt from disclosure is not transmitted to the Attorney General in an open text field, as follows:

State and local law enforcement agencies shall not report the name, address, social security number, or other unique personal identifying information of persons stopped, searched, or subjected to a property seizure, for purposes of this section. Notwithstanding any other law, the data reported shall be available to the public, except for the badge number or other unique identifying information of the peace officer involved, ~~which shall be released to the public only to the extent the~~

⁶⁰ Government Code section 12525.5(b) (Stats. 2015, ch. 466).

⁶¹ Government Code section 12525.5(d)(f) (Stats. 2015, ch. 466).

⁶² Government Code section 12525.5(e) (Stats. 2015, ch. 466).

release is permissible under state law. Law enforcement agencies are solely responsible for ensuring that personally identifiable information of the individual stopped or any other information that is exempt from disclosure pursuant to this section is not transmitted to the Attorney General in an open text field.

The Senate Floor Analysis for AB 953, Statutes 2017, chapter 328, indicates an expectation that the statute may result in reimbursable state-mandated costs as follows:

Data collection, reporting, retention, and training: Major future one-time and ongoing costs, potentially in the millions to tens of millions of dollars annually, once fully phased in, to local law enforcement agencies for data collection, reporting, and retention requirements specified in the bill. Additional costs for training on the process would likely be required. There are currently 482 cities and 58 counties in California. To the extent local agency expenditures qualify as a reimbursable state mandate, agencies could claim reimbursement of those costs (General Fund). While costs could vary widely, for context, the Commission on State Mandates' statewide cost estimate for Crime Statistics Reports for the DOJ reflects eligible reimbursement of over \$13.6 million per year for slightly over 50 percent of local agencies reporting.⁶³

4. Regulations adopted by DOJ (Cal. Code Regs., tit. 11, §§ 999.224 through 999.229, Register 2017, No. 46)

As required by Government Code section 12525.5(e), DOJ adopted regulations for the collection and reporting of racial and identity data, which became effective and operative on November 7, 2017.⁶⁴ These regulations define the scope of the collection and reporting requirements and generally do the following:

- Define the reporting agencies required to comply with the Act.
- Identify the “stop data,” which consists of specified “data elements” and “data values,” required to be collected by peace officers during a stop and reported to DOJ.
- Provide standards, definitions, and technical specifications for collection and reporting of stop data.
- Require the electronic submission of the data to DOJ.
- Require data validation, retention, and audits.

In the Final Statement of Reasons for these regulations, DOJ made the following determination with respect to whether the regulations impose a reimbursable state-mandated program:

The Department has determined that the proposed regulations do impose a reimbursable mandate on local government. City and county law enforcement

⁶³ Exhibit I, Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 953, (2015-2016), as amended August 31, 2015, page 5.

⁶⁴ California Code of Regulations, title 11, sections 999.224 through 999.229 (Register 2017, No. 46).

agencies subject to the reporting requirements of Government Code section 12525.5 shall provide officers with the means to collect the additional data elements and data values set forth in these proposed regulations (in addition to the requirements set forth in Government Code section 12525.5 itself). They shall also obtain the necessary personnel and/or technology to report the required stop data to the Department as provided in proposed Section 999.228, subdivisions (a) and (b).

These provisions may require additional investments in technology and/or personnel time, as detailed in the Revised STD 399 and STD 399 Addendum.⁶⁵

III. Positions of the Parties and Interested Persons

A. Claimant, City of San Diego

The claimant states that it pled Penal Code sections 13012 and 13519.4, as amended by the test claim statutes, for “informational purposes only.”⁶⁶ The claimant asserts, however, that Government Code section 12525.5 (Stats. 2015, ch. 466; Stats. 2017, ch. 328) and Title 11, Sections 999.224-999.229 (Register 2017, No. 46) constitute a reimbursable state-mandated program for the following new activities:⁶⁷

1. Training, and Updating Policies and Procedures. The claimant alleges that, in order to comply with the test claim statutes, it is necessary for local agencies that employ peace officers to update their policies and procedures, and provide training related to data collection and reporting. The claimant states that all sworn members of the San Diego Police Department were required to receive at least 15 minutes of training via an online PowerPoint presentation related to new stop data items to be collected and submitted, while supervisors were required to receive an additional hour of training to ensure officers assigned to them were accurately collecting and submitting the data pursuant to the alleged mandate.⁶⁸
2. Data Collection. Law enforcement personnel are now required to document and submit information on every stop they make.⁶⁹
3. Information Technology. Costs were incurred to obtain, test, process, and validate the collected data through hardware and software applications. Different contingency methods, such as paper data collection, also have to be in place in case of computer system failures. The claimant states that information technology costs were relatively minor for the San Diego Police

⁶⁵ Exhibit I, Final Statement of Reasons, Proposed Regulations, Title 11, Sections 999.224-999.229, page 4, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/stop-data-reg-fsor-revised-110817.pdf> (accessed on November 8, 2019).

⁶⁶ Exhibit A, Test Claim, page 7.

⁶⁷ Exhibit A, Test Claim, pages 7-9.

⁶⁸ Exhibit A, Test Claim, page 8.

⁶⁹ Exhibit A, Test Claim, page 8.

Department, because the San Diego Sheriff's Department provided it with substantial technical support and assistance. Specifically, the Sheriff's Department provided its custom data collection application and submission tools free of charge, as well as to other law enforcement agencies required to collect data under the statutory mandate. The data collection application was loaded by Data Systems members onto the San Diego Police Department's desktop and mobile computers so officers could use it to submit the data they collected. Additional testing was done to make sure the software worked properly.⁷⁰

4. Reporting to DOJ. Reporting to DOJ is required by Government Code section 12525.5. However, before data can be reported, it must be reviewed and validated. Also, that data has to be accurate and free of personal identifying information (PII). It took the claimant's personnel approximately 240 hours to ensure collected stop data was reported correctly to DOJ.⁷¹
5. Data Storage and Release. The claimant alleges that the data collected under the test claim statutes and regulations is constantly being requested through the California Public Records Act. The claimant is not requesting reimbursement for the costs related to storing stop data locally or releasing it publicly, but the claimant alleges that these activities will undoubtedly be performed by local agencies and costs will be incurred as a result of Government Code section 12525.5. Claimant states that data storage can possibly be mitigated by the type of application used to collect and submit data; for instance if data is submitted directly to DOJ, instead of being stored at a local law enforcement agency first to allow for validation and review.⁷²

The claimant alleges that it first incurred costs on June 15, 2018, when it began providing training to its peace officers on stop data collection requirements.⁷³ The claimant began collecting data on June 27, 2018 "to test the functionality of its data collection application, as well as to ensure it would be in compliance with the alleged statutory mandate GC 12525.5(a)(1) by July 1, 2018."⁷⁴

The total increased costs alleged by the claimant in a declaration filed under penalty of perjury by Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, for the 2017-2018 fiscal year amounted to \$97,367.95, including the costs for training, software update and testing, and collection of stop data.⁷⁵ Lieutenant Jordan's declaration further states that total costs for the

⁷⁰ Exhibit A, Test Claim, page 9.

⁷¹ Exhibit A, Test Claim, page 9.

⁷² Exhibit A, Test Claim, page 9.

⁷³ Exhibit A, Test Claim, pages 2, 20 (Declaration of Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, July 30, 2019).

⁷⁴ Exhibit A, Test Claim, page 12.

⁷⁵ Exhibit A, Test Claim, pages 11, 16, 20-21 (Declaration of Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, July 30, 2019).

2018-2019 fiscal year amounted to \$871,675.56, including the costs for training, compliance, reporting, management, and collection of stop data.⁷⁶ The majority of the fiscal year 2018-2019 costs (\$744,005.98) were for officers collecting stop data.⁷⁷ The claimant notes that there could be some potential grants and funding sources to partially offset the cost of complying with the mandate; for example, for purchasing equipment to facilitate data collection. However, the claimant “is not aware of any current State, Federal, or other non-local agency funds to pay for its substantial costs already incurred and those anticipated going forward from the alleged statutory mandate in Government Code 12525.5(a)(1), which was enacted by AB 953.”⁷⁸

The claimant filed rebuttal comments on October 16, 2019, in response to Finance’s argument that “the training provided by the SDPD to its sworn personnel in 2017-2018 and 2018-2019 was not required under the relevant statutes, and the associated costs are not reimbursable.”⁷⁹ The claimant states that:

. . . training members of SDPD on the 22 pages of regulations developed by the DOJ to implement AB 953 and its alleged mandates, along with updating its orders, procedures and training materials to reflect them, is a standard and expected practice for law enforcement agencies. It should also be considered a very reasonable method of implementing this alleged mandate.⁸⁰

The claimant did not file comments on the Draft Proposed Decision.

B. Department of Finance

Finance does not dispute that the test claim statutes and implementing regulations require local law enforcement agencies to collect data and annually report to DOJ data on all stops conducted by the agency's peace officers for the preceding calendar year.⁸¹ Finance, however, argues that the training provided by the claimant’s police department “was not required under the relevant statutes, and the associated costs are therefore not reimbursable.”⁸² According to Finance, the law enforcement agencies made a discretionary decision to provide training, and should therefore absorb the associated costs.⁸³

Finance did not file comments on the Draft Proposed Decision.

⁷⁶ Exhibit A, Test Claim, pages 14, 16, 20-21 (Declaration of Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, July 30, 2019).

⁷⁷ Exhibit A, Test Claim, page 20 (Declaration of Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, July 30, 2019).

⁷⁸ Exhibit A, Test Claim, page 17.

⁷⁹ Exhibit G, Claimant’s Rebuttal Comments, page 2.

⁸⁰ Exhibit G, Claimant’s Rebuttal Comments, page 2.

⁸¹ Exhibit B, Finance’s Comments on the Test Claim, page 1.

⁸² Exhibit B, Finance’s Comments on the Test Claim, page 2.

⁸³ Exhibit B, Finance’s Comments on the Test Claim, page 2.

C. Interested Persons

The San Bernardino County Sheriff's Department expresses support for the Test Claim and states that "all the affected first wave law enforcement agencies in California, including the San Bernardino County Sheriff's Department, have incurred similar one-time and reoccurring costs as well."⁸⁴ The Department asserts that the test claim statute mandates the following activities:

In addition to the time spent by each officer filling out RIPA forms (lost **FTE** productivity), this mandate also requires ongoing training of sworn personnel, Information Technology equipment and support, administrative oversight, manual auditing of the data to ensure compliance before final submission to the Department of Justice, and considerable project management time. These required functions are staff intensive and have created increased workload demands for both safety and professional staff throughout the organization.⁸⁵

The Riverside County Sheriff's Department asserts that AB 953, which enacted the Racial and Identity Profiling Act of 2015, "contains a statutory mandate that requires local agencies that employ peace officers to provide an enhanced-level of service by performing new activities related to the collection and reporting of stop data," and requests that the Commission approve the Test Claim filed by the [City] of San Diego.⁸⁶ The Department states that to implement the mandate it incurred \$79,828 in fiscal year 2018-2019; and estimates that its costs will exceed \$80,000 in fiscal year 2019-2020.⁸⁷ In addition, the Department estimates that it incurred "approximately \$31,000 in associated training and information technology related costs." The Department filed documents evidencing its costs, including a declaration of Zachary Hall, Captain for the Riverside County Sheriff's Department, which details the costs and describes the activities performed to implement the mandate.⁸⁸ With respect to training activities, the declaration states that "the regulations created per 12525.5(e) consist of 22 pages of information and instruction on how to meet the mandated requirements. It would not be possible to accurately collect stop data and report it to the Attorney General, per the legislative mandate without formal training."⁸⁹

⁸⁴ Exhibit C, San Bernardino County Sheriff's Department's Comments on the Test Claim, page 1.

⁸⁵ Exhibit C, San Bernardino County Sheriff's Department's Comments on the Test Claim, page 1.

⁸⁶ Exhibit D, Riverside County Sheriff's Department's Comments on the Test Claim, page 1.

⁸⁷ Exhibit D, Riverside County Sheriff's Department's Comments on the Test Claim, page 1.

⁸⁸ Exhibit D, Riverside County Sheriff's Department's Comments on the Test Claim, pages 3-8.

⁸⁹ Exhibit D, Riverside County Sheriff's Department's Comments on the Test Claim, pages 3-4 (Declaration of Zachary Hall, Captain for the Riverside County Sheriff's Department, September 19, 2019).

The San Diego County Sheriff's Department expresses support for the Test Claim and requests that the Commission approve the claim.⁹⁰ The Department asserts that the Racial and Identity Profiling Act (AB 953) constitutes a mandate which resulted in "both one-time and reoccurring costs" for the Department:

In addition to the time spent by each deputy/officer filling out RIPA forms, which currently is about 7422 hours of time spent by San Diego County Sheriff's Deputies, the state mandate also requires departments to provide ongoing training of personnel, computer hardware and software, along with ongoing administrative oversight, auditing and review of the data before submission to the Attorney General's Office. All of these tasks require reassigning and/ or additional staffing and funding.⁹¹

The Peace Officers' Research Association of California (PORAC) represents 75,000 public safety members and 930 public safety associations, and supports the Test Claim, stating that:

Under AB 953 by Assemblywoman Shirley Weber (D-San Diego) in 2015, the state mandated each local agency that employs peace officers to perform a new set of activities that consisted of the collection and reporting of stop data. The new activities required additional training of all officers to comply with the stop date requirements and additional training in the area of reporting and submission of that data. Furthermore, the time spent in acquiring the data created additional costs for the department, and was tracked by a software application. To fulfill the mandate presented in AB 953, the City of San Diego and the SDPD also incurred costs with the information technology implementation and testing, as well as reporting, and data storage and release.⁹²

No comments have been filed by any of the interested persons on the Draft Proposed Decision.

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

⁹⁰ Exhibit F, San Diego County Sheriff's Department's Late Comments on the Test Claim, page 1.

⁹¹ Exhibit F, San Diego County Sheriff's Department's Late Comments on the Test Claim, page 1.

⁹² Exhibit E, PORAC's Late Comments on the Test Claim, page 1.

articles XIII A and XIII B impose.”⁹³ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”⁹⁴

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.⁹⁵
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.⁹⁶
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.⁹⁷
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.⁹⁸

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.⁹⁹ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.¹⁰⁰ In making its decisions, the Commission must strictly construe 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.”¹⁰¹

⁹³ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁹⁴ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

⁹⁵ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

⁹⁶ *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).

⁹⁷ *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.

⁹⁸ *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.

⁹⁹ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

¹⁰⁰ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

¹⁰¹ *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].

A. This Test Claim Was Timely Filed Pursuant to Government Code Section 17551.

Government Code section 17551(c) provides 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.”¹⁰² Section 1183.1(c) of the Commission’s regulations defines “12 months” as 365 days.¹⁰³

This Test Claim was filed on June 14, 2019, with a declaration signed under penalty of perjury by Lieutenant Jordan, the program manager overseeing the claimant’s implementation of the test claim statutes, which states that the claimant first incurred costs as a result of the test claim statutes and regulations on June 15, 2018, when initial training was provided to the claimant’s officers.¹⁰⁴ Pursuant to Government Code section 12525.5(a)(2), as amended by Statutes 2017, chapter 328, the claimant, as an agency that employs 1,000 or more peace officers, was required to begin collecting data on or before July 1, 2018.¹⁰⁵ There is no evidence rebutting Lieutenant Jordan’s declaration.

Since the Test Claim was filed on June 14, 2019, within 12 months of first incurring costs, the Test Claim is timely filed pursuant to the second prong of Government Code section 17551(c).

B. The Potential Period of Reimbursement Begins November 7, 2017.

Government Code section 17557(e) establishes the period of reimbursement for an approved test claim based on when the test claim is filed; “[a] test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.” Based on the filing date of June 14, 2019 for this Test Claim, the potential period of reimbursement, pursuant to Government Code section 17557(e), would begin July 1, 2017. However, as indicated in this Decision, the Commission partially approves this Test Claim *only* for the activities mandated by Government Code section 12525.5 and the regulations adopted by DOJ to implement section 12525.5 (Cal. Code Regs., tit. 11, §§ 999.224 through 999.229, Register 2017, No. 46). These regulations became operative and effective on November 7, 2017. The Legislature, in Government Code section 12525.5(a)(2) and (e), delayed local agency compliance with the program to a date after the regulations were required to be adopted. Accordingly, the period of reimbursement for this Test Claim begins November 7, 2017.

¹⁰² Government Code section 17551(c) (Stats. 2007, ch. 329).

¹⁰³ California Code of Regulations, title 2, section 1183.1(c), Register 2018, No. 18 (eff. April 1, 2018).

¹⁰⁴ Exhibit A, Test Claim, page 20 (Declaration of Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, July 30, 2019).

¹⁰⁵ Exhibit A, Test Claim, page 7.

C. Penal Code Sections 13012 and 13519.4 as Amended by Statutes 2015, Chapter 466 and Statutes 2017, Chapter 328, Do Not Impose Any Activities on Local Government, and Thus, Do Not Constitute a Reimbursable State-Mandated Program Within the Meaning of Article XIII B, Section 6 of the California Constitution.

The claimant states that Penal Code sections 13012 and 13519.4 were included in the Test Claim because they “provide additional details regarding who is required to analyze the data, the frequency of that analysis, and the manner in which the collected data shall be reported and published. An explanation of these [P]enal [C]odes is being provided for informational purposes only.”¹⁰⁶

Penal Code sections 13012 and 13519.4, as amended by the test claim statutes, impose requirements on state agencies and RIPA (whose membership does not include local government).¹⁰⁷ Penal Code sections 13012 and 13519.4, however, do not impose any activities on local government and, thus, do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

Penal Code section 13012 was amended by Statutes 2015, chapter 466, to expand the content of the DOJ annual report to the Governor on criminal statistics to include citizen complaints alleging racial or identity profiling.¹⁰⁸ In addition, Statutes 2015, chapter 466 added subdivision (c) to section 13012 to require RIPA to analyze the statistics reported by DOJ.¹⁰⁹ Section 13012 was again amended by Statutes 2017, chapter 328 to delete references to “*citizen*” complaints and instead include reference to “*civilian*” complaints, and to make several non-substantive changes that do not require local government to do anything.

Similarly, Penal Code section 13519.4 was amended by Statutes 2015, chapter 466, to define “racial or identity profiling”;¹¹⁰ require the Attorney General to establish RIPA for the purpose of eliminating racial and identity profiling, and improving diversity and racial sensitivity in law enforcement;¹¹¹ direct RIPA to analyze the racial and identity data provided under Government Code section 12525.5 (racial and identity stop data reported to the Attorney General by state and local agencies that employ peace officers) and Penal Code section 13012 (DOJ’s annual report to the Governor), and issue an annual report that includes detailed findings and policy recommendations for eliminating racial and identity profiling;¹¹² and require POST to consult

¹⁰⁶ Exhibit A, Test Claim, page 7.

¹⁰⁷ Penal Code section 13519.4(j)(2) (Stats. 2015, ch. 466).

¹⁰⁸ Penal Code section 13012(a)(5)(iii) (Stats. 2015, ch. 466).

¹⁰⁹ Penal Code section 13012(c) (Stats. 2015, ch. 466).

¹¹⁰ Penal Code section 13519.4(e) (Stats. 2015, ch. 466).

¹¹¹ Penal Code section 13519.4(j) (Stats. 2015, ch. 466).

¹¹² Penal Code section 13519.4(j)(3) (Stats. 2015, ch. 466).

with RIPA in developing an updated racial profiling training for peace officers that prescribes evidence-based patterns, practices, and protocols that prevent racial and identity profiling.¹¹³

Penal Code sections 13012 and 13519.4, as amended by the test claim statutes, do not impose any activities on local government and, thus, do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

D. Government Code Section 12525.5, as Added and Amended by Statutes 2015, Chapter 466 and Statutes 2017, Chapter 328, and California Code of Regulations, Title 11, Sections 999-224-999.229 (Register 2017, No. 46) Impose a Reimbursable State-Mandated Program on Cities and Counties.

As described below, the Commission finds that Government Code section 12525.5, as added and amended by the test claim statutes (Stats. 2015, ch 466 and Stats. 2017, ch. 328), and California Code of Regulations, title 11, sections 999.224-999.229 (Register 2017, No. 46), impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution on cities and counties, as specified below.

1. Government Code section 12525.5, as added and amended by Statutes 2015, chapter 466 and Statutes 2017, chapter 328, and California Code of Regulations, Title 11, sections 999-224-999.229 (Register 2017, No. 46) impose requirements on local governments.

Government Code section 12525.5(a)(1),(g)(1), as added and amended by the test claim statutes, requires city and county law enforcement agencies, and the California Highway Patrol and California state and university educational institutions that employ peace officers to annually report to the Attorney General data on all stops conducted by that agency's peace officers for the preceding calendar year. Section 12525.5 and the test claim regulations describe how to comply with this reporting requirement and the scope of the requirement, as described below.

a. Identify the peace officers required to report stops, and maintain a system to match individual officers to their Officer I.D. Number

California Code of Regulations, title 11, section 999.227(a)(8) requires that "[o]n January 1 of each year until the agency begins reporting to the Department, each reporting agency shall count the number of peace officers it employs who are subject to this chapter to determine the date that agency must start collecting stop data and reporting to the Department pursuant to Government Code section 12525.5, subdivisions (a)(1) and (a)(2)."

Section 999.227(a)(11) then requires the reporting agencies to "create the Officer's I.D. Number . . . for each officer required to report stops . . ." ¹¹⁴ "Officer I.D. Number" is defined in section 999.226(a)(14), as "a permanent identification number assigned by the reporting agency to the reporting officer, which shall be used for all reporting to the Department . . ." and "shall be considered Unique Identifying Information." ¹¹⁵ The stop reports submitted to DOJ "shall"

¹¹³ Penal Code section 13519.4(h) (Stats. 2015, ch. 466).

¹¹⁴ California Code of Regulations, title 11, section 999.227(a)(11).

¹¹⁵ California Code of Regulations, title 11, section 999.226(a)(14). "Unique Identifying Information" is defined in section 999.224(a)(17) to mean "personally identifying information, the release of which, either alone or in combination with other data reported, is reasonably likely

include the Officer's I.D. Number, but shall not include the officer's name or badge number.¹¹⁶ However, each reporting agency "shall maintain a system to match an individual officer to his or her Officer's I.D. Number."¹¹⁷

b. Collect and report stop data.

Government Code section 12525.5(g) defines a "stop" as "any detention by a peace officer of a person, or any peace officer interaction with a person in which the peace officer conducts a search, including a consensual search, of the person's body or property in the person's possession or control."¹¹⁸

Agencies are required to begin collecting and reporting data on all stops on or before the following dates:

- (1) An agency that employs 1,000 or more peace officers shall begin collecting data on or before July 1, 2018, and shall issue its first round of reports on or before April 1, 2019.
- (2) An agency that employs 667 or more but less than 1,000 peace officers shall begin collecting data on or before January 1, 2019, and shall issue its first round of reports on or before April 1, 2020.
- (3) An agency that employs 334 or more but less than 667 peace officers shall begin collecting data on or before January 1, 2021, and shall issue its first round of reports on or before April 1, 2022.
- (4) An agency that employs one or more but less than 334 peace officers shall begin collecting data on or before January 1, 2022, and shall issue its first round of reports on or before April 1, 2023.¹¹⁹

to reveal the identity of the individual officer who collected the stop data information. It does not include the minimum information that is specified in Government Code section 12525.5, subdivision (b)."

¹¹⁶ California Code of Regulations, title 11, section 999.227(a)(11).

¹¹⁷ California Code of Regulations, title 11, section 999.227(a)(11).

¹¹⁸ Government Code section 12525.5(g)(2) (Stats.2015, ch.466); see also, California Code of Regulations, title 11, section 999.224(a)(14).

¹¹⁹ Government Code section 12525.5(a)(2) (Stats. 2017, ch. 328).

The minimum “data elements”¹²⁰ required to be collected and reported are described in Government Code section 12525.5(b), and sections 999.226(a)(1)-(16) and 999.227(a)(2) of the regulations as follows:¹²¹

- (1) “ORI number,” which is “the data element that refers to the reporting agency’s Originating Agency Identifier, a unique identification code number assigned by the Federal Bureau of Investigation.”¹²²
- (2) “Date, Time, and Duration of Stop.”¹²³
- (3) “Location of Stop”¹²⁴
- (4) “Perceived Race or Ethnicity of Person Stopped”¹²⁵
- (5) “Perceived Gender of Person Stopped”¹²⁶
- (6) “Person Stopped Perceived to be LGBT”¹²⁷
- (7) “Perceived Age of Person Stopped”¹²⁸
- (8) “Person Stopped Has Limited or No English Fluency”¹²⁹
- (9) “Perceived or Known Disability of Person Stopped”¹³⁰

¹²⁰ “Data element” is defined as “a category of information the peace officer must report regarding a stop. For example, “perceived gender of person stopped” is a data element that must be collected under Government Code section 12525.5.” (Cal. Code Regs., tit. 11, § 999.224(a)(4).)

¹²¹ Section 999.227(a)(2) of the regulations states that “[t]he data elements described in section 999.226, subdivision (a) are the minimum that a reporting agency shall collect and report. Nothing in this section prohibits a reporting agency from voluntarily collecting additional data.”

¹²² California Code of Regulations, title 11, section 999.226(a)(1).

¹²³ Government Code section 12525.5(b)(1) (Stats. 2015, ch. 466); California Code of Regulations, title 11, section 999.226(a)(2).

¹²⁴ Government Code section 12525.5(b)(1) (Stats. 2015, ch. 466); California Code of Regulations, title 11, section 999.226(a)(3).

¹²⁵ Government Code section 12525.5(b)(6) (Stats. 2015, ch. 466); California Code of Regulations, title 11, section 999.226(a)(4).

¹²⁶ Government Code section 12525.5(b)(6) (Stats. 2015, ch. 466); California Code of Regulations, title 11, section 999.226(a)(5).

¹²⁷ California Code of Regulations, title 11, section 999.226(a)(6).

¹²⁸ Government Code section 12525.5(b)(6) (Stats. 2015, ch. 466); California Code of Regulations, title 11, section 999.226(a)(7).

¹²⁹ California Code of Regulations, title 11, section 999.226(a)(8).

¹³⁰ California Code of Regulations, title 11, section 999.226(a)(9).

- (10) “Reason for Stop”¹³¹
- (11) “Stop Made in Response to a Call for Service.”¹³²
- (12) “Actions Taken by Officer During Stop”¹³³
- (13) “Result of Stop”¹³⁴
- (14) “Officer's Identification (I.D.) Number”¹³⁵
- (15) “Officer's Years of Experience”¹³⁶
- (16) “Type of Assignment of Officer”¹³⁷

For each “data element” the officer must select all applicable “data values” in accordance with the instructions provided in section 999.226 of the regulations.¹³⁸ For example, for data element “Location of Stop” the officer “shall report one of the following options, which are provided in order of preference:

- 1. Block number and street name;
- 2. Closest intersection; or
- 3. Highway and closest highway exit.
- 4. If none of these options are applicable, the officer may report a road marker, landmark, or other description, except that the officer shall not provide a street address if the location is a residence.”¹³⁹

Reporting some of the data elements requires multiple steps. For example, when reporting data element “(10) ‘Reason for Stop,’” the officer must do all of the following:

¹³¹ Government Code section 12525.5(b)(2) (Stats. 2015, ch. 466); California Code of Regulations, title 11, section 999.226(a)(10).

¹³² California Code of Regulations, title 11, section 999.226(a)(11).

¹³³ Government Code section 12525.5(b)(7) (Stats. 2015, ch. 466); California Code of Regulations, title 11, section 999.226(a)(12).

¹³⁴ Government Code section 12525.5(b)(3) (Stats. 2015, ch. 466); California Code of Regulations, title 11, section 999.226(a)(13).

¹³⁵ California Code of Regulations, title 11, section 999.226(a)(14).

¹³⁶ California Code of Regulations, title 11, section 999.226(a)(15).

¹³⁷ California Code of Regulations, title 11, section 999.226(a)(16).

¹³⁸ “Data value” defined as “a component or characteristic of a data element to be used in reporting each data element. For example, “male,” “female,” “transgender man/boy,” “transgender woman/girl,” and “gender nonconforming” are each data values to use in reporting the data element “perceived gender of person stopped.” (Cal. Code Regs., tit. 11, § 999.224(a)(5).)

¹³⁹ California Code of Regulations, title 11, section 999.226(a)(3)(A).

- a. Report the primary reason for stopping a person and select one applicable data value from the list of six possible reasons for stop; for example, “2. *Reasonable suspicion that the person was engaged in criminal activity*”;¹⁴⁰
- b. Select all applicable circumstances that gave rise to the officer's reasonable suspicion from the list provided;¹⁴¹
- c. “[U]sing the Department's standard CJIS Offense Table, the officer shall identify the primary code section and subdivision of the suspected violation of law that formed the basis for the stop, if known to the officer”;¹⁴² and
- d. “[T]he officer shall also provide a brief explanation (250-character maximum) regarding the reason for the stop. This explanation shall include additional detail beyond the general data values selected for the ‘Reason for Stop.’”¹⁴³

In addition, data element “(12) ‘Actions Taken by Officer During Stop’” includes several additional reportable data elements, which are triggered when corresponding data values are selected.¹⁴⁴ For example, to report this data element the officer must select all applicable data values from the list of twenty three values describing the officer’s actions during the stop, such as, “1. *Person removed from vehicle by order*” and “8. *Firearm pointed at person.*”¹⁴⁵ If during the stop the officer’s actions included a search of the person, the person's property, or both, the officer is also required to report the “Basis for Search,” by selecting all applicable data values that describe the reason for the search from the list of twelve data values; and, in addition, “provide a brief explanation (250-character maximum) regarding the basis for the search. This explanation shall include additional detail beyond the general data values selected for ‘Basis for Search.’”¹⁴⁶

Similarly, if the officer’s actions included action “21. *Property was seized,*” the officer is further required to report the “Basis for Property Seizure” by selecting all applicable data values that describe the basis for the property seizure from the list of five data values; for example “a. *Safekeeping as allowed by law/statute*” or “c. *Evidence*”; and to report the type of property seized by selecting all of the data values that apply from the provided list of eleven types of property, such as “a. *Firearm(s)*” or “k. *Other contraband or evidence.*”¹⁴⁷

In addition to the data elements and corresponding data values set forth in section 999.226(a), section 999.227(e) specifies additional data that must be collected for reportable peace officer

¹⁴⁰ California Code of Regulations, title 11, section 999.226(a)(10)(A).

¹⁴¹ California Code of Regulations, title 11, section 999.226(a)(10)(A)(2).

¹⁴² California Code of Regulations, title 11, section 999.226(a)(10)(A)(2).

¹⁴³ California Code of Regulations, title 11, section 999.226(a)(10)(B).

¹⁴⁴ California Code of Regulations, title 11, section 999.226(a)(12).

¹⁴⁵ California Code of Regulations, title 11, section 999.226(a)(12)(A).

¹⁴⁶ California Code of Regulations, title 11, section 999.226(a)(12)(B).

¹⁴⁷ California Code of Regulations, title 11, section 999.226(a)(12)(D).

interactions with students at a K-12 public school. Under these circumstances, the following situations constitute a reportable stop:

- a. Any interaction that results in a temporary custody under Welfare and Institutions Code section 625, citation, arrest, permanent seizure of property as evidence of a criminal offense, or referral to a school administrator because of suspected criminal activity.
- b. Any interaction in which the student is questioned for the purpose of investigating whether the student committed a violation of law, including violations of Education Code sections 48900, 48900.2, 48000.4, and 48000.7 (addressing the suspension and expulsion of students), or to determine whether the student is truant.
- c. Any interaction in which an officer engages in one or more data values identified in section 999.226(a), excluding “none.” However, this does not include a detention or search that is conducted of all persons as part of a neutrally applied formula that is not based upon personal characteristics (such as searches conducted at the entries and exits of school facilities by screening devices).¹⁴⁸

The following additional data values shall be reported for stops at a K-12 school: the name of the school where the stop took place, whether the stop is of a student, whether there is a perceived disability related to hyperactivity or impulsive behavior of the student, the possible conduct warranting discipline under the Education Code, whether there was an admission or written statement obtained from the student, whether the student is suspected of violating school policy, and whether the student was referred to a school administrator or counselor.

c. Scope of reporting requirements

Section 999.227(a)(4) explains that when two or more reporting agencies are involved in a stop, only the primary agency shall submit the report. The primary agency is the agency with investigative jurisdiction based on local, county, or state law or interagency agreement or memoranda of understanding. If there is uncertainty as to the primary agency, the agencies shall agree on which agency is the primary agency for reporting purposes. If, however, a stop is done in conjunction with a reporting agency and an agency that is not subject to the reporting requirements, the reporting agency is required to submit data on the stop even if it is not the primary agency responsible for the stop.

Section 999.227(a)(5) states that if more than one peace officer of the agency conducts the stop, the officer with the highest level of engagement with the person stopped shall submit the full report.

Section 999.227(a)(6) states that if multiple persons are stopped during one incident, the stop data shall be submitted for each person within a single report.

¹⁴⁸ California Code of Regulations, title 11, section 999.227(e)(3).

And section 999.227(a)(9) requires peace officers to complete their stop data report by the end of their shift, unless exigent circumstances preclude doing so. In such circumstances, the data shall be completed as soon as practicable.

In addition, section 999.227(a)(1) requires peace officers to submit the data elements described in section 999.226(a) for every person stopped by the officer, *except* as provided in subdivisions (b), (c), (d) and (e) of this section. Accordingly, reports are not required to be submitted in the following circumstances described in section 999.227(b) and (c):

- (1) Peace officers shall not submit data elements for passengers in vehicles to a stop, unless the passenger is observed or suspected of violating the law or the passenger is subjected to any of the actions identified as data values in section 999.226(a)(12), “Actions Taken by Officer During Stop, excluding “Vehicle impounded” and “None.”¹⁴⁹
- (2) Peace officers shall not submit data elements for stops during public safety mass evacuations, active shooter incidents, or routine security screenings of all persons entering a building or special event.¹⁵⁰

In addition, section 999.227(d) states there are some peace officer interactions that are reportable only if the officer takes certain actions:

- (1) Interactions that take place during the following circumstances shall only be reported if the person is detained based upon individualized suspicion or personal characteristics or the officer engages in the actions described in the data values in section 999.226(a)(12)(A)(1)-(22): Interactions during: traffic control of vehicles due to a traffic accident or emergency situation that requires that vehicles are stopped for public safety purposes; any type of crowd control in which pedestrians are made to remain in a location or routed to a different location for public safety purposes; interactions during which persons are detained at a residence so that the officers may check for proof of age for purposes of investigating underage drinking; and checkpoints and roadblocks in which an officer detains a person as the result of a blanket regulatory activity or neutral formula that is not based on individualized suspicion or personal characteristics.¹⁵¹
- (2) Interactions that take place with a person in his or her residence who is the subject of a warrant or search condition is not subject to the reporting requirements. However, a peace officer shall report any interactions with persons in the home who are not the subject of a warrant or search condition if the officer handcuffs the person; arrests the person; points a firearm at the person; discharges or uses a

¹⁴⁹ California Code of Regulations, title 11, section 999.227(b).

¹⁵⁰ California Code of Regulations, title 11, section 999.227(c).

¹⁵¹ California Code of Regulations, title 11, section 999.227(d)(1).

firearm, electronic control device, impact projectile, baton or other impact weapon, or chemical spray on the person; or if a canine bit or held the person.¹⁵²

- (3) Interactions that take place with a person in his or her residence who is the subject of home detention or house arrest while an officer is on home detention or house arrest assignment are not subject to the reporting requirements. However, the officer shall report any interactions with person in the home who are not under home detention or house arrest if the officer takes the following actions: the officer handcuffs the person; arrests the person; points a firearm at the person; discharges or uses a firearm, electronic control device, impact projectile, baton or other impact weapon, or chemical spray on the person; or if a canine bit or held the person.¹⁵³

Finally, section 999.225(d) states that peace officers shall not report stops that occur in a custodial setting.¹⁵⁴

d. Electronically submit data to DOJ and retain stop data.

California Code of Regulations, title 11, section 999.228 requires, that all stop data be transmitted to the DOJ electronically. Section 999.228(a) specifically states that “[t]he system developed by the Department *shall require the electronic submission of data from reporting agencies.*” The Addendum to Initial Statement of Reasons for the regulations states that the intent of this provision is “to require electronic versus paper submission of data in order to ensure data is both accurate and accessible,” as follows:

E. Article 5. Section 999.228 (Technical Specifications and Uniform Reporting Practices)

999.228, subd. (a). Electronic System. Subdivision (a) was amended nonsubstantively to replace the term “automated” with “electronic.” This change is intended to conform to the original intent of the provision, which was to require electronic versus paper submission of data in order to ensure data is both accurate and accessible (consistent with the intent of Government Code section 12525.5) and to make clear that agencies can use any form of electronic data submission—

¹⁵² California Code of Regulations, title 11, section 999.227(d)(2).

¹⁵³ California Code of Regulations, title 11, section 999.227(d)(3).

¹⁵⁴ California Code of Regulations, title 11, section 999.225(c). “Custodial setting” means correctional institutions, juvenile detention facilities, and jails, including parking lots and grounds within the perimeter of these enumerated facilities. “Custodial setting” does not include home detention or any circumstances where persons are under house arrest outside of correctional institutions, juvenile detention facilities, or jails. (California Code of Regulations, title 11, section 999.224(a)(3)).

including secure file transfer of spreadsheets or other common file formats—to comply with the reporting requirements.¹⁵⁵

Section 999.228(b) then provides for three permissible methods of electronic data transmission of stop data to the DOJ, as follows:

Submission of Data. Agencies shall be provided with the following options to submit their stop data to the Department: (1) a web-browser based application, which shall include mobile capabilities for agencies that choose to use the Department's developed and hosted solution to submit stop data; (2) a system-to-system web service for agencies that elect to collect the data in a local system and then submit the data to the Department; and (3) a secured file transfer protocol for agencies that elect to collect the data in a local repository and then submit the data to the Department. Agencies that select option 3 shall be permitted to submit batch uploads of stop data in Excel spreadsheets and other delimited text formats of electronic documentation that complies with the Department's interface specifications.¹⁵⁶

The Addendum to Initial Statement of Reasons for the regulations explains that “...DOJ will accept data in any electronic format that complies with the Department’s interface specifications.”¹⁵⁷ The “interface specifications” are not included with the implementing regulations. Instead, section 999.228(f) of the regulations states that the DOJ shall publish a data dictionary and interface specifications for submission of stop data, as follows:

Data Standards. The Department shall publish a data dictionary and interface specifications to ensure uniform and complete reporting of stop data. These documents will define each required data element and acceptable data values. These data standards shall be consistent with the definitions and technical specifications set forth in this chapter.¹⁵⁸

According to DOJ, each method of submission carries costs and benefits from a fiscal perspective, as follows:

- **DOJ-hosted application** may require up-front costs in technology investment to equip officers in the field with a laptop, tablet, or smartphone (although many departments already provide some or all of their officers with such tools), but it eliminates the need for data input services, paper publication, and data storage costs.

¹⁵⁵ Exhibit I, Addendum to Initial Statement of Reasons (OAL File No. Z-2016-1129-03), pages 30-31, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/isor-addendum-08012017.pdf> (accessed on November 8, 2019).

¹⁵⁶ California Code of Regulations, title 11, section 999.228(b).

¹⁵⁷ Exhibit I, Addendum to Initial Statement of Reasons (OAL File No. Z-2016-1129-03), pages 30-31, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/isor-addendum-08012017.pdf> (accessed on November 8, 2019).

¹⁵⁸ California Code of Regulations, title 11, section 999.228(f).

- **Paper-based collection** will require few upfront costs but significant ongoing resources to produce paper forms and to input the data. It will also require some minimal costs to store the data.
- **Relay-to-dispatch** eliminates the need for paper forms but requires similar costs for data input. It will also require some minimal costs to store the data.
- Modifying an existing **agency-hosted data collection process** to accommodate the statutory and regulatory requirements-or acquiring such a system-may result in significant upfront costs for technology, as well as ongoing vendor costs to maintain and support the system, but may streamline the data collection process by syncing with other agency data collection requirements. It may be especially challenging and costly for some law enforcement agencies with older record management systems to modify these systems to allow for the collection of stop data. Some agencies are using systems that are 20+ years old. If agencies are unable to make modifications to their existing systems due to the age or other limitations, an alternative would be to use the DOJ AB 953 application or other acceptable submission methods.¹⁵⁹

Thus, while the regulations provide for a choice of data submission methods, all reporting agencies are required to ensure that their electronic stop data submission is compatible with the DOJ interface specifications.

Section 999.228(e) of the regulations further requires that the reporting agencies authorize and remove users from the system developed by the DOJ as necessary, and that automated systems handling the stop data shall be secure from unauthorized access, alteration, deletion, or release:

(e) System Security. The Department shall design its system to be easily accessible for authorized users, confidential, and accurate. The system will provide role-based authorization services. Reporting agencies will be required to authorize and remove users to the system as necessary. Automated systems handling stop data and the information derived therein shall be secure from unauthorized access, alteration, deletion or release.

Finally, section 999.228(h) states “[e]ach reporting agency shall keep a record of its source data for a minimum of three years, and shall make this data available for inspection by the Department should any issues arise regarding the transfer of data to the Department.” However, the last sentence of this section provides that for agencies that report stop data via DOJ web-browser based application, the DOJ “shall host the data for the agency for the requisite retention period,” which would result in no costs to the local agency for stop-data retention.¹⁶⁰ The

¹⁵⁹ Exhibit A, Test Claim, page 105 (AB 953 Stop Data Reporting Regulations, Addendum to Form 399).

¹⁶⁰ Exhibit I, California Department of Justice Economic and Fiscal Impact Statement (STD 399), AB 953 Stop Data Reporting Regulations to Implement Gov. Code Section 12525.5, page 17, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/stop-data-reg-std399-signed-110817.pdf> (accessed on November 8, 2019).

rulemaking materials for Section 999.228 indicate that the DOJ will assume responsibility for the three-year retention period for the agencies that use the DOJ web-browser based application to collect stop data where the DOJ retains sole possession of the transmitted stop data.¹⁶¹ In the alternative, “*at the agency's election*” the DOJ will transfer this data back to the agency.¹⁶² Thus, if an agency uses DOJ’s web-browser based application, it is not required by state law to store and retain the data because DOJ will host the data for the agency for the retention period. If the agency elects to store and retain the data under these circumstances, however, any costs incurred for storage and retention are triggered by the agency’s own discretion.¹⁶³ Therefore, section 999.228(h) authorizes, but does not require, storage and retention of the stop data by the reporting agencies that use the DOJ web-browser based application to report stop data.

e. Audit and validation requirements

California Code of Regulations, title 11, section 999.229(b) states that DOJ shall perform data validation on stop data submitted to ensure data integrity and quality assurance. Each reporting agency, therefore, “is responsible for ensuring that all data elements, data values, and narrative explanatory fields conform to these regulations and for correcting any errors in the data submission process, and shall do so through the Department’s error resolution process.” Section 999.227(a)(10) makes clear that “[o]nce stop data is submitted to the Department . . . an agency can only revise stop data through the Department’s error resolution process.” Although the regulations do not define “error resolution process,” the Final Statement of Reasons for these regulations explains that it is a term of art in database management and that this process will be used to ensure compliance with the technical requirements of the database system and to obtain missing data:

As used here, “error resolution process” is a term of art in database management, which refers to a common technical process imposed by the database manager to impose a uniform, standard mechanism for correction of submitted data to ensure compliance with the technical requirements of the database system; it does not refer to a substantive or qualitative review of the reported data. It will be used simply to obtain missing data. Law enforcement agencies are familiar with error resolution processes in place for a variety of databases maintained by the Department of Justice that require the submission of data. For example, an error resolution process would apply if an agency attempted to batch upload 6 months of data into the Department’s system, but neglected to include one of the required data fields. In that case, the agency’s database manager would receive an electronic notice of the error, and the data will be sent back for the agency to

¹⁶¹ Exhibit I, California Department of Justice Economic and Fiscal Impact Statement (STD 399), AB 953 Stop Data Reporting Regulations to Implement Gov. Code Section 12525.5, page 17, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/stop-data-reg-std399-signed-110817.pdf> (accessed on November 8, 2019).

¹⁶² California Code of Regulations, title 11, section 999.228(h).

¹⁶³ *Department of Finance v. Commission on State Mandates (Kern High School District)* (2003) 30 Cal.4th 727, 743.

resolve and resubmit the corrected data as required by AB 953 and its implementing regulations.¹⁶⁴

Section 999.224(a)(5) similarly requires reporting agencies to “ensure that the technical specifications for data values are consistent with these regulations and in doing so shall follow the data dictionary prepared by the Department. In this respect, the Addendum to the Initial Statement of Reasons for the regulation package adopting California Code of Regulations, title 11, sections 999.224-999.229 states the following:

999.224, subs. (a)(4)-(5). *"Data element" and "Data Value."*

[¶] . . . [¶]

. . . [T]he following language was added to the definition of "data value": "[r]eporting agencies shall ensure that the technical specifications for data values are consistent with these regulations and in doing so shall follow the data dictionary prepared by the Department." This amendment is intended to provide guidance to law enforcement agencies so that agencies develop technical specifications for their computer systems that are consistent with the requirements of the regulations. To assist agencies in this objective, the regulations also reference the data dictionary that the Department shall prepare, as required by section 999.228, subdivision (f). As subdivision (f) makes clear, this data dictionary is designed to provide technical specifications regarding the requirements in these regulations and must be consistent with those requirements.¹⁶⁵

In addition, section 999.229(c) requires each reporting agency “submitting records via the system-to-system web service or the secure file transfer protocol . . . [to] include a unique stop record number for each stop,” so that DOJ can use the record number to relay information on errors when necessary.

- f. Ensuring that personally identifiable information of the individual stopped or any other information exempt from disclosure is not transmitted to the Attorney General

Government Code section 12525.5(f) states that all data and reports under the Act are public records within the meaning of Government Code section 6252(e), and are open to public inspection. However, section 12525.5(d) states that local law enforcement agencies “shall not report the name, address, social security number, or other unique personal identifying information of persons stopped, searched, or subjected to property seizure. . . .” and not report

¹⁶⁴ Exhibit I, Final Statement of Reasons, Proposed Regulations, Title 11, Sections 999.224-999.229, page 3, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/stop-data-reg-fsor-revised-110817.pdf> (accessed on November 8, 2019).

¹⁶⁵ Exhibit I, Addendum to Initial Statement of Reasons (OAL File No. Z-2016-1129-03), page 2, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/isor-addendum-08012017.pdf> (accessed on November 8, 2019).

“the badge number or other unique identifying information of the peace officer involved.”¹⁶⁶ Section 12525.5(d) and section 999.228(d) of the test claim regulations further state that the law enforcement agencies are “solely responsible for ensuring that personally identifiable information of the individual stopped or any other information that is exempt from disclosure” pursuant to this section is not transmitted to the Attorney General in an open text field.

The Addendum to the Initial Statement of Reasons for the test claim regulations explains that this provision is “intended to make clear that the reporting agencies are responsible to ensure—through training, supervisory review, or any other methodology—that these fields do not contain information that is exempt from public disclosure,” and notes that the earlier version “provided that law enforcement agencies must redact any personally identifiable information with respect to the person stopped and officer, except for the Officer's Unique Identifier, prior to transmission of stop data.”¹⁶⁷

g. Summary of required activities

Accordingly, the following activities are required by Government Code section 12525.5, as added and amended by Statutes 2015, chapter 466 and Statutes 2017, chapter 328, and California Code of Regulations, title 11, sections 999-224-999.229 (Register 2017, No. 46):

1. Identification of the peace officers required to report stops, and maintenance of a system to match individual officers to their Officer I.D. number
 - a. On January 1 of each year until the agency begins reporting data to the DOJ, each reporting agency shall count the number of peace officers it employs who are required to report stops to determine the date that agency must start collecting stop data and reporting to the DOJ pursuant to Government Code section 12525.5(a)(1)(2). (Cal. Code Regs, tit. 11, § 999.227(a)(8) [Register 2017, No. 46].)
 - b. Reporting agencies shall create the Officer's I.D. Number for each officer required to report stops. (Cal. Code Regs, tit. 11, § 999.227(a)(11) [Register 2017, No. 46].)
 - c. Reporting agencies shall maintain a system to match an individual officer required to report stops to his or her Officer's I.D. Number. (Cal. Code Regs, tit. 11, § 999.227(a)(11) [Register 2017, No. 46].)

¹⁶⁶ The term “Unique Identifying Information” is defined in section 999.224(a)(17) of the title 11 regulations to mean “personally identifying information, the release of which, either alone or in combination with other data reported, is reasonably likely to reveal the identity of the individual officer who collected the stop data information. It does not include the minimum information that is specified in Government Code section 12525.5, subdivision (b).”

¹⁶⁷ Exhibit I, Addendum to Initial Statement of Reasons (OAL File No. Z-2016-1129-03), page 31, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/isor-addendum-08012017.pdf> (accessed on November 8, 2019).

2. Collection and reporting data on all stops, as defined,¹⁶⁸ conducted by that agency's peace officers for the preceding calendar year in accordance with sections 999.226(a) and 999.227 of the regulations.
 - a. Begin collecting and reporting data on all stops on or before the following dates:
 - (1) An agency that employs 1,000 or more peace officers shall begin collecting data on or before July 1, 2018, and shall issue its first round of reports on or before April 1, 2019.
 - (2) An agency that employs 667 or more but less than 1,000 peace officers shall begin collecting data on or before January 1, 2019, and shall issue its first round of reports on or before April 1, 2020.
 - (3) An agency that employs 334 or more but less than 667 peace officers shall begin collecting data on or before January 1, 2021, and shall issue its first round of reports on or before April 1, 2022.
 - (4) An agency that employs one or more but less than 334 peace officers shall begin collecting data on or before January 1, 2022, and shall issue its first round of reports on or before April 1, 2023.

(Gov. Code, § 12525.5(a)(2), Stats. 2017, ch. 328).

The following are not reportable:

- Data elements described in section 999.226(a) for passengers in vehicles subject to a stop who have not been observed or suspected of violating the law, or who have not been subjected to the officer's actions listed in section 999.226(a)(12)(A) excluding "Vehicle impounded" and "None).¹⁶⁹
- Stops made during public safety mass evacuations.¹⁷⁰
- Stops during an active shooter incident.¹⁷¹
- Stops that occur during or as a result of routine security screenings required of all persons to enter a building or special event, including metal

¹⁶⁸ Government Code section 12525.5(g)(2) (Stats.2015, ch.466); see also, California Code of Regulations, title 11, section 999.224(a)(14) (Register 2017, No. 46), which defines a "stop" as "any detention by a peace officer of a person, or any peace officer interaction with a person in which the peace officer conducts a search, including a consensual search, of the person's body or property in the person's possession or control;" section 999.227(b) and (c) for interactions that are not reportable as "stops;" and section 999.227(d) for peace officer interactions that are reportable only if the officer takes additional specified actions.

¹⁶⁹ California Code of Regulations, title 11, section 999.227(b), Register 2017, No. 46.

¹⁷⁰ California Code of Regulations, title 11, section 999.227(c)(1), Register 2017, No. 46.

¹⁷¹ California Code of Regulations, title 11, section 999.227(c)(2), Register 2017, No. 46.

detector screenings, including any secondary searches that result from the screening.¹⁷²

- The following interactions are **not** reportable unless a person is detained based upon individualized suspicion or personal characteristics, or the officer engages in the actions described in the data values in section 999.226(a)(12)(A)(1)-(22): Interactions during traffic control of vehicles due to a traffic accident or emergency situation that requires that vehicles are stopped for public safety purposes; any type of crowd control in which pedestrians are made to remain in a location or routed to a different location for public safety purposes; interactions during which persons are detained at a residence so that the officer may check for proof of age for purposes of investigating underage drinking; and checkpoints and roadblocks in which an officer detains a person as the result of a blanket regulatory activity or neutral formula that is not based on individualized suspicion or personal characteristics.¹⁷³
 - Interactions that take place with a person in his or her residence who is the subject of a warrant or search condition.¹⁷⁴
 - Interactions that take place with a person in his or her residence who is the subject of home detention or house arrest while an officer is on home detention or house arrest assignment.¹⁷⁵
 - Stops in a custodial setting.¹⁷⁶
 - Stops that occur while the officer is off-duty.¹⁷⁷
- b. The agency's peace officers shall collect the following minimum required categories of stop data, and all applicable "data elements," "data values," and narrative explanatory fields described in section 999.226(a) for every person stopped, and in accordance with section 999.227(a)(4)-(6), (b) and (d) of the regulations, and complete all stop reports for stops made during the officer's shift by the end of the officer's shift, or if exigent circumstances preclude doing so, as soon as practicable: (Gov. Code, §12525.5(b), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, §§999.226(a), 999.227(a)(1)(2)(4)(5)(6)(9),(b) and (d) [Register 2017, No. 46].)

¹⁷² California Code of Regulations, title 11, section 999.227(c)(3), Register 2017, No. 46.

¹⁷³ California Code of Regulations, title 11, section 999.227(d)(1).

¹⁷⁴ California Code of Regulations, title 11, section 999.227(d)(2), Register 2017, No. 46.

¹⁷⁵ California Code of Regulations, title 11, section 999.227(d)(3), Register 2017, No. 46.

¹⁷⁶ California Code of Regulations, title 11, section 999.225(c), Register 2017, No. 46.

¹⁷⁷ Exhibit I, Final Statement of Reasons, Proposed Regulations, Title 11, Sections 999.224-999.229, pages 12-13, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/stop-data-reg-fsor-revised-110817.pdf> (accessed on November 8, 2019).

- (1) “ORI number,” which is “the data element that refers to the reporting agency’s Originating Agency Identifier, a unique identification code number assigned by the Federal Bureau of Investigation.” (Cal Code Regs., tit. 11, § 999.226(a)(1) [Register 2017, No. 46].)
- (2) “Date, Time, and Duration of Stop.” (Gov. Code, §12525.5(b)(1), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(2) [Register 2017, No. 46].)
- (3) “Location of Stop.” (Gov. Code, §12525.5(b)(1), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(3) [Register 2017, No. 46].)
- (4) “Perceived Race or Ethnicity of Person Stopped” (Gov. Code, § 12525.5(b)(6), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(4) [Register 2017, No. 46].)
- (5) “Perceived Gender of Person Stopped.” (Gov. Code, §12525.5(b)(6), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(5) [Register 2017, No. 46].)
- (6) “Person Stopped Perceived to be LGBT.” (Cal Code Regs., tit. 11, § 999.226(a)(6) [Register 2017, No. 46].)
- (7) “Perceived Age of Person Stopped.” (Gov. Code, §12525.5(b)(6), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(7) [Register 2017, No. 46].)
- (8) “Person Stopped Has Limited or No English Fluency.” (Cal Code Regs, tit. 11, § 999.226(a)(8) [Register 2017, No. 46].)
- (9) “Perceived or Known Disability of Person Stopped.” (Cal Code Regs., tit. 11, § 999.226(a)(9) [Register 2017, No. 46].)
- (10) “Reason for Stop.” (Gov. Code, §12525.5(b)(2), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(10) [Register 2017, No. 46].)
- (11) “Stop Made in Response to a Call for Service.” (Cal Code Regs., tit. 11, § 999.226(a)(11) [Register 2017, No. 46].)
- (12) “Actions Taken by Officer During Stop.” (Gov. Code, §12525.5(b)(7), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(12) [Register 2017, No. 46].)
- (13) “Result of Stop.” (Gov. Code, §12525.5(b)(3)(4)(5), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(13) [Register 2017, No. 46].)
- (14) “Officer’s Identification (I.D.) Number.” (Cal Code Regs., tit. 11, § 999.226(a)(14) [Register 2017, No. 46].)
- (15) “Officer’s Years of Experience.” (Cal Code Regs., tit. 11, § 999.226(a)(15) [Register 2017, No. 46].)

- (16) “Type of Assignment of Officer.” (Cal Code Regs., tit. 11, § 999.226(a)(16) [Register 2017, No. 46].)
- c. The following additional data values shall be reported for stops (as defined in section 999.227(e)(3) of the regulations) at a K-12 school: the name of the school where the stop took place; indicate if the stop is of a student, whether there is a perceived disability related to hyperactivity or impulsive behavior of the student, the possible conduct warranting discipline under the Education Code, whether there was an admission or written statement obtained from the student, whether the student is suspected of violating school policy, and whether the student was referred to a school administrator or counselor. (Cal Code Regs., tit. 11, § 999.227(e)(3)(4) [Register 2017, No. 46].)
3. Electronic submission of data to DOJ and retention of stop data collected
- a. Submit all required stop data to the system developed by the DOJ in electronic format that complies with the DOJ interface specifications via one of the three approved submission methods: (1) a web-browser based application developed by the DOJ; (2) a system-to-system web service; and (3) a secured file transfer protocol. (Cal Code Regs., tit. 11, § 999.228(a), (b) [Register 2017, No. 46].)
- b. Authorize and remove users to the system as necessary. Automated systems handling stop data and the information derived therein shall be secure from unauthorized access, alteration, deletion or release. (Cal Code Regs., tit. 11, § 999.228(e) [Register 2017, No. 46].)
- c. Each reporting agency, *except* those agencies that report stop data via the DOJ web-browser based application, shall keep a record of its source data for three years and to make it available for inspection by DOJ. (Cal Code Regs., tit. 11, § 999.228(h) [Register 2017, No. 46].)
4. Audits and validation of data collected
- a. Ensure that the technical specifications for data values are consistent with the regulations and follow the data dictionary prepared by DOJ. (Cal Code Regs., tit. 11, § 999.224(a)(5) [Register 2017, No. 46].)
- b. Ensure that all data elements, data values, and narrative explanatory fields conform to the regulations and correct any errors in the data submission process through the DOJ’s error resolution process. (Cal Code Regs., tit. 11, § 999.229(b) [Register 2017, No. 46].)
- c. Agencies submitting records via the system-to-system web service or the secure file transfer protocol shall include a unique stop record number for each stop, so that DOJ can use the record number to relay information on errors when necessary. (Cal Code Regs., tit. 11, § 999.229(c) [Register 2017, No. 46].)
5. For stop data collected, ensure that the name, address, social security number, or other unique personally identifiable information of the individual stopped, searched, or subjected to property seizure, and the badge number or other unique

identifying information of the peace officer involved, is not transmitted to the Attorney General in an open text field. (Gov. Code, § 12525.5, Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.228(d) [Register 2017, No. 46].)

In addition, the claimant requests reimbursement for the costs of training, updating policies and procedures, supervisory review, and for installation and testing of software.¹⁷⁸ Although the legislative history of the test claim statute¹⁷⁹ and rulemaking materials¹⁸⁰ acknowledge that the mandate would result in local agencies incurring costs for training and technology, and the claimant has filed evidence supporting such costs,¹⁸¹ these activities and costs are not required by the plain language of the test claim statutes and regulations. Nevertheless, these activities and costs may be proposed by claimant for inclusion in the Parameters and Guidelines if they are supported by evidence in the record showing they are “reasonably necessary for the performance of the state-mandated program” in accordance with Government Code section 17557(a), and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

2. Government Code section 12525.5 and the test claim regulations impose a state-mandated program on counties and cities only.

The activities addressed above are required of agencies identified in Government Code section 12525.5(a)(1) and (g)(1) as “each state or local agency that employs peace officers,” as “defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code,” “limited to members of the California Highway Patrol, a city or county law enforcement agency, and California state or university educational institutions.”¹⁸² Section 12525.5(g)(1) further states that “peace officer” does not include probation officers and officers in a custodial setting. Thus, section 12525.5 imposes the requirements on city and county law enforcement agencies and law

¹⁷⁸ Exhibit A, Test Claim, pages 8-9.

¹⁷⁹ Exhibit I, Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 953, (2015-2016 Reg. Sess.), as amended August 31, 2015, page 5.

¹⁸⁰ Exhibit I, California Department of Justice Economic and Fiscal Impact Statement (STD 399), AB 953 Stop Data Reporting Regulations to Implement Government Code section 12525.5, pages 15-20, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/stop-data-reg-std399-signed-110817.pdf> (accessed on November 8, 2019).

¹⁸¹ Exhibit A, Test Claim, pages 20-21 (Declaration of Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, July 30, 2019).

¹⁸² DOJ’s interpretation of Government Code section 12525.5(a)(1) and (g)(1) is stated as follows: “Government Code section 12525.5, subdivision (a) provides that the reporting requirements apply only to those state and local agencies that employ “peace officers,” a term that Government Code section 12525.5, subdivision (g)(1) limits for purposes of reporting agencies “to members of the California Highway Patrol, a city or county law enforcement agency, and California state or university educational institutions,” excluding “probation officers and officers in a custodial setting.” (Exhibit I, Final Statement of Reasons, Proposed Regulations, Title 11, Sections 999.224-999.229, page 8, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/stop-data-reg-fsor-revised-110817.pdf> (accessed on November 8, 2019).)

enforcement agencies of California state or university educational institutions that employ persons, other than probation and custodial officers, who have been designated by statute to have peace officer powers and duties.¹⁸³

California Code of Regulations, title 11, section 999.224(a)(11) refers to agencies required to collect and report stop data as “reporting agencies”. And, section 999.224(a)(11) defines reporting agency, for purposes of local government, as any city or county law enforcement agency that employs peace officers, including those who are contracted to work at other government agencies or private entities (such as housing or transit agencies and state educational institutions) and the law enforcement agencies of any California state or university educational institutions. California Code of Regulations, title 11, section 999.224(a)(11) then defines “California state or university educational institutions,” as used in the statute, rather broadly to include K-12 school districts that employ peace officers pursuant to the authority provided by Education Code section 38000; and community college districts that employ peace officers pursuant to the authority provided by Education Code section 72300. Section 999.224(a)(11) states the following:

(11) “Reporting agency” means:

(A) Any city or county law enforcement agency that employs peace officers.

1. “Reporting agency” includes any city or county law enforcement agency that employs peace officers, including officers who are contracted to work at other government agencies or private entities. This includes, but is not limited to, peace officers assigned to work in cities or other jurisdictions that are not within the original jurisdiction of the city or county law enforcement agency; peace officers of city or county law enforcement agencies assigned to or contracted to work at housing or transit agencies; and school resource officers assigned to work in California state educational institutions.

(B) The California Highway Patrol.

(C) The law enforcement agencies of any California state or university educational institutions.

1. “California state educational institution” means any public elementary or secondary school; the governing board of a school district; or any combination of school districts or counties recognized as the administrative agency for public elementary or secondary schools.
 - a. “The law enforcement agencies of California state educational institutions” refers to any police department established by a public school district pursuant to Education Code section 38000, subdivision (b).

¹⁸³ The Legislature enacted chapter 4.5 of the Penal Code to “define peace officers, the extent of their jurisdiction, and the nature and scope of their authority, powers and duties.” (*County of Santa Clara v. Deputy Sheriffs’ Ass’n. of Santa Clara County, Inc.* (1992) 3 Cal.4th 873, 879; see also, *People v. Pennington* (2017) 3 Cal.5th 786, 792-793.)

2. “California university educational institution” means the University of California, the California State University, and any college of the California Community Colleges.
 - a. “The law enforcement agencies of California university educational institutions” refers to the following:
 - (1) Police departments of all campuses of the California State University established pursuant to Education Code section 89560;
 - (2) Police departments of all campuses of the University of California established pursuant to Education Code section 92600; and
 - (3) Police departments of all California community colleges established pursuant to Education Code section 72330.¹⁸⁴

California Code of Regulations, title 11, section 999.225(d) further explains that “all peace officers employed by a reporting agency, except for probation officers [and officers in a custodial setting], are subject to this chapter even if the officer makes a stop while assigned or contracted to work for another governmental agency or a private entity pursuant to a contract or memorandum of understanding between the reporting agency and the government agency or private entity.” Section 999.225(d)(1),(2) describes the following examples:

- (1) Example: A peace officer of a reporting agency who is also a member of a federal task force is subject to this chapter when stopping a person while the officer is performing duties as part of the task force, regardless of whether the officer must also comply with federal data collection policies, if any.
- (2) Example: A peace officer of a reporting agency assigned to work as a school resource officer in a K-12 Public School pursuant to a memorandum of understanding or other contractual relationship is subject to this chapter when stopping a person while on that assignment.

The Final Statement of Reasons for the DOJ regulations further makes clear that off-duty officers are not required to collect and report stop data, as follows:

... the Department has modified proposed Section 999.225, subdivision (d) to *delete* the provision that these reporting requirements apply to off-duty officers and to delete the examples pertaining to off-duty officers. In drafting these regulations, the Department has considered the need to balance the burden on law enforcement, including both officer time and technological costs, with the value of the data to examine racial and identity profiling. As explained in the ISOR Addendum: “This amendment was made upon further review of the regulations because of the infrequent nature of such stops and the practical and logistical complications that may arise regarding the reporting by an officer who is off-duty. For example, an officer who is off-duty will be unable to complete the reporting requirement by the end of his or her shift, and may not have access to mobile or

¹⁸⁴ California Code of Regulations, title 11, section 999.224(a)(11), Register 2017, No. 46.

electronic devices, or other means of reporting the data electronically, as he or she would if on-duty.”¹⁸⁵

Thus, the local government reporting agencies required to comply with Government Code section 12525.5 and the test claim regulations are limited to city and county law enforcement agencies that employ peace officers (other than probationary and custodial officers) assigned to work in the city or county jurisdiction and those city and county peace officer employees assigned by contract to provide services for other government and private entities; and to K-12 and community college districts that have established police departments and employ peace officers. As described below, however, the test claim statutes and regulations do not impose a state-mandated program in all of these circumstances.

- a. The test claim statutes and regulations do **not** impose a state-mandated program on K-12 school districts and community college districts.

The courts have made clear that activities required by state law, but triggered by a local discretionary decision (that is, action undertaken without any legal compulsion from the state or threat of penalty for nonparticipation) do not result in a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.¹⁸⁶ In *Department of Finance v. Commission on State Mandates (POBRA)*, the court addressed legislation that provided procedural protections to peace officers employed by counties, cities, and school districts when a peace officer employee is subject to an interrogation by the employer, is facing punitive action, or receives an adverse comment in his or her personnel file. The court specifically held that “school districts . . . that are permitted by statute [i.e., Education Code sections 38000 and 72330], but not required, to employ peace officers who supplement the general law enforcement units of cities and counties” are not eligible to claim reimbursement under article XIII B, section 6 for the new activities required by the state because school districts and community college districts are not legally or practically compelled by state law to comply.¹⁸⁷ The court reasoned that unlike cities and counties,¹⁸⁸ school districts and community college districts do

¹⁸⁵ Exhibit I, Final Statement of Reasons, Proposed Regulations, Title 11, Sections 999.224-999.229, pages 12-13, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/stop-data-reg-fsor-revised-110817.pdf> (accessed on November 8, 2019).

¹⁸⁶ *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 742; *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1363.

¹⁸⁷ *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1357-1367.

¹⁸⁸ Article XI of the California Constitution provides for the formation of cities and counties. Section 1, Counties, states that the Legislature shall provide for an elected county sheriff. Section 5, City charter provision, specifies that “It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (1) the constitution, regulation, and government of the city police force” Government Code section 36501 further provides that “[t]he government of a general law city is vested in: . . . (d) A chief of police.”

not have the provision of police protection as an essential and basic function, and instead make a discretionary decision to form a police department and employ peace officers pursuant to statutory authority:

The Commission notes that *Carmel Valley Fire Protection Dist. v. State* characterizes police protection as one of “the most essential and basic functions of local government.” [Citation omitted.] However, that characterization is in the context of cities, counties, and districts that have as an ordinary, principal, and mandatory duty the provision of policing services within their territorial jurisdiction. A fire protection district perforce must hire firefighters to supply that protection.

Thus, as to cities, counties, and such districts, new statutory duties that increase the costs of such services are prima facie reimbursable. This is true, notwithstanding a potential argument that such a local government’s discretionary decision is voluntary in part, as to the number of personnel it hires. (See *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at p. 888. . . .) A school district, for example, has an analogous basic and mandatory duty to educate students. In the course of carrying out that duty, some “discretionary” expulsions will necessarily occur. [Citation to *San Diego Unified School Dist.* omitted.] Accordingly, San Diego Unified School Dist. suggests additional costs of “discretionary” expulsions should not be considered voluntary. Where, as a practical matter, it is inevitable that certain actions will occur in the administration of a mandatory program, costs attendant to those actions cannot fairly and reasonably be characterized as voluntary under the rationale of *City of Merced*. [Citation to *San Diego Unified School Dist.* omitted.]

However, the districts in issue are authorized, but not required, to provide their own peace officers and do not have provision of police protection as an essential and basic function. It is not essential unless there is a showing that, as a practical matter, exercising the authority to hire peace officers is the only reasonable means to carry out their core mandatory functions.¹⁸⁹

In this case, section 999.224(a)(11) states that “any police department established by a public school district pursuant to Education Code section 38000, subdivision (b)” and “police departments of all California community colleges established pursuant to Education Code section 72330” are required to comply with Government Code section 12525.5 and the test claim regulations. Education Code section 38000(b) states that “The governing board of a school district *may* establish a school police department under the supervision of a school chief of police and, in accordance with Chapter 5 (commencing with a Section 45100) of Part 25, may employ peace officers, as defined in subdivision (b) of Section 830.32 of the Penal Code, to ensure the safety of school district personnel and pupils, and the security of the real and personal property of the school district.”

¹⁸⁹ *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367-1368.

Similarly, Education Code section 72330(a) states that “The governing board of a community college district *may* establish a community college police department under the supervision of a community college chief of police and, in accordance with Chapter 4 (commencing with Section 88000) of Part 51, may employ personnel as necessary to enforce the law on or near the campus of the community college and on or near other grounds or properties owned, operated, controlled, or administered by the community college or by the state acting on behalf of the community college.”

Thus, as recognized by the court in *Department of Finance (POBRA)*, K-12 school districts and community college districts are authorized, but not mandated by state law, to have police departments and employ peace officers. Police protection is not a basic or essential function of K-12 school districts and community college districts. Thus, K-12 school districts and community college districts are not legally compelled to comply with the activities required by Government Code section 12525.5 and the test claim regulations. Nor is there any evidence in the record that, as a practical matter, exercising the authority to hire peace officers is the only reasonable means to carry out their core mandatory function to provide educational services.

Accordingly, the Commission finds that the test claim statutes and regulations do not impose a state-mandated program on K-12 school districts and community college districts and, thus, K-12 school districts and community college districts are not eligible to claim reimbursement for this program.

- b. The test claim statutes and regulations, do **not** impose a state-mandated program when a city or county assigns their peace officer employees out to work for other government or private entities based on a contract or memorandum of understanding.

As indicated above, California Code of Regulations, title 11, section 999.224(a)(11) states that “[a]ny city or county law enforcement agency that employs peace officers, *including officers who are contracted to work at other government agencies or private entities*” is a reporting agency and is required to comply with Government Code section 12525.5 and the test claim regulations. This includes,

- Peace officers assigned to work in cities or other jurisdictions that are not within the original jurisdiction of the city or county law enforcement agency.
- Peace officers of city or county law enforcement agencies assigned to or contracted to work at housing or transit agencies.
- School resource officers assigned to work in California state educational institutions.

Section 999.225(d) similarly provides that the peace officers assigned by the reporting agency (i.e., a city or county) to work for other governmental agencies under contractual arrangements (such as a federal task force) are “subject to this chapter” and must comply with the reporting requirements of the test claim statute and regulations.

Thus, the activities required by the test claim statutes and regulations apply when a county or city peace officer is assigned to work for other government (such as other cities or counties, housing or transit agencies, schools as their resource officer, or a federal task force) or private entities based on a contract or memorandum of understanding entered into by the county or city employer.

The Commission finds, however, that the test claim statutes and regulations do *not* impose a state-mandated program on city or county law enforcement agencies when the city or county assigns their peace officer employees *out* to work for other government entities (such as other cities or counties, housing or transit agencies, schools as their resource officer, or a federal task force) or private entities based on a contract or memorandum of understanding. In such cases, any costs incurred by the county or city to comply with Government Code section 12525.5, as added or amended by the test claim statutes, and California Code of Regulations, title 11, sections 999.224- 999.229 (Reg. 2017, No. 46) are triggered by the local discretionary decision to enter into the contract with the other entity, and are not mandated by the state. As indicated by the court in *Department of Finance v. Commission on State Mandates (POBRA)*, cities and counties have as an ordinary, principal, and mandatory duty the provision of policing services *within their territorial jurisdiction*.¹⁹⁰ There is no duty to provide services by contract to other entities. Government Code section 53069.8 authorizes a county or city to enter into contract on behalf of the sheriff or chief of police to provide supplemental services to private entities. And Government Code section 51301 provides that “[a] board of supervisors may contract with a city, governed under general laws or charter, within the county, and the city legislative body may contract with the county for the performance by its appropriate officers and employees, of city functions.”

The court in *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* made it clear that activities required by state law, but triggered by a local discretionary decision, do not result in a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.¹⁹¹

Thus, the test claim statutes and regulations do not impose a state-mandated program when a city or county assigns their peace officer employees out to work for other government or private entities based on a contract or memorandum of understanding.

- c. Government Code section 12525.5 and California Code of Regulations, title 11, sections 999.224- 999.229, as added or amended by the test claim statutes and regulations, constitute a state-mandated program on city and county law enforcement agencies that employ peace officers (other than probation officers and officers in a custodial setting) who perform the requirements of the test claim statute and regulations in their own jurisdictions, and cities and counties that contract for officers from other city or county reporting agencies in order to carry out their basic and essential function of providing police protection services in their own jurisdictions.

Section 999.224(a)(11) states that “[a]ny city or county law enforcement agency that employs peace officers” other than probation officers and officers in a custodial setting, is a reporting agency and is required to comply with Government Code section 12525.5 and the test claim regulations. As indicated by the court in *Department of Finance v. Commission on State*

¹⁹⁰ *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367, emphasis added.

¹⁹¹ See also, *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783; *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1363.

Mandates (POBRA), cities and counties have as an ordinary, principal, and mandatory duty the provision of policing services within their territorial jurisdiction and, thus, new statutory duties that increase the costs of such services are “prima facie reimbursable,” notwithstanding the number of personnel it hires.¹⁹² Thus, Government Code section 12525.5 and California Code of Regulations, title 11, sections 999.224-999.229, as added or amended by the test claim statutes and regulations, impose a state-mandated program on city and county law enforcement agencies that employ peace officers to perform the requirements of the test claim statute and regulations in their own jurisdictions.

In addition, however, there are many cities that, by law, provide police protection services within their jurisdictions,¹⁹³ but contract with the county sheriff’s department for those services within the city. It is estimated that nearly 30 percent of the cities in California contract with the county for police protection services.¹⁹⁴ Similarly, city or county law enforcement agencies that employ peace officers have the authority to enter into contracts with other city and county law enforcement agencies for additional police protection services in their jurisdictions, and may

¹⁹² *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367-1368.

¹⁹³ Article XI, section 5 of the California Constitution specifies that “It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (1) the constitution, regulation, and government of the city police force” Government Code section 36501 further provides that “[t]he government of a general law city is vested in: . . . (d) A chief of police.”

¹⁹⁴ See Exhibit I, Abstract of the Peter J. Nelligan & William Bourns, *Municipal Contracting With County Sheriffs for Police Services in California: Comparison of Cost and Effectiveness*, 14 Police Q. 70 (2011), SAGE Journals, <https://journals.sagepub.com/doi/abs/10.1177/1098611110393133> (accessed on October 14, 2019).

For example, the Sheriff of Stanislaus County “provides contractual law enforcement services for the cities of Riverbank, Patterson, Waterford and Hughson. The contract funds police services and all general law enforcement services as specified in the respective contract with each city. Each city government, in partnership with the Sheriff’s Department, establishes the level of service to be provided. Law enforcement services are based upon a philosophy of community-oriented policing which is the foundation to ensure and maintain a safe community for the residents of and visitors to Stanislaus County.” (Exhibit I, Stanislaus County Sheriff’s Department, Contract Cities, <https://www.scsdonline.com/ops/contract-cities.html> (accessed on December 5, 2019)).

In addition, the Los Angeles Sheriff’s Department provides contractual law enforcement services for forty cities in Los Angeles County. (Exhibit I, Excerpt from the L. Baca, Contract Law Enforcement Services, Los Angeles Sheriff’s Department, Contract Law Enforcement Bureau (revised January 2009), page 3, <https://www.sheriffs.org/sites/default/files/uploads/CLESDocument.pdf> (accessed on October 14, 2019)).

need these supplemental services from time to time.¹⁹⁵ Under these circumstances, the Commission finds that Government Code section 12525.5 and California Code of Regulations, title 11, sections 999.224-999.229, as added or amended by the test claim statutes and regulations, constitute a state-mandated program on city and county law enforcement agencies that contract *for* officers from other cities or counties in order to carry out their basic and essential function of providing police protection services in their own jurisdictions.

Although section 999.224(a)(11) defines reporting agencies as city or county law enforcement agencies that “employ” peace officers, the regulation defines peace officers required to comply with the collection and reporting activities broadly to include those city or county employees assigned to work in cities or other jurisdictions based on contract or memorandum of understanding. As indicated by the court in *Department of Finance v. Commission on State Mandates (POBRA)*, cities and counties have as an ordinary, principal, and mandatory duty the provision of policing services *within their* territorial jurisdiction.¹⁹⁶ And in *San Diego Unified*, the court recognized that reimbursement under article XIII B, section 6 should not be foreclosed under the *City of Merced* and *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* cases based on local decisions, such as the number of people to hire for example, in order to carry out the agency’s core government function:

Upon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement under article XIII B, section 6 of the state Constitution and Government Code section 17514, whenever an entity makes an initial discretionary decision that in turn triggers mandated costs. Indeed, it would appear that under a strict application of the language in *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, as explained above, in *Carmel Valley* [citation omitted], an executive order requiring that county firefighters be provided with protection clothing and safety equipment was found to create a reimbursable state mandated for the added costs of such clothing and equipment. [Citation omitted.] 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* [citation omitted], such costs would not be reimbursable for the simple reason that the local agency’s

¹⁹⁵ Government Code section 51301 provides that “A board of supervisors may contract with a city, governed under general laws or charter, within the county, and the city legislative body may contract with the county for the performance by its appropriate officers and employees, of city functions.”

¹⁹⁶ *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367, emphasis added.

decision to employ 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.¹⁹⁷

Thus, the application of the rule in *City of Merced* and *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* [that activities triggered by a local discretionary decision do not result in a state-mandated program] should not foreclose reimbursement based on a decision to employ peace officers or to contract with other cities or counties for peace officers to provide the police protection services in their jurisdictions.

Accordingly, the Commission finds that Government Code section 12525.5 and California Code of Regulations, title 11, sections 999.224-999.229, as added and amended by the test claim statutes and regulations, constitute a state-mandated program on city and county law enforcement agencies that employ peace officers (other than probation officers and officers in a custodial setting) who perform the requirements of the test claim statute and regulations in their own jurisdictions, and on cities and counties that contract *for* officers from other city or county reporting agencies in order to carry out their basic and essential function of providing police protection services in their own jurisdictions.

3. The activities mandated by Government Code section 12525.5, as added and amended by Statutes 2015, chapter 466 and Statutes 2017, chapter 328, and California Code of Regulations, title 11, sections 999-224-999.229 (Register 2017, No. 46) constitute a new program or higher level of service.

State mandate reimbursement is not required for any and all costs that might be incurred by local government as an incident of a change in law or regulation. Alleged costs must be *mandated by the state*, and must constitute a *new program or higher level of service*, within the meaning of article XIII B, section 6. The California Supreme Court explained in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46:

Looking at the language of section 6 then, it seems clear that by itself the term “higher level of service” is meaningless. It must be read in conjunction with the predecessor phrase “new program” to give it meaning. Thus read, 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.” But the term “program” itself is not defined in article XIII B. What programs then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term – programs that carry out the governmental function of providing services to the public, or laws which, to implement a state

¹⁹⁷ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 888.

policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.¹⁹⁸

Here, the activities mandated by the state are new. Prior law prohibited peace officers from engaging in racial profiling;¹⁹⁹ required every law enforcement officer in the state to participate in racial profiling training approved by POST;²⁰⁰ required submission of certain criminal statistics requested by the Attorney General, including in some cases, the person's age, gender, race, and ethnic background;²⁰¹ and required the Legislative Analyst's Office to conduct a study of the racial profiling data that was voluntarily collected by some law enforcement agencies. However, prior law did not require the collection and reporting of the specific stop data or the manner of electronic reporting mandated by the test claim statutes and regulations.²⁰² And, though some local agencies were voluntarily collecting limited data on traffic stops before the enactment of the test claim statute, they were not mandated by state law to do so. The claimant describes its prior stop data collection activities as follows:

[T]he Department already collected data on approximately ten elements related to a traffic stop -primarily on paper forms prior to AB 953 and Government Code it enacted that produced the alleged mandate 12525.5 (a) (1). SDPD's collection of data could be accomplished in a matter of seconds by sworn officers in the field and later entered by data entry personnel without significantly increasing out of service time for sworn officers. Prior to AB 953, SDPD officers could also use their mobile computer to enter stop data, but since SDPD collected very limited stop data elements it could be collected and entered almost instantaneously. This SDPD practice was not mandated by any local, state or federal statutes, and conducted voluntarily by the Department.²⁰³

Government Code section 17565 states "[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." No prior state law required local agencies to collect and submit an additional report on racial and identity profiling data for all stops made by their peace officers. Thus, the mandated activities with respect to collecting and reporting stop data to the DOJ are new.

In addition, the activities mandated by Government Code section 12525.5 and California Code of Regulations, title 11, sections 999.224- 999.229, as added or amended by the test claim statutes and regulations, are unique to government as by the plain language of the statutes and regulations the requirements are only applicable to governmental entities. Moreover, the activities provide a peculiarly governmental service to the public – police protection is one of the most essential and

¹⁹⁸ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56, emphasis added.

¹⁹⁹ Penal Code section 13519.4(e) (Stats. 2000, ch. 684).

²⁰⁰ Penal Code section 13519.4(f)(h) (Stats. 2000, ch. 684).

²⁰¹ Penal Code sections 13014 (Stats., ch. 1992, ch. 1338), 13023 (Stats. 1989, ch. 1172).

²⁰² Penal Code section 13519.4(j) (Stats. 2000, ch. 684).

²⁰³ Exhibit A, Test Claim, page 10.

basic functions of local government.²⁰⁴ The legislative history of statutes 2015, chapter 466 indicated that by enacting this statute the Legislature “seeks to facilitate the development of evidence-based policing by establishing a system of collecting and reporting information on law enforcement stops”²⁰⁵ and intends that the activities required “will help eliminate the harmful and unjust practice of racial and identity profiling, and improve the relationship between law enforcement and the communities they serve.”²⁰⁶

Accordingly, Government Code section 12525.5, as added and amended by the test claim statutes, and California Code of Regulations, title 11, sections 999.224- 999.229 impose a new program or higher level of service.

4. Government Code section 12525.5, as added and amended by Statutes 2015, chapter 466 and Statutes 2017, chapter 328, and California Code of Regulations, title 11, sections 999.224- 999.229 (Register 2017, No. 46) impose increased costs mandated by the state for counties and cities within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

For the mandated activities to constitute reimbursable state-mandated activities under article XIII B, section 6 of the California Constitution, they 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.

Here, the claimant alleges that it has incurred increased costs of \$97,367.95 to comply with the mandate in fiscal year 2017-2018.²⁰⁷ This amount includes costs for initial training, information technology staff costs for software update and testing, labor costs for stop data collection, and program manager labor costs.²⁰⁸ The claimant supports these assertions with a declaration from Jeffrey Jordon, Lieutenant for the City of San Diego Police Department.²⁰⁹ The claimant identifies the following actual costs incurred in fiscal year 2017-2018 with respect to stop data collection and reporting:²¹⁰

²⁰⁴ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

²⁰⁵ Exhibit A, Test Claim, page 56 (Senate Committee on Appropriations Analysis of AB 953 (2015-2016 Reg. Sess.), as amended August 27, 2015).

²⁰⁶ Exhibit I, Senate Committee on Public Safety Analysis of AB 953, (2015-2016 Reg. Sess.), as amended June 30, 2015, page 7.

²⁰⁷ Exhibit A, Test Claim, page 14.

²⁰⁸ Exhibit A, Test Claim, pages 11-14.

²⁰⁹ Exhibit A, Test Claim, pages 20-21 (Declaration of Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, July 30, 2019).

²¹⁰ Exhibit A, Test Claim, page 20 (Declaration of Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, July 30, 2019).

FY2017-2018 is the fiscal year the alleged mandate in GC 12525.5(a)(1) was implemented.

Activity	Date(s) Performed	Description	Cost
1) Initial Training	6/15/2018-6/26/2018	Online PowerPoint	\$56,476.35
2) IT Activity	6/20/2018-6/27/2018	Software Update/Testing	\$5,754.50
3) Data Collection	6/27/2018-6/30/2018	Officers Collecting Stop Data	\$10,048.70
4) Program Manager	6/15/2018-6/30/2018	Implement Training	\$25,088.40
Total			\$97,367.95

The total costs alleged for the 2018-2019 fiscal year, and supported by the Declaration of Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, amounted to \$871,675.56, including the \$744,005.98 in labor costs for stop data collection, \$62,080.60 in supervisor training costs, \$40,500.58 in information technology staff costs for DOJ compliance and reporting, and \$ 25,088.40 in program manager labor costs.²¹¹

The claimant also estimated the statewide cost to implement the mandated activities at \$18,000,000 for fiscal year 2018-2019.²¹²

Finance argues that costs for the training provided by the claimant's police department to its sworn personnel in 2017-2018 and 2018-2019 "was not required under the relevant statutes, and the associated costs are therefore not reimbursable."²¹³ According to Finance, the police department made a discretionary decision to provide training, and should therefore absorb the associated costs.²¹⁴ As indicated earlier in this Decision, training is not required by the plain language of the Government Code section 12525.5 or California Code of Regulations, title 11, sections 999.224- 999.229, as added or amended by the test claim statutes and regulations. However, training costs may be proposed by the claimant for consideration in the Parameters and Guidelines as a reasonably necessary activity. Even without the training costs, the record contains substantial evidence, which has not been disputed, that the claimant's costs to comply with the mandate in fiscal year 2017-2018 exceeded \$1,000.

Additionally, no law or facts in the record support a finding that the exceptions specified in Government Code section 17556 apply to this claim. There is, for example, no law or evidence in the record that additional funds have been made available for the new state-mandated activities, or that there is any fee authority specifically intended to pay the costs of the alleged mandate.²¹⁵ Although claimant noted that "[t]here could be *potentially* some grants and funding sources to partially pay for the mandated regulations associated with AB 953 and the DOJ has

²¹¹ Exhibit A, Test Claim, pages 15-16 and page 20 (Declaration of Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, July 30, 2019).

²¹² Exhibit A, Test Claim, pages 3, 16-17.

²¹³ Exhibit B, Finance's Comments on the Test Claim, page 2.

²¹⁴ Exhibit B, Finance's Comments on the Test Claim, page 2.

²¹⁵ See Government Code section 17556(d-e).

spoken to SDPD about limited grant monies to assist purchasing equipment to facilitate data collection,” the claimant states that it “is not aware of any *current* State, Federal, or other non-local agency funds to pay for its substantial costs already incurred and those anticipated going forward from the alleged statutory mandate.”²¹⁶

Based on the foregoing, the Commission finds that Government Code section 12525.5, as added and amended by Statutes 2015, chapter 466 and Statutes 2017, chapter 328 and California Code of Regulations, title 11, sections 999.224- 999.229 (Register 2017, No. 46), impose increased costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514.

V. Conclusion

Based on the forgoing analysis, the Commission partially approves this Test Claim, with a reimbursement period beginning November 7, 2017, and finds that Government Code section 12525.5, as added and amended by Statutes 2015, chapter 466 and Statutes 2017, chapter 328, and California Code of Regulations, title 11, sections 999.224- 999.229 (Register 2017, No. 46), constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution *only* on city and county law enforcement agencies that employ peace officers (other than probation officers and officers in a custodial setting) to perform the requirements of the test claim statute and regulations for stops within their own jurisdictions, and city and county law enforcement agencies that contract for officers from other cities or counties in order to carry out their basic and essential function of providing police protection services in their jurisdictions, for the following activities:

1. Identification of the peace officers required to report stops, and maintenance of a system to match individual officers to their Officer I.D. number
 - a. On January 1 of each year until the agency begins reporting data to the DOJ, each reporting agency shall count the number of peace officers it employs who are required to report stops to determine the date that agency must start collecting stop data and reporting to the DOJ pursuant to Government Code section 12525.5(a)(1)(2). (Cal. Code Regs, tit. 11, § 999.227(a)(8) [Register 2017, No. 46].)
 - b. Reporting agencies shall create the Officer’s I.D. Number for each officer required to report stops (Cal. Code Regs, tit. 11, § 999.227(a)(11) [Register 2017, No. 46].)
 - c. Reporting agencies shall maintain a system to match an individual officer required to report stops to his or her Officer’s I.D. Number. (Cal. Code Regs, tit. 11, § 999.227(a)(11) [Register 2017, No. 46].)

²¹⁶ Exhibit A, Test Claim, page 17, emphasis added.

2. Collection and reporting data on all stops, as defined,²¹⁷ conducted by that agency's peace officers for the preceding calendar year in accordance with sections 999.226(a) and 999.227 of the regulations.
 - a. Begin collecting and reporting data on all stops on or before the following dates:
 - (1) An agency that employs 1,000 or more peace officers shall begin collecting data on or before July 1, 2018, and shall issue its first round of reports on or before April 1, 2019.
 - (2) An agency that employs 667 or more but less than 1,000 peace officers shall begin collecting data on or before January 1, 2019, and shall issue its first round of reports on or before April 1, 2020.
 - (3) An agency that employs 334 or more but less than 667 peace officers shall begin collecting data on or before January 1, 2021, and shall issue its first round of reports on or before April 1, 2022.
 - (4) An agency that employs one or more but less than 334 peace officers shall begin collecting data on or before January 1, 2022, and shall issue its first round of reports on or before April 1, 2023.

(Gov. Code, § 12525.5(a)(2), Stats. 2017, ch. 328).

The following are **not** reportable:

- Data elements described in section 999.226(a) for passengers in vehicles subject to a stop who have not been observed or suspected of violating the law, or who have not been subjected to the officer's actions listed in section 999.226(a)(12)(A), excluding "Vehicle impounded" and "None".²¹⁸
- Stops made during public safety mass evacuations.²¹⁹
- Stops during an active shooter incident.²²⁰
- Stops that occur during or as a result of routine security screenings required of all persons to enter a building or special event, including metal

²¹⁷ Government Code section 12525.5(g)(2) (Stats.2015, ch.466); see also, California Code of Regulations, title 11, section 999.224(a)(14) (Register 2017, No. 46), which defines a "stop" as "any detention by a peace officer of a person, or any peace officer interaction with a person in which the peace officer conducts a search, including a consensual search, of the person's body or property in the person's possession or control;" section 999.227(b) and (c) for interactions that are not reportable as "stops;" and section 999.227(d) for peace officer interactions that are reportable only if the officer takes additional specified actions.

²¹⁸ California Code of Regulations, title 11, section 999.227(b) (Register 2017, No. 46).

²¹⁹ California Code of Regulations, title 11, section 999.227(c)(1) (Register 2017, No. 46).

²²⁰ California Code of Regulations, title 11, section 999.227(c)(2) (Register 2017, No. 46).

detector screenings, including any secondary searches that result from the screening.²²¹

- The following interactions are **not** reportable unless a person is detained based upon individualized suspicion or personal characteristics, or the officer engages in the actions described in the data values in section 999.226(a)(12)(A)(1)-(22): Interactions during: traffic control of vehicles due to a traffic accident or emergency situation that requires that vehicles are stopped for public safety purposes; any type of crowd control in which pedestrians are made to remain in a location or routed to a different location for public safety purposes; interactions during which persons are detained at a residence so that the officer may check for proof of age for purposes of investigating underage drinking; and checkpoints and roadblocks in which an officer detains a person as the result of a blanket regulatory activity or neutral formula that is not based on individualized suspicion or personal characteristics.²²²
 - Interactions that take place with a person in his or her residence who is the subject of a warrant or search condition.²²³
 - Interactions that take place with a person in his or her residence who is the subject of home detention or house arrest while an officer is on home detention or house arrest assignment.²²⁴
 - Stops in a custodial setting.²²⁵
 - Stops that occur while the officer is off-duty.²²⁶
- b. The agency's peace officers shall collect the following required categories of stop data, and all applicable "data elements," "data values," and narrative explanatory fields described in section 999.226(a) for every person stopped, and in accordance with section 999.227(a)(4)-(6), (b) and (d) of the regulations, and complete all stop reports for stops made during the officer's shift by the end of the officer's shift, or if exigent circumstances preclude doing so, as soon as practicable: (Gov. Code, §12525.5(b), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, §§999.226(a), 999.227(a)(1)(2)(4)(5)(6)(9), (b) and (d) [Register 2017, No. 46].)

²²¹ California Code of Regulations, title 11, section 999.227(c)(3) (Register 2017, No. 46).

²²² California Code of Regulations, title 11, section 999.227(d)(1).

²²³ California Code of Regulations, title 11, section 999.227(d)(2) (Register 2017, No. 46).

²²⁴ California Code of Regulations, title 11, section 999.227(d)(3) (Register 2017, No. 46).

²²⁵ California Code of Regulations, title 11, section 999.225(c) (Register 2017, No. 46).

²²⁶ Exhibit I, Final Statement of Reasons, Proposed Regulations, Title 11, Sections 999.224-999.229, pages 12-13, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/stop-data-reg-fsor-revised-110817.pdf> (accessed on November 8, 2019).

- (1) “ORI number,” which is “the data element that refers to the reporting agency’s Originating Agency Identifier, a unique identification code number assigned by the Federal Bureau of Investigation.” (Cal Code Regs., tit. 11, § 999.226(a)(1) [Register 2017, No. 46].)
- (2) “Date, Time, and Duration of Stop.” (Gov. Code, §12525.5(b)(1), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(2) [Register 2017, No. 46].)
- (3) “Location of Stop.” (Gov. Code, §12525.5(b)(1), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(3) [Register 2017, No. 46].)
- (4) “Perceived Race or Ethnicity of Person Stopped.” (Gov. Code, § 12525.5(b)(6), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(4) [Register 2017, No. 46].)
- (5) “Perceived Gender of Person Stopped.” (Gov. Code, §12525.5(b)(6), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(5) [Register 2017, No. 46].)
- (6) “Person Stopped Perceived to be LGBT.” (Cal Code Regs., tit. 11, § 999.226(a)(6) [Register 2017, No. 46].)
- (7) “Perceived Age of Person Stopped.” (Gov. Code, §12525.5(b)(6), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(7) [Register 2017, No. 46].)
- (8) “Person Stopped Has Limited or No English Fluency.” (Cal Code Regs., tit. 11, § 999.226(a)(8) [Register 2017, No. 46].)
- (9) “Perceived or Known Disability of Person Stopped.” (Cal Code Regs., tit. 11, § 999.226(a)(9) [Register 2017, No. 46].)
- (10) “Reason for Stop.” (Gov. Code, §12525.5(b)(2), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(10) [Register 2017, No. 46].)
- (11) “Stop Made in Response to a Call for Service.” (Cal Code Regs., tit. 11, § 999.226(a)(11) [Register 2017, No. 46].)
- (12) “Actions Taken by Officer During Stop.” (Gov. Code, §12525.5(b)(7), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(12) [Register 2017, No. 46].)
- (13) “Result of Stop.” (Gov. Code, §12525.5(b)(3)(4)(5), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(13) [Register 2017, No. 46].)
- (14) “Officer’s Identification (I.D.) Number.” (Cal Code Regs., tit. 11, § 999.226(a)(14) [Register 2017, No. 46].)
- (15) “Officer’s Years of Experience.” (Cal Code Regs., tit. 11, § 999.226(a)(15) [Register 2017, No. 46].)

- (16) “Type of Assignment of Officer.” (Cal Code Regs., tit. 11, § 999.226(a)(16) [Register 2017, No. 46].)
- c. The following additional data values shall be reported for stops (as defined in section 999.227(e)(3) of the regulations) at a K-12 school: the name of the school where the stop took place; indicate if the stop is of a student, whether there is a perceived disability related to hyperactivity or impulsive behavior of the student, the possible conduct warranting discipline under the Education Code, whether there was an admission or written statement obtained from the student, whether the student is suspected of violating school policy, and whether the student was referred to a school administrator or counselor. (Cal Code Regs., tit. 11, § 999.227(e)(3)(4) [Register 2017, No. 46].)
3. Electronic submission of data to DOJ and retention of stop data collected
- a. Submit all required stop data to the system developed by the DOJ in electronic format that complies with the DOJ interface specifications via one of the three approved submission methods: (1) a web-browser based application developed by the DOJ; (2) a system-to-system web service; and (3) a secured file transfer protocol. (Cal Code Regs., tit. 11, § 999.228(a), (b) [Register 2017, No. 46].)
- b. Authorize and remove users to the system as necessary. Automated systems handling stop data and the information derived therein shall be secure from unauthorized access, alteration, deletion or release. (Cal Code Regs., tit. 11, § 999.228(e) [Register 2017, No. 46].)
- c. Each reporting agency, *except* those agencies that report stop data via the DOJ web-browser based application, shall keep a record of its source data for three years and to make it available for inspection by DOJ. (Cal Code Regs., tit. 11, § 999.228(h) [Register 2017, No. 46].)
4. Audits and validation of data collected
- a. Ensure that the technical specifications for data values are consistent with the regulations and follow the data dictionary prepared by DOJ. (Cal Code Regs., tit. 11, § 999.224(a)(5) [Register 2017, No. 46].)
- b. Ensure that all data elements, data values, and narrative explanatory fields conform to the regulations and correct any errors in the data submission process through the DOJ’s error resolution process. (Cal Code Regs., tit. 11, § 999.229(b) [Register 2017, No. 46].)
- c. Agencies submitting records via the system-to-system web service or the secure file transfer protocol shall include a unique stop record number for each stop, so that DOJ can use the record number to relay information on errors when necessary. (Cal Code Regs., tit. 11, § 999.229(c) [Register 2017, No. 46].)
5. For stop data collected, ensure that the name, address, social security number, or other unique personally identifiable information of the individual stopped, searched, or subjected to property seizure, and the badge number or other unique

identifying information of the peace officer involved, is not transmitted to the Attorney General in an open text field. (Gov. Code, § 12525.5, Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.228(d) [Register 2017, No. 46].)

The test claim statutes and regulations do not impose a state-mandated program for K-12 school districts or community college districts and, thus, these entities are not eligible for reimbursement. In addition, the test claim statutes and regulations do not impose a state-mandated program when a city or county assigns their peace officer employees *out* to work for other government or private entities based on a contract or memorandum of understanding. There is no requirement in law that a city or county contract out their law enforcement officers and any costs resulting from the discretionary decision to do so are not mandated by the State.

Moreover, Penal Code sections 13012 and 13519.4, as amended by Statutes 2015, chapter 466 and Statutes 2017, chapter 328, do not impose any activities on local government, and thus, do not constitute a reimbursable state-mandated program within the meaning of article XIII B, Section 6 of the California Constitution.

All other activities and costs alleged in the Test Claim are not mandated by the plain language of the test claim statute, but may be proposed by claimant for inclusion in the Parameters and Guidelines, and must be supported with evidence, pursuant to Government Code section 17557(a), and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

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 22, 2020, I served the:

- **Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Hearing issued May 22, 2020**
- **Decision adopted May 22, 2020**

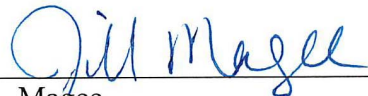
Racial and Identity Profiling, 18-TC-02

Government Code Section 12525.5 and Penal Code Sections 13012 and 13519.4; Statutes 2015, Chapter 466 (AB 953); Statutes 2017, Chapter 328 (AB 1518); California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228, and 999.229, Register 2017, No. 46, effective November 7, 2017¹

City of San Diego, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 22, 2020 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
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¹ Although the claimant incorrectly pled Notice Register Number 2016, 50-2 regarding changes to California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228, and 999.229 with a file and effective date of November 7, 2017, the Commission can take judicial notice of Register 2017, No. 46. In this case, Westlaw incorrectly indicates in the history of each of these sections that the update appears in Register 2017, No. 45 when in fact the adoption of these changes appears in Register 2017, No. 46.

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/22/20

Claim Number: 18-TC-02

Matter: Racial and Identity Profiling

Claimant: City of San Diego

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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Secretary of State

Tim Wyman

Presidential Primary 2020 Advisory #01
Return Envelope | Declaration Template
November 19, 2019

This advisory replaces the Presidential Primary Advisory #01 issued on August 27, 2019. Requirements for 2020 Presidential Primary ballot materials are explained in [WAC 434-219-155](#). The County Auditor prints the voter declaration, two political party declarations, and a signature area on return ballot envelopes. For consistency statewide, the envelopes must be printed in the same format and color prescribed by the Secretary of State. (See envelope templates)

Design and Dimensions

The official template for the ballot declaration face is designed for the standard envelope size (9x5 in.) most commonly used by counties. To meet other envelope shapes and sizes, county printers may adjust the design elements, but with limitations.

Adjustments

If adjustments to the template are necessary, the County Auditor may:

- Increase size of the font and party declaration boxes.
- Resize the margins.
- Rotate the design by 180°.
- Print the standard ballot declaration so, when sealed, the envelope flap partially covers the text.
- Reverse the design from right-hand address to left-hand address.
- Adjust areas for the voter and witness signatures.
- Remove optional shading.
- Create more "white space."

Limitations

Unless prior approval is obtained from the OSOS, the County Auditor may **not**:

- Change the format of the declarations.

- Rearrange the order of the declarations.
- Modify wording of the declarations.
- Reduce size of the font or party declaration boxes.
- Eliminate the numbered steps.
- Eliminate the use of colored ink as formatted.

The OSOS will consider exceptions to the template on a case-by-case basis. To request permission to modify the template, please provide a .pdf of your design, and the reasons for the necessary changes to [CTSupport](#). Your request will be considered as quickly as possible.

Mail piece approval.

Every county must use one of the QBRM (Business Reply Mail) accounts to provide return postage on return ballot envelopes. ([WAC 434-230-135](#))

The United States Postal Service has regulations in place specifically for election mail envelopes, such as placement of the elections [logo](#) and reserving sufficient space for cancellation marks. For QBRM, the USPS requires preapproval of envelope designs by submitting 10 sample envelopes to a Mail Design Analyst (MDA). Work with your printer to design and print the sample envelopes.

Consult with a Postal Service Mail piece Design Analyst (MDA) to determine if your envelope design meets official election mail requirements and the QBRM requirements. You can send your request or questions to ElectionMailProgramManager@usps.gov. Call the MDA Center at 855-593-6093 for more information. If you need assistance, Jonathan Cahoon, USPS, is available to assist you through the process. Jonathan.e.cahoon@usps.gov or (206) 768-7923.

Best Practices

The following practices have been suggested by both the OSOS and county election administrators.

Take a fresh look at other envelopes.

Does your county intend to use its usual outer mail envelopes and security envelopes/sleeves for the Presidential Primary? If so, be sure to **remove** information that doesn't apply. For example, a graphic regarding the Public Disclosure Commission is irrelevant for this election.

Label each item in the ballot packet.

The instructional insert designed by the OSOS contains numbered steps that correspond to numbers on the return envelope. It refers voters to the return envelope and security envelope/sleeve.

Help voters understand how to cast their ballot by identifying each item in the packet. For example, clearly label envelopes as “Return” and “Security.” (Ideally, the labels are the same typeface and font size.)

Different envelopes for different elections.

Some voters will be eligible to participate in overlapping elections in 2020. During the overlap, the County Auditor will issue and process ballots for two different election types.

Consider using a different color for Presidential Primary return envelopes to distinguish them from other spring elections. Sorting the envelopes may be easier for election workers; casting the correct ballots may be easier for voters.

Red and blue are for political parties.

Consider using the designated colors blue (Democratic Party) and red (Republican Party) only when identifying party choices or party information.

Off-the-shelf ink colors commonly used by printers:

- Democratic = [Reflex Blue C](#)
- Republican = [185 Red C](#)

For questions about administering Washington State’s 2020 Presidential Primary, please see our resources for [election administrators](#), or contact the Certification and Training Program of the Office of the Secretary of State.

- 1 Voter's Declaration:** I do solemnly swear or affirm under penalty of perjury that I am: a citizen of the United States; a resident of the state of Washington and meet the requirements for voting mandated by state law; at least 18 years old on election day; voting only once in this election; not under the authority of the Department of Corrections for a Washington felony conviction; not disqualified from voting due to a court order; and not voting in any other jurisdiction in the United States for this election. It is illegal to forge a signature or cast another person's ballot. Attempting to vote when not qualified, attempting to vote more than once, or falsely signing this declaration is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both.
-

2 Mark one party declaration box (required)

☐

Democratic Party

I declare that my party preference is the Democratic Party and I will not participate in the nomination process of any other political party for the 2020 Presidential election.

☐

Republican Party

I declare that I am a Republican and I have not participated and will not participate in the 2020 precinct caucus or convention system of any other party.

3 Sign & date



signature of voter (required)

date

phone (optional)

If you cannot sign make a mark and have two witnesses sign below.

Power of Attorney cannot be used to sign for someone else.

witness 1 signature

witness 2 signature

- 1 Voter's Declaration:** I do solemnly swear or affirm under penalty of perjury that I am: a citizen of the United States; a resident of the state of Washington and meet the requirements for voting mandated by state law; at least 18 years old on election day; voting only once in this election; not under the authority of the Department of Corrections for a Washington felony conviction; not disqualified from voting due to a court order; and not voting in any other jurisdiction in the United States for this election. It is illegal to forge a signature or cast another person's ballot. Attempting to vote when not qualified, attempting to vote more than once, or falsely signing this declaration is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both.
-

2 Mark one party declaration box (required)

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Democratic Party

I declare that my party preference is the Democratic Party and I will not participate in the nomination process of any other political party for the 2020 Presidential election.

☐

Republican Party

I declare that I am a Republican and I have not participated and will not participate in the 2020 precinct caucus or convention system of any other party.

3 Sign & date



signature of voter *(required)*

date

phone *(optional)*

If you cannot sign make a mark and have two witnesses sign below.
Power of Attorney cannot be used to sign for someone else.

witness 1 signature

witness 2 signature

- 1 Voter's Declaration:** I do solemnly swear or affirm under penalty of perjury that I am: a citizen of the United States; a resident of the state of Washington and meet the requirements for voting mandated by state law; at least 18 years old on election day; voting only once in this election; not under the authority of the Department of Corrections for a Washington felony conviction; not disqualified from voting due to a court order; and not voting in any other jurisdiction in the United States for this election. It is illegal to forge a signature or cast another person's ballot. Attempting to vote when not qualified, attempting to vote more than once, or falsely signing this declaration is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both.

Declaración del Votante: Yo solemnemente juro o afirmo bajo penalidad de perjurio que: soy ciudadano de los Estados Unidos; soy residente del estado de Washington y cumplo con los requisitos para votar exigidos por ley estatal; tendré por lo menos 18 años de edad el día de las elecciones; estoy votando una sola vez en estas elecciones; no estoy bajo la autoridad del Departamento Correccional por una condena de un delito grave en el estado de Washington; no estoy descalificado a votar debido a una orden judicial; y no estoy votando en otra jurisdicción de los Estados Unidos en estas elecciones. Es ilegal falsificar la firma o emitir una boleta de otra persona. Intentar votar cuando no es elegible, intentar votar más de una vez, o falsificar la firma en esta declaración es un delito grave castigable por un máximo de cinco años de encarcelamiento, un máximo de \$10,000 de multa, o ambos.

- 2 Mark one party declaration box (required)**
Selecione una casilla de la declaración del partido (requerido)

☐ **Democratic Party Partido Demócrata**
I declare that my party preference is the Democratic Party and I will not participate in the nomination process of any other political party for the 2020 Presidential election.

Declaro que mi preferencia de partido político es el Partido Demócrata y que no participaré en el proceso de nominación de ningún otro partido para las Elecciones Presidenciales de 2020.

☐ **Republican Party Partido Republicano**
I declare that I am a Republican and I have not participated and will not participate in the 2020 precinct caucus or convention system of any other party.

Declaro que soy un Republicano y que no he participado ni participaré en el caucus del recinto de 2020 o en el sistema de convenciones de ningún otro partido.

- 3 Sign & date Firma y fecha**



signature of voter (required)
firma del votante (requerida)

date
fecha

phone (optional)
teléfono (opcional)

If you cannot sign, try to make a mark in the signature area. Have two witnesses sign below.

Si no puede firmar, intente hacer una marca en el área de la firma. Dos testigos deben firmar a continuación.

Power of Attorney cannot be used to sign for someone else.
El poder notarial no se puede usar para firmar por otra persona.

witness 1 signature firma de testigo 1	witness 2 signature firma de testigo 2

Tools

- Click-N-Ship
- Stamps & Supplies
- Calculate a Price
- Schedule a Pickup
- Look Up a ZIP Code™
- Find a USPS Location

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 - Label Broker
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 - Priority Mail Express
 - Priority Mail
 - First-Class Mail
 - Military & Diplomatic Mail
 - Money Orders



- Skip Track and Manage Links Track & Manage

Tools

- Tracking
- Informed Delivery
- Intercept a Package
- Schedule a Redelivery
- Hold Mail
- Change of Address
- Rent or Renew PO Box

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- Managing Mail Basics
- Forwarding Mail
- Informed Delivery
- Redirecting a Package
- PO Boxes
- Mailbox Guidelines
- Mail for the Deceased



- Skip Postal Store Links Postal Store

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- Shipping Supplies
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Learn About

- Money Orders
- Returns & Exchanges



- Skip Business Links Business

Tools

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- Every Door Direct Mail



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 - Political Mail
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 - Informed Delivery Marketing
 - Product Samples
- Postage Options
 - Verifying Postage
- Returns Services
- Label Broker
- International Business Shipping
- Managing Business Mail
- Web Tools (APIs)
- Prices
- Skip International Links International

Tools

- Calculate International Prices
- Print International Labels



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FAQs Home

How can we help?

Close

Search for a topic

SearchSearchClose

Search for a topic

Loading

Search for a topic

End of Search Dialog



1.Business

Share via email

Business Reply Mail

Broad information on the Business Reply Mail option, its purpose, and how businesses can apply for the option.

Jul 15, 2020•FAQ

Information

Article Number

000003004

Customer Information

What is Business Reply Mail?	Getting Started with Business Reply Mail	Why do I need a unique ZIP+4 Code for my Business Reply Mail?
What Fees are Associated with Business Reply Mail (BRM)	Comparison of Types of Business Reply Mail	What Payment Options are Available for Business Reply Mail Services and Fees?

Business Reply Mail Resources and Additional Information		
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What is Business Reply Mail?

Business Reply Mail is a service provided by the United States Postal Service® that enables a sender (a permit holder) to provide a recipient with a convenient, prepaid method for replying to a mailing. Providing a prepaid reply envelope or postcard may increase the chances of receiving a reply from customers or potential customers.

Business Reply Mail is frequently used by:

- Direct marketers seeking to encourage orders
- Researchers seeking survey response data
- Publishers soliciting subscriptions
- Businesses collecting receipts or documents from employees
- BRM Pieces can include: Cards, Envelopes, Self-mailers, Flats, Labels

Business Reply Mail is available as:

- Basic Business Reply Mail (BRM) - Suitable if fewer than 925 returned pieces are expected in one year.
- High-Volume BRM - Suggested if more than 925 responses a year are expected.

You can also [compare all Business Reply Mail options](#).

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Getting Started with Business Reply Mail

- **What is a Business Reply Mail permit?**

A permit entitles a sender to distribute an unlimited number of Business Reply Mail (BRM) mailpieces for return to any Post Office™ in the United States and its territories. BRM permit holders do not prepay postage for the pieces distributed to customers. Permit holders agree to pay an annual permit fee and a First-Class Mail® or Priority Mail® per-piece charge on returned mailpieces.

- **Why do I need a Business Reply Mail permit?**

You must have a valid Business Reply Mail (BRM) permit before you can start using a BRM mailpiece and receive BRM mail.

- **What are the qualifications to begin the Business Reply Mail (BRM) program?**

No qualifications are necessary. For more details, please visit "[Advertise with Mail](#)" > "Extras & Add-Ons" at <https://www.usps.com/business/customized-direct-mail.htm>.

- **How do I obtain a Business Reply Mail permit and number?**

You must have a valid Business Reply Mail permit before you can mail. You may apply for a permit at any time by filling out *PS Form 3615, Mailing Permit Application and Customer Profile*.

Note: [PS Form 3615](#) is a simple form requiring you to know the company name, address where the mail will be returned, contact person, and telephone number. The forms are available at your local Post Office, Mailing Requirements Office, or Business Mail Entry Unit (BMEU).

A Business Reply Mail permit number is issued at the Post Office where the PS Form 3615 is filed (generally where the mail is returned) and requires a fee. The fee is paid annually by cash, check or money order.

Notes:

- Checks must be made out to the U.S. Postal Service® or Postmaster.
- When filing the *PS Form 3615*, you must present 2 different form of [Acceptable Forms of Identification](#).
- For Qualified Business Reply Mail approval and/or ZIP+4 Code assignment: complete a printed *PS Form 6805* and bring to your local BMEU or Post Office along with 2 forms of [Acceptable Forms of Identification](#).

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Why do I need a unique ZIP+4 Code for my Business Reply Mail?

The ZIP+4 Code™ assigned by the Postal Service™ is unique for the category of Reply Mail you use. This unique ZIP+4 Code enables Reply Mail to be sorted on postal automated equipment by specific size and weight (i.e., cards, 1 oz. letters, 2 oz. letters, etc.).

How do I get a unique ZIP+4® Code?

- Register your company and authorized users using Customer Registration.
- Select the Add ZIP+4 Code option within the online Business Reply Mail tool.
- Select the media type that you intend to use.

- Provide complete delivery information for the BRM mailpieces that will be returned.
- Submit your request.
- The standardized delivery information (with the assigned unique ZIP+4) will be sent to you for use on your mail piece.

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What Fees are Associated with Business Reply Mail (BRM)?

Quarterly Fees

- Can be paid for any three consecutive calendar months.
- Eligible for High-Volume Qualified Business Reply Mail (QBRM) fees and per piece fees only for the period they pay the quarterly fee.
- Cannot be paid or renewed retroactively to receive a lower per piece fee on mail already paid for and delivered.

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Comparison of Types of Business Reply Mail

Business Reply Mail Options	Best For	Features	Fee
Basic Business Reply Mail (BRM)	Fewer than 925 returned pieces expected annually.	<ul style="list-style-type: none"> • Postage-paid, pre-printed First-Class Mail® and Priority Mail® materials. • Pay only for responses received. 	Annual Permit Fee*
High Volume Business Reply Mail (BRM)	More than 925 returned pieces expected annually.	<ul style="list-style-type: none"> • Discounted postage rates. • Postage-paid, pre-printed First-Class Mail and Priority Mail materials. • Pay only for responses received. • Advanced Deposit Account prepays postage. 	Annual Permit Fee* Annual Account Maintenance Fee
Basic Qualified Business Reply Mail (QBRM)	More than 875 responses expected a year	<ul style="list-style-type: none"> • Discounted postage rates. 	Annual Account Maintenance Fee

	with automation-compatible mailpieces.	<ul style="list-style-type: none"> • ZIP + 4® Code and barcode for efficient sorting. • Postage-paid, pre-printed First-Class Mail materials. • Advanced Deposit Account prepays postage. 	
High-Volume Qualified Business Reply Mail (QBRM)	More than 42,981 replies expected in a quarter with automation-compatible mailpieces.	<ul style="list-style-type: none"> • One of the lowest per-piece fees available. • Discounted postage rates. • ZIP + 4 Code and barcode for efficient sorting. • Postage-paid, pre-printed First-Class Mail materials. • Advanced Deposit Account prepays postage. 	Annual Account Maintenance Fee Processing (or Quarterly) Fee (paid quarterly)
Courtesy Reply Mail (CRM)	Guaranteed responses like bills or invoice payments.	<ul style="list-style-type: none"> • Customer pays postage. • Pre-addressed, pre-barcoded materials ensure accurate addressing. • Mailers are secure. • No permit required. 	None
Metered Reply Mail	Small businesses with limited reply needs can prepay return postage on single pieces.	<ul style="list-style-type: none"> • Use your own reply materials. • Valid on Priority Mail Express®, Priority Mail®, and First-Class Mail services, as well as Media Mail® and Library Mail. • Apply stamp to labels or envelopes. • Facing Identification Marks and barcodes provided at no charge. 	None

*The annual permit fee and other annual or quarterly fees for each permit account type are non-refundable. [Shipping Products Permit](#) is another permit option which requires no application. Fees vary between letters, flats, and parcels.

Actual Fee costs can be located at: <https://www.usps.com/business/return-services.htm>. More information can be found at "[Fees Associated with Permit Imprint and Return Services](#)"

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What Payment Options are Available for Business Reply Mail Services and Fees?

You may pay for [applicable fees](#) (annual permit application fee, annual Business Reply Mail account maintenance fee for advance deposit, and/or quarterly fee) from within the online BRM tool with:

- A credit card.
- A previously established **Enterprise Payment System (EPS)** account; (formerly Centralized Account Processing System (CAPS) Account).
- **Link to Industry Alert:** [Centralized Accounting Processing System \(CAPS\) Migration to Enterprise Payment System \(EPS\) - Biweekly Industry Call](#)

You have three options to pay for returned Business Reply Mail pieces:

- Payment upon delivery; take no special steps prior to distributing business reply mail (other than obtaining your BRM permit), and the Postal Service will ask for payment upon delivery, before turning the pieces over to you. Payment can be made by check, cash, or meter strip.
- Advance Deposit Trust Account; establish an Advance Deposit Trust Account with your local delivery post office. There is no cost or fee to establish an Advance Deposit Trust Account. The Postal Service will automatically deduct the charges for all incoming postage due mail from this account, including, but not limited to, all BRM and Address Change notifications. The deductions to this account are made prior to delivery.
- Dedicated BRM advance deposit account; this account is similar to a postage due account. This allows for separate accounting of BRM and other postage due charges. You may maintain both a BRM advance deposit account and a postage due account. This type of account is required for Qualified Business Reply Mail (QBRM) qualification.

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Business Reply Mail Resources and Contact Information

The proper group to respond to these request is the Mailing Requirements Department. You may obtain the phone number for your local Mailing Requirements office through the [Mailing & Shipping Solutions Center](#).

- **Where do I go for more information about Business Reply Mail?**

For additional information and assistance regarding Reply Mail, visit "[Advertise with Mail](#)" > "Extras and Add-Ons" on [USPS.com](#).

- **Who do I contact if I need help with my Business Reply Mail?**

Contact your local [Mailpiece Design Analyst](#) (MDA). Approval from an MDA is not a requirement for designing your Business Reply Mail mailpiece unless the customer wants to apply for Qualified Business Reply Mail. However, if you would like to consult with an MDA, they are available to help. Customers can also consult with their local Post Office or Business Mail Entry office.

- **Who do I contact with my ZIP Code™ request for use with Business Reply Mail?**

Note: In order to receive volume discounts, you may be required to use a ZIP+4 Code™ on your mailings.

You may obtain the phone number for your local Mailing Requirements office through the [Mailing & Shipping Solutions Center](#).

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Additional Information

- **Deciding against designing a Business Reply mailpiece**

If you decide not to use the Business Reply mailpiece you designed, your mailpiece will be saved within your mailpiece library for your convenience. If you would like to discard it, simply delete it from your mailpiece library.

- **Business Reply Mail did not pass automation**

If you are trying to qualify for the high-volume automation discount and are concerned that your mailpieces may not comply with automation requirements, please contact your Mailpiece Design Analyst (MDA). Your MDA will assist you to assure that you will qualify for the best possible prices.

If you are notified that your mailpiece does not pass through the automation equipment, you will be required to pay the high volume Business Reply Mail price.

- **Using Business Reply Mail from Canada**

You may use Business Reply Mail from Canada. However, the mailpiece needs to be distributed and delivered within the United States.

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No Labels

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Additional Info (Attachment)

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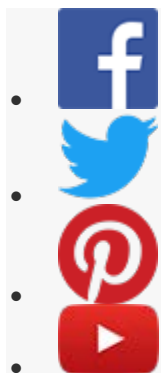
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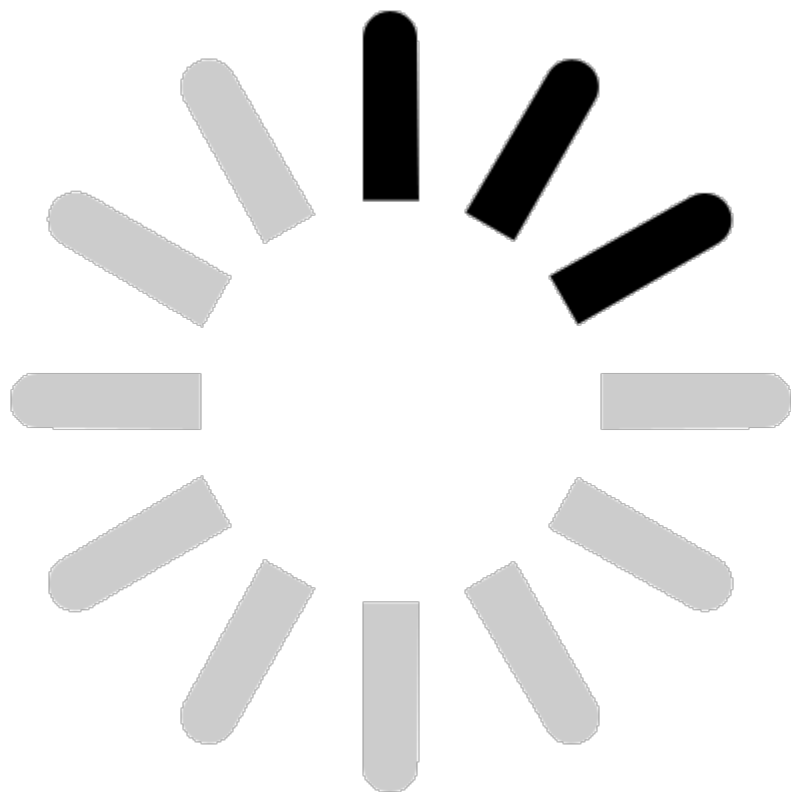
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Business Reply Mail

Payment Options for Returned Business Reply Mail

You have three options to pay for returned Business Reply Mail pieces:

- **Postage Due Account;** establish a Postage Due Account with your local delivery Post Office. There is no cost or fee to establish a Postage Due Account. The Postal Service will automatically deduct the charges for all incoming postage due mail from this account, including, but not limited to, all BRM and Address Change notifications. The deductions to this account are made automatically prior to delivery.
- **Dedicated BRM advance deposit account;** this account is similar to a postage due account, however, the Postal Service will only deduct BRM charges from this account. This allows for separate accounting of BRM and other postage due charges. You may maintain both a BRM

advance deposit account and a postage due account. The Postal Service requires an additional annual fee to establish and maintain this dedicated account. This type of account is required for Qualified Business Reply Mail (QBRM) qualification.

- Payment upon delivery; take no special steps prior to distributing Business Reply Mail (other than obtaining your BRM permit), and the Postal Service will ask for payment upon delivery, before turning the pieces over to you. Payment can be made by check, cash, or meter strip.

For additional information, see Quick Service Guide 505 - Business Reply Mail [PDF](#) or [HTML](#).

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505 Return Services

Overview

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[1.0 Business Reply Mail \(BRM\)](#)

1.1 BRM Postage and Fees

1.1.1 Basic BRM

For basic BRM, a permit holder is required to pay an annual permit fee as provided under 1.2 and a per-piece fee under 1.1.7 in addition to the applicable Retail First-Class Mail (stamped for letters), First-Class Package Service — Retail, or Priority Mail postage for each returned piece. For First-Class Package Service — Retail, or Priority Mail BRM pieces exceeding 13 ounces in weight, if the zone cannot be determined from a return address or cancellation, then the permit holder is charged zone 4 postage based on the weight of the piece. See [Notice 123—Price List](#), for applicable prices and fees.

1.1.2 High-Volume BRM

In addition to the fees and applicable postage required under 1.1.1, an annual account maintenance fee under 1.1.9 is required for high-volume BRM.

1.1.3 Basic Qualified BRM (QBRM)

For basic qualified BRM, a permit holder is required to pay an account maintenance fee under 1.1.8, and a per-piece fee under 1.1.7 in addition to the applicable retail letter or card First-Class Mail (stamped letters) postage for each returned piece. An annual permit fee may also be required under 1.2.3 if the BRM permit is not used exclusively for the return of QBRM pieces. Pieces that do not meet the format requirements for QBRM cannot qualify for the QBRM per-piece fees or postage prices and are charged the high-volume BRM per-piece fees and First-Class Mail postage under 1.1.2, and are subject to an annual permit fee.

1.1.4 High-Volume Qualified BRM

In addition to the account maintenance, per-piece fees and applicable postage required under 1.1.3, a quarterly fee under 1.1.11 is required for high-volume QBRM.

1.1.5 Bulk Weight Averaged Nonletter-Size BRM

In addition to an annual permit fee (which will apply under 1.2.3 for the return of any flat-size pieces), per piece fee and the applicable Retail First-Class Mail, First-Class Package Service — Retail, or Priority Mail postage, permit holders participating in bulk weight averaged nonletter-size BRM under 1.8 must pay an annual account maintenance fee, and a monthly maintenance fee.

1.1.6 Special Standards for BRM Pieces with an Optical Disc

A letter-size BRM piece containing one standard optical disc will not be charged a nonmachinable surcharge if the piece meets the standards in 233.2.8. A flat-size BRM piece containing one standard optical disc and weighing no more than 2 ounces will be charged postage applicable for a 1-ounce First-Class Mail flat if the piece meets the standards in 233.2.8.

1.1.7 Per Piece Fees

Per piece fees listed in 1.1 are charged for each piece of returned BRM in addition to the applicable postage. Per piece fees are based on whether the permit holder qualifies as Basic, High-Volume Basic, Basic Qualified, or High-Volume Qualified BRM.

1.1.8 Payment Options for Per Piece Fees and Postage

Basic BRM permit holders may pay per piece fees and postage on returned pieces by cash or check upon delivery, or through a regular postage due account (604.6.3). High-volume BRM and QBRM permit holders must pay per piece fees and postage on returned pieces through a BRM advance deposit account.

1.1.9 Annual Account Maintenance Fee and Advance Deposit Account

A permit holder may choose to pay an annual account maintenance fee and pay postage through an advance deposit account, to qualify returned BRM pieces for the lower high-volume BRM or QBRM per piece fees. The account maintenance fee must be paid once each 12-month period at each Post Office where a permit holder holds an advance deposit account to receive BRM at a lower price. Payment of the account maintenance fee is based on the anniversary date of the initial payment. The fee may be paid in advance only for the next 12-month period and only during the last 60 days of the current 12-month period. The fee charged is that which is in effect on the date of payment. A separate advance deposit account solely for BRM is not required. An advance deposit account can be used for BRM under these conditions:

- a. For each withdrawal, only one statement is provided for each annual account maintenance fee paid.
- b. If a permit holder distributes BRM with different addresses (including Post Office box numbers) under the same permit number going to the same delivery unit and has only one business reply account, then the BRM is separated by each different address but only one statement is provided and only one annual account maintenance fee is paid.
- c. The permit holder must pay an annual account maintenance fee for each separate statement (accounting) requested. If only one annual account maintenance fee is paid, then the permit holder receives only one statement.
- d. The permit holder must maintain a sufficient balance in the BRM advance deposit account to cover postage and per piece fees for returned mailpieces. The permit holder is notified if funds are insufficient. After three calendar days, if no funds are deposited, then the BRM on hand is charged the basic BRM per piece fee and postage and charges are collected from the permit holder (e.g., in cash) prior to delivery.
- e. BRM addressed to several different firms at the same delivery unit may be delivered to an agent authorized by a valid BRM permit holder. The agent pays one annual account maintenance fee for all the firms represented by the agent in the same delivery unit. If the agent, or any of the firms represented by the agent, wants a separation of charges, then separate (additional) account maintenance fees must be paid.

1.1.10 Renewal of Annual Account Maintenance Fee

An annual renewal notice is provided to each BRM permit holder with a BRM advance deposit account. The notice and the payment for the next 12 months must be returned by the expiration date to the Post Office that holds the advance deposit account. After the expiration date, if the permit holder has not paid the annual account maintenance fee but still has a valid BRM permit, returned BRM pieces no longer qualify for the high-volume BRM or QBRM per piece fees and are charged the basic BRM per piece fees and applicable postage in 1.1.1.

1.1.11 Quarterly Fee for High-Volume QBRM

Mailers may choose to pay a quarterly fee in addition to the annual account maintenance fee. Payment of the quarterly fee entitles mailers to a lower per piece fee (the high-volume QBRM per piece fee identified in 1.1.4). The quarterly fee and annual account maintenance fee must be paid at each Post Office where mail is returned, and for each separate billing desired. Mailers are eligible for the high-volume QBRM rates and per piece fees only for the time they pay the quarterly fee (i.e., mailers can opt out of the quarterly fee and related high-volume QBRM per piece fees simply by not paying the fee for the next quarter). The quarterly fee cannot be paid or renewed retroactively to receive a lower per piece fee on pieces already paid for and delivered. The quarterly fee can be paid for any three consecutive calendar months.

1.1.12 Payment Period for Quarterly Fee

The quarterly fee must be paid in advance for at least one but no more than four quarterly periods. A quarterly period begins on either the first day of the month (if a mailer pays on or before the 15th of the month) or the first day of the following month (if a mailer pays after the 15th of the month) and continues for three consecutive calendar months. A mailer who pays the quarterly fee is entitled to the high-volume QBRM per piece fee from the date of payment (rather than the date the quarterly period begins) through the end of the quarterly period. The fee paid is that which is in effect on the date of payment.

1.2 Permits

1.2.1 Required

Any mailer who wants to distribute BRM must apply for and receive a permit. The permit number, city, and state where the permit is held must appear on all pieces of BRM.

1.2.2 Application Process

The mailer may apply for a BRM permit by submitting a completed Form 3615 to the Post Office issuing the permit and except under 1.2.3 paying the annual permit fee. Customers must provide with the completed PS Form 3615 acceptable primary and secondary forms of identification as specified under 608.10.0. If a completed Form 3615 is already on file for the mailer for other permits at that office, then the mailer must submit the annual BRM permit fee, if required under 1.2.3, and the USPS amends Form 3615 by adding the BRM authorization. An advanced deposit account is established for a permit holder's use upon BRM authorization (see 1.1.9).

1.2.3 Annual Permit Fee

Except for permits used for only BRM parcels and QBRM, a permit fee must be paid once each 12-month period at each Post Office where a BRM permit is held. The fee may be paid in advance only for the next 12 months and only during the last 60 days of the current service period. The fee charged is that which is in effect on the date of payment. For agents authorized by a permit holder to distribute and receive BRM see 1.7.

1.2.4 Renewal of Annual Permit Fee

Except for permits used for only BRM parcels and QBRM, an annual renewal notice is provided to each BRM permit holder by the USPS. Permits used for only BRM parcels and QBRM do not expire unless the account is unused for a period of 24 months. The renewal notice and the payment, if applicable, for the next 12 months must be returned by the expiration date to the Post Office that issued the permit. After the expiration date, the returned BRM pieces are treated as follows until the permit fee is paid, the unused permit is reactivated, or a new permit is obtained, as applicable:

- a. Postcards of no obvious value are treated as waste and disposed of at the delivery unit.
- b. Pieces (excluding postcards) with a return address are endorsed "Business Reply Permit Canceled" and are returned to the sender.
- c. Pieces without a return address are endorsed "Business Reply Permit Canceled" and forwarded to the mail recovery center for handling.

1.2.5 Other Post Offices

A permit holder may distribute BRM through any Post Office for delivery at any Post Office under 1.7.

1.2.6 Revocation of a Permit

The USPS may revoke any BRM permit because of format errors or for refusal to pay the applicable permit fees (annual, accounting, quarterly, or monthly), postage, or per piece fees. If the permit was revoked due to format errors, then a former permit holder may obtain a new permit and permit number by completing and submitting a new Form 3615, paying the required BRM annual permit fee (if applicable), paying a new annual account maintenance fee (if applicable), and, for the next 2 years, submitting two samples of each BRM format to the appropriate Post Office for approval.

1.3 Basic Standards

1.3.1 Description

Business Reply Mail (BRM) service enables a permit holder to receive First-Class Mail, First-Class Package Service — Retail, and Priority Mail back from customers. The permit holder guarantees payment of the applicable Retail First-Class Mail, First-Class Package Service — Retail, or Priority Mail postage, plus a per piece fee, on all returned BRM which includes any incomplete, blank, or empty BRM cards and envelopes and any mailable matter with a BRM label affixed. BRM cards, envelopes, self-mailers, cartons, and labels may be distributed by a BRM permit holder in any quantity for return to any Post Office in the United States and its territories and possessions, including military Post Offices overseas. High-Volume BRM under 1.1.2 is a subset of BRM that qualify pieces for a reduced per piece fee. QBRM, under 1.1.3, 1.1.4 and 1.6, is a subset of BRM available for specific automation-compatible letter-size pieces that qualify for an automation postage price and a reduced per piece fee. Domestic BRM may not be distributed to foreign countries (see the International Mail Manual for International Business Reply Service (IBRS)).

1.3.2 Extra Services

No extra services are permitted with BRM, except for BRM parcels bearing an Intelligent Mail package barcode with imbedded USPS Tracking service.

1.3.3 Official Mail

Authorized users of official (penalty) mail may distribute BRM subject to the additional standards in 703.7.0, which supersede any conflicting standards in 1.0.

1.3.4 Samples

Prior to printing, permit holders are encouraged, but not required, to submit preproduction samples of BRM to the USPS for approval. QBRM pieces require USPS approval (1.6).

1.3.5 Error Notification

If the USPS discovers a BRM format error, the responsible permit holder or authorized agent receives written notification of the error. The permit holder must correct the error and make sure that all future BRM pieces meet appropriate specifications. The repeated distribution of BRM with format errors is grounds for revoking a BRM permit (1.2.6).

1.3.6 Combined Pieces as a Single Item

Two or more BRM pieces may be mailed as a single piece if the BRM pieces are identically addressed and prepared for mailing in accordance with 201. The permit holder is charged postage based on the total weight of the combined piece plus one per piece fee. If the combined pieces become separated, then the permit holder must pay postage and a per piece fee for each individual piece. Combined pieces are not eligible for QBRM postage prices or per piece fees.

1.3.7 With Postage Affixed

BRM with postage affixed is handled the same as other BRM. No effort is made to identify or separate BRM pieces with postage affixed. The amount of affixed postage is not deducted from the

postage or per piece fees owed. The permit holder may request a credit or refund for postage affixed to BRM under 604.9.2.

1.3.8 Improper Use of Labels and Misuse of BRM Cards and Envelopes

Improper use of BRM labels or misuse of BRM cards or envelopes should be handled as follows:

- a. When a BRM label is improperly used or a BRM card or envelope is misused as a label to return an unsealed item such as a brick, two-by-four, or similar item, the Postal Service may treat the item as waste to be disposed of at the discretion of the Post Office.
- b. When a BRM card or envelope is misused and affixed to a sealed item, the permit holder will be responsible for payment of the applicable Retail postage and per piece fee.

1.4 Mailpiece Characteristics

1.4.1 Paper Weight

BRM paper envelopes must have a minimum paper basis weight of 50 pounds or equivalent (500 25- by 38-inch sheets). Other pieces (cards and self-mailers) must meet the basis weight requirements in 201.3.0.

1.4.2 Nonpaper Envelopes

USPS Engineering must approve nonpaper envelopes for mailability. See 201.3.0.

1.4.3 Envelope Reflectance

Envelope material must not have a red fluorescence exceeding 4.0 phosphor meter units.

1.4.4 Sealing and Edges

BRM pieces must be rectangular, with four square corners, and parallel opposite sides, but may have finished corners as described in 201.1.0 for letter-sized pieces or 201.4.0 for flat-sized pieces. BRM pieces are not mailable if they are sealed with wax, clasps, string, staples, or buttons.

1.4.5 Window Envelopes

The following standards apply to BRM prepared in an open-panel or a covered window envelope:

- a. All window envelopes:
 1. When a mailpiece has a barcode in the address block, the mailpiece must meet the applicable standards in 202.5.1 for letters or 202.5.2 for flats.
 2. The address showing through the window must be that of the permit holder or an authorized representative.
 3. The facing identification mark (FIM) must be printed on the envelope as specified in 202.8.0.
 4. See 601.6.3 for required clearances for information showing within a window envelope.
- b. Covered window envelopes:
 1. The “No Postage Necessary” imprint, the business reply legend, and the horizontal bars must be printed either directly on the envelope or on the insert appearing through the covered window. The minimum size of the information appearing in the covered window is 2 inches high and 4-1/4 inches long. Horizontal bars may be omitted only on letter-size BRM bearing Intelligent Mail barcodes.
 2. The window cover must be of a nontinted clear or transparent material (e.g., cellophane or polystyrene) that permits the barcode and its background, as viewed

through the window material, to meet the reflectance standards in 204.1.4. The edges of the window cover must be securely glued to the envelope.

c. **Open panel window envelopes:**

1. The “No Postage Necessary” imprint, the business reply legend, and the horizontal bars must be printed directly on the envelope. Horizontal bars may be omitted only on letter-size BRM bearing Intelligent Mail barcodes.
2. Other required and optional elements in 1.5 may be printed on the insert appearing through the address window.

1.4.6 Self-Mailers and Reusable Mailpieces

In addition to the standards in 1.4 and 1.5, self-mailers and reusable mailpieces must meet the standards in 201.3.14 and 601.6.4 (or 601.6.5). Permit holders must provide instructions to the user for re-folding and sealing (see 601.6.4 or 601.6.5.) so that upon return the piece meets sealing and folding requirements in 201.3.0.

1.4.7 Cards

Cards must meet the standards in 201.1.2. A card exceeding the dimensions in 201.1.2 is charged the applicable First-Class Mail letter price.

1.4.8 Labels

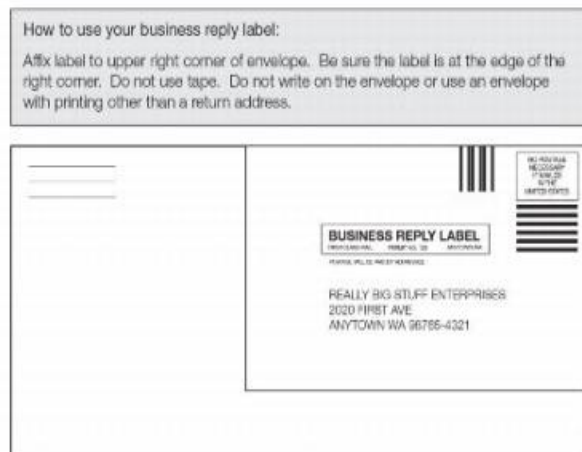
For general use, the minimum size of a BRM label is 2 inches high and 3 inches long. BRM labels are not required to have a FIM or a ZIP+4 barcode, but all other format standards in 1.5 must be met. See 1.4.9 for labels on letter-size pieces.

1.4.9 Labels for Letter-Size Pieces

The following standards apply to BRM labels for use on letter-size pieces:

- a. The minimum size of a BRM label is 2-5/8 inches high and 4-1/4 inches long. All format elements, including a FIM, must be printed on the label. Exception: The vertical series of horizontal bars must be at least 3/4-inch high. Horizontal bars may be omitted on BRM letter-size pieces bearing Intelligent Mail barcodes. The back of the label must be coated with a permanent adhesive strong enough to firmly attach the label to an envelope.
- b. The permit holder must provide instructions to the user describing how the label should be applied to a mailpiece and what precautions must be observed when applying the label (see Exhibit 1.4.9). A pictorial diagram showing proper placement of the label must be included with the instructions. At a minimum, the instructions must include the following directions:
 1. Place the label squarely in the upper right corner of the envelope.
 2. Do not write on the envelope or label.
 3. Do not use a window envelope, an envelope that is less than 1 inch higher than the label an envelope that is more than 4-1/2 inches high, or an envelope with any printing other than a return address.
 4. Do not use tape to affix the label.
- c. When the label is affixed to an envelope, the address must be placed within the OCR read area (see 202.2.1).
- d. Pieces with business reply labels cannot qualify for QBRM prices.

Exhibit 1.4.9 Instructions for Affixing Business Reply Label

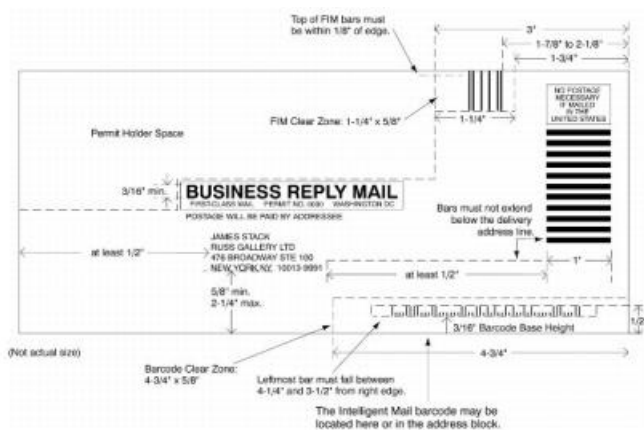


1.5 Format Elements

1.5.1 General

All pieces of BRM are subject to the format Elements in 1.5. The USPS may revoke a BRM permit because of format errors under 1.2.6. An Intelligent Mail barcode (IMb) is not required, except for QBRM prices; if an IMb is used, it must be printed and placed under 1.5.10 and as shown in Exhibit 1.5.1. Pieces of QBRM and bulk weight averaged nonletter-size BRM are subject to additional format standards listed in 1.6 and 1.8. BRM format elements are shown in Exhibit 1.5.1.

Exhibit 1.5.1 Business Reply Mail Format



1.5.2 Printing and Print Reflectance

All forms of printing are permissible if legible to the satisfaction of the USPS. Handwriting, typewriting, and hand stamping may not be used to prepare BRM. Printed borders are not permitted on letter-size BRM, but are permitted on envelopes greater than 6-1/8 inches high or 11-1/2 inches long or 1/4 inch thick. All ink colors are acceptable if the piece meets the appropriate reflectance standards in 204.1.3.

1.5.3 “No Postage Necessary” Imprint

The imprint “NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES” must be printed in the upper right corner of the address side of the piece, except as allowed under 601.6.5 for reusable

mailpieces with outgoing permit imprint indicia. The “NO POSTAGE NECESSARY” imprint must not extend more than 1-3/4 inches from the right edge of the piece.

1.5.4 Business Reply Legend

The legend “BUSINESS REPLY MAIL” or “BUSINESS REPLY LABEL”, as appropriate, must appear on all pieces. This legend must appear above the address in capital letters at least 3/16 inch high. At the permit holder’s discretion, the business reply legend may be surrounded by a rule or border.

1.5.5 Permit Number and Postage Endorsement

Directly below the business reply legend, the words “FIRST-CLASS MAIL PERMIT NO. [NO., CITY, STATE]” (representing the permit holder’s number and Post Office that issued the permit) must appear in capital letters. Directly below that, the endorsement “POSTAGE WILL BE PAID BY ADDRESSEE” must appear in capital letters. At the permit holder’s discretion, the permit number and postage endorsement may be surrounded by a rule or border.

1.5.6 Delivery Address

The delivery address on a piece of BRM may not be altered to redirect the mailpiece to any address other than the one preprinted on the piece. The complete address (including the permit holder’s name, delivery address, city, state, and USPS assigned BRM ZIP + 4) must be printed directly on the piece, except as allowed under 1.4.5 or under item a below, subject to these conditions:

- a. Preprinted labels with only delivery address information (including an Intelligent Mail barcode under 1.5.10) are permitted, but the permit holder’s name and other required elements must be printed directly on the BRM piece.
- b. On letter-size pieces, the complete delivery address must appear within the OCR read area (see 202.2.1).
- c. There must be at least a 1/2-inch clearance between the ZIP Code and the horizontal bars.
- d. A unique ZIP Code (i.e., firm ZIP Code) must not be used for BRM unless the ZIP Code has been assigned specifically for BRM (see Form 6805). A unique 4-digit add-on to denote BRM may not be used with a unique 5-digit ZIP Code not specifically assigned to BRM.

1.5.7 Horizontal Bars

A vertical series of horizontal bars parallel to the length of the piece must be printed directly below the imprint “NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES.” The bars must be uniform in length, at least 1 inch long and 1/16 inch to 3/16 inch thick, and evenly spaced. On letter-size nonbarcoded BRM, the bars must not extend below the delivery address line (the line above the line containing the ZIP Code). On barcoded BRM, the bars must not extend lower than 5/8 inch from the bottom edge of the piece. Horizontal bars may be omitted on BRM letter-size and cards bearing Intelligent Mail barcodes.

1.5.8 Facing Identification Mark (FIM)

A FIM must be printed on all letter-size BRM and on business reply labels affixed to letter-size mail (see 1.4.9d). FIM B must be used with BRM without a barcode. FIM C must be used with any BRM printed with a barcode. The FIM must meet the physical standards in 202.8.0.

1.5.9 Company Logo

A company logo is permitted:

- a. On nonbarcoded BRM, if it is placed outside the OCR read area (see 202.2.1).

- b. On letter-size barcoded BRM, if it is placed no lower than 5/8 inch from the bottom edge of the piece.
- c. On any piece, if the logo does not interfere with any required format elements.

1.5.10 Additional Standards for Letter-Size and Flat-Size BRM Bearing an IMb

Except as provided under 1.5.11, when an Intelligent Mail barcode is printed on any BRM pieces, it must contain the barcode ID, service type ID, and correct unique ZIP+4 routing code, as specified under 204.1.3. The IMb must be placed on the address side of the piece and positioned as part of the delivery address block under 202.5.3 or within the barcode clear zone in the lower right corner of the piece if printed directly on the piece.

1.5.11 Mailer ID (MID) Based IMb Option

A mailer may use a MID based Intelligent Mail barcode on BRM pieces. The MID based IMb must contain the barcode ID, specific service type ID, Mailer ID, serial number, in the tracking code field and a ZIP+4 routing code. Additional information on the MID based Intelligent Mail barcode can be found on PostalPro at <https://postalpro.usps.com/>. Place the barcode according to 1.5.10.

1.6 Additional Standards for Qualified Business Reply Mail (QBRM)

1.6.1 Description

Qualified business reply mail (QBRM) is a subset of business reply mail. Permit holders distribute reply pieces that qualify for lower postage prices and per piece fees. In addition to meeting the eligibility requirements below, the authorization to participate in QBRM under 1.6.2, and the format standards in 1.5, QBRM is First-Class Mail that:

- a. Is a letter weighing two ounces or less or card that is prepared to meet the automation compatibility requirements in 201.3.0.
- b. Meets all the Business Reply Mail (BRM) standards in 1.3 through 1.8.
- c. Has postage and per piece charges deducted from a BRM advance deposit account.
- d. Is authorized to mail at QBRM prices and fees under 1.6.2. During the authorization process, a proper ZIP+4 code is assigned to the mailer (under 1.6.2) for each price category of QBRM to be returned under the system (one for card priced pieces, one for letter-size pieces weighing 1 ounce or less, and one for letter-size pieces weighing over 1 ounce up to and including 2 ounces).
- e. Bears the proper ZIP+4 code, assigned by USPS for the appropriate price category, in the address of each piece. The ZIP+4 codes assigned for this program must be used only on the organization's appropriate QBRM pieces.
- f. Bears the correct Intelligent Mail barcode, correctly prepared under 1.5.10 or 1.5.11 and 204.1.0, that corresponds to the unique ZIP+4 code in the address on each piece distributed.
- g. Bears a properly prepared facing identification mark (FIM) C on each piece distributed (see 202.8.0).

1.6.2 Authorization

To participate in QBRM, a mailer with a valid BRM permit and having paid the annual account maintenance fee, must submit Form 6805 to the Postmaster or manager, Business Mail Entry for the Post Office to which the QBRM pieces are to be returned. USPS assigns to the mailer a proper BRM ZIP+4 Code, as applicable, reviews Form 6805 and preproduction samples provided by the mailer for compliance with relevant standards, and if approved, issues the mailer an authorization via the Form 6805.

1.7 BRM Distributed and Received by Agents of a Permit Holder

1.7.1 Description

Permit holders may give permission to subsidiary offices, agents, or authorized representatives to distribute and receive BRM using a single (corporate) permit number. BRM pieces are distributed by and returned to agents, who pay postage and per piece fees on those returned pieces. Agents may use any type of BRM service meeting the applicable standards in 1.0 and under the following additional conditions:

- a. **Permit**—The main permit holder or “corporate” office applies for the permit number and pays the permit fee, if applicable. The agent must present a letter of authorization from the permit holder showing the name, address, and telephone number of the local agent authorized to receive the BRM to the Post Office where the BRM is to be returned. Any time there is a change to the original permit application or the authorization letter, each agent must provide an amended letter of authorization to their local Post Office.
- b. **Annual Permit Fee**—Agents do not pay a separate annual permit fee but must submit evidence (usually a copy of Form 3544) to the local office once each 12-month period to show that the annual permit fee, if applicable, has been paid. This evidence is not required if permit holder has a centralized account processing system (CAPS) account, through which the local Post Office can determine that the permit fee, if applicable, has been paid.
- c. **Postage, Per Piece Fees, and Annual Account Maintenance Fees**—Agents receiving BRM or QBRM are responsible for paying all the postage and per piece fees, and applicable annual account maintenance fees, under 1.1 for the type of service received.
- d. **Payment Guarantee**—The permit holder is ultimately responsible for postage and per piece fees for all pieces returned under that permit number. If a local agent refuses or neglects to pay postage or per piece fees on returned pieces, then those pieces are forwarded to the Post Office that issued the original permit for collection of postage and per piece fees from the permit holder. Once forwarded to the permit holder, these pieces cannot qualify for QBRM postage and per piece fees. The permit holder’s refusal to accept and pay the required postage and per piece fees for BRM offered for delivery is grounds for immediate revocation of the BRM permit (1.5.6).
- e. **Format**—BRM distributed by agents must meet all required format standards in 1.4 and 1.5. Authorized representatives distributing BRM on behalf of a permit holder must have the permit holder’s name and permit number printed on the BRM and their own names and addresses printed below the permit holder’s name, except:
 1. When the agent is a branch of an authorized business.
 2. The permit holder notifies a Post Office that authorized representatives may use the permit holder’s permit number without printing the permit holder’s name.

1.8 Bulk Weight Averaged Nonletter-size BRM

1.8.1 Description

Bulk weight averaging is a method of counting, rating, and billing incoming nonletter-size BRM based on principles of mathematical statistics. Probability sampling techniques are used to measure the characteristics of the total BRM volume by examining a fraction of the volume. Statistically valid samples that are drawn from the incoming BRM volume each postal accounting period are used by Post Offices to compute average postage due per pound and average piece count per pound factors. The net bulk weight of mail received is multiplied by these conversion factors to get the estimated volume received and postage and fee amounts.

1.8.2 Eligibility

BRM pieces rated by the weight averaging method must:

- a. Meet the basic standards for BRM in 1.0.
- b. Not be letter-size (201.1.0) or card-size (201.1.2).
- c. Not exceed 5 pounds.

1.8.3 Fees and Postage

Permit holders participating in bulk weight averaged nonletter-size BRM must pay the fees and postage under 1.1.5.

1.8.4 Application Process

A permit holder who wants to use bulk weight averaged BRM for nonletter-size pieces must submit a written request to the Postmaster of the office where the BRM permit is held. The Postmaster forwards this information to the manager, Customer Service Standardization, USPS Headquarters (see 608.8.0 for address). The request must include the following information:

- a. Permit holder's name and address.
- b. Name and location of the Post Office at which BRM will be received and a CAPS account number, if available.
- c. Information about the number of pieces expected to be returned over a 24-hour period and a 30-day period, and a breakdown of the weight distribution of those pieces (in nearest ounces or pounds) (e.g., X number of 3-ounce pieces, Y number of 4-ounce pieces, and Z number of 5-ounce pieces).
- d. Based on the estimated volume in 1.8.4c, a 24-hour estimate and a 30-day estimate of postage and per piece fees using the postage and charges listed in 1.1.5.
- e. A statement indicating whether the piece volume has seasonal variation and, if applicable, estimates of monthly volumes for a 12-month period.

1.8.5 Authorization

The permit holder's request will be reviewed and approved by the manager, Customer Service Standardization, USPS Headquarters. If the request is approved, then a letter of authorization is sent to the permit holder from the Post Office where the BRM permit is held. The permit holder signs a service agreement and, if necessary, is assigned a Post Office box address.

1.8.6 Denial of Authorization

If the permit holder's request is not approved, then the Post Office sends a written notice, giving reasons for the denial. The permit holder has 15 days following receipt of the notice to file a written appeal of the decision with the postmaster and to furnish further information. If the postmaster still finds that the application should be denied, then the postmaster forwards the file to the manager, Customer Service Standardization, USPS Headquarters, who issues a final written decision to the permit holder.

1.8.7 Revoking Authorization

A Postmaster may terminate authorization for bulk weight averaged BRM by sending written notice to the permit holder, for any of the following reasons:

- a. The permit holder provided incorrect or incomplete information on the request for authorization.
- b. The permit holder's BRM pieces no longer meet the eligibility requirements in 1.0.
- c. The USPS finds that bulk weight averaging no longer provides adequate revenue protection.

- d. The permit holder no longer desires to participate in bulk weight averaging.

1.8.8 Notice and Appeal

Termination takes effect 15 days from the permit holder's receipt of the notice unless the permit holder files a written appeal within that period with the postmaster. The postmaster forwards the permit holder's appeal together with all pertinent information to the manager, Customer Service Standardization, USPS Headquarters, who issues a final agency decision to the permit holder. The permit holder may continue to use the bulk weight averaging method until a final decision is made on the appeal.

2.0 Permit, Pre-paid (Metered), and Courtesy Reply Mail

2.1 Permit Reply Mail

2.1.1 Description

Permit reply mail (PRM) enables a permit imprint permit holder to receive First-Class Mail and Priority Mail back from customers by prepaying postage for reply pieces at the time of mailing. Mailers must distribute PRM pieces as part of the contents of an outgoing First-Class Mail mailing (see 230) only by using a valid permit imprint (604.5.0) account.

2.1.2 Extra Services

No extra services are permitted with PRM.

2.1.3 Permit Holder Intentions

PRM may not be used for any purpose other than the purpose intended by the permit holder, even when postage is affixed.

2.1.4 Special Standards for PRM Pieces with an Optical Disc

A letter-size PRM piece containing one standard optical disc will not be charged a nonmachinable surcharge if the piece meets the standards in 233.2.8. A flat-size PRM piece containing one standard optical disc and weighing no more than 2 ounces will be charged postage applicable for a 1-ounce First-Class Mail letter if the piece meets the standards in 233.2.8.

2.2 Authorization and Revocation

2.2.1 Authorization

PRM customers must apply for authorization through the district manager of Business Mail Entry at the office where the permit imprint account is held.

2.2.2 Samples

Permit holders must submit preproduction samples of PRM pieces to the Postal Service for approval prior to distribution.

2.2.3 Error Notification

If the Postal Service discovers a PRM format error, the permit holder or authorized agent will receive a written notification of the error. The permit holder must correct the error and ensure that all future PRM pieces meet appropriate specifications. The Postal Service may revoke a PRM authorization if a mailer repeatedly distributes PRM with format errors (see 2.2.4).

2.2.4 Revocation of Authorization

The Postal Service may revoke a PRM authorization because of format errors or misuse. If the authorization is revoked due to format errors, the format errors must be corrected before reauthorization.

2.3 Format Elements

2.3.1 General

All pieces of PRM must include the format elements shown in Exhibit 2.3.1.

Exhibit 2.3.1 Permit Reply Mail Format Elements



2.3.2 Printing and Print Reflectance

All legible forms of printing are permitted. Mailers may not use handwriting, typewriting, or handstamping to prepare PRM.

2.3.3 No Postage Necessary Imprint

The imprint, "NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES," must be printed in the upper right corner of the address side of the piece. The imprint must not extend more than 1-3/4 inches from the right edge of the piece.

2.3.4 Permit Reply Mail Legend

The legend, "PERMIT REPLY MAIL," must appear on all pieces. The legend must appear above the address in capital letters at least 3/16 inch high. At the permit holder's discretion, the permit reply mail legend may be surrounded by a rule or border.

2.3.5 Permit Number and Postage Endorsement

Directly below the permit reply mail legend, the words, "FIRST-CLASS MAIL PERMIT NO. [NO., CITY, STATE]" (representing the permit holder's number and the Post Office that issued the permit) must appear in capital letters. The permit holder may replace the permit number and the Post Office with a company permit as described in 2.4. Directly below that, the endorsement, "POSTAGE HAS BEEN PREPAID BY ADDRESSEE," must appear in capital letters. At the permit holder's discretion, the permit number and postage endorsement may be surrounded by a rule or border.

2.3.6 Delivery Address

The complete address (including the permit holder's name, delivery address, city, state, and ZIP+4 Code) must be printed on the piece. The delivery address on a PRM mailpiece may not be altered to redirect it to any address other than the one preprinted on the piece. PRM pieces must bear an Intelligent Mail barcode meeting the standards in 202.5.0 and 204.1.0.

2.3.7 Facing Identification Mark

A facing identification mark (FIM) C must be printed on all letter-size PRM. The FIM C must meet the physical standards in 202.8.0.

2.3.8 Company Logo

A company logo is permitted on letter-size PRM, provided the logo is placed no lower than 5/8 inch from the bottom edge of the piece and it does not interfere with any required format element.

2.4 Company Permit Reply Mail Imprint

2.4.1 Definition

A company permit reply mail imprint is one in which the exact name of the company holding the permit is shown in the permit reply mail indicia in place of the city, state, and permit number.

2.4.2 Use

A customer may use a company permit reply mail imprint if, for 1 year from the date of mailing, the permit holder or its agent keeps records of each mailing paid with a company permit reply mail imprint and makes them available for USPS review on request. These records must include the weight of a single piece; the total number of pieces mailed; the total postage; and the dates and Post Offices of mailing. A complete sample mailpiece must be included for each mailing.

2.4.3 Format

To create a company permit reply mail imprint, replace the words “PERMIT No. [NO., CITY, STATE]” (representing the permit holder’s number and the Post Office that issued the permit), with “PERMIT PAID BY [COMPANY NAME]” (representing the name of the company in the delivery address of the mailpiece) in capital letters.

2.5 Prepaid (Metered) Reply Mail

2.5.1 Description

Mailers may use indicia generated by any postage evidencing system (see 604.4.0) to prepay reply postage on Priority Mail Express, on Priority Mail when the price is the same for all zones, on First-Class Mail, and on single-piece price Media Mail and Library Mail under the following conditions.

- a. The postage amount must be sufficient to prepay the full postage due.
- b. Print indicia directly on the mailpiece or on a label, and place indicia under 604.4.3.3.
- c. Indicia used to prepay reply postage must not show the date.
- d. Pre-address the mailpiece for return to the authorized user only.
- e. Print the words “NO POSTAGE STAMP NECESSARY POSTAGE HAS BEEN PREPAID BY” directly above the address.
- f. Mailers may use FIM A on barcoded letter-size First-Class Mail reply mail except when using PC Postage.
- g. When using PC Postage, mailers must use FIM D for prepaid reply mail when the indicium is printed directly on the mailpiece.
- h. The address side must appear as described in this section and shown in the illustration below. Nothing may be added except a return address, FIM, or barcode.



2.6 Courtesy Reply Mail

Courtesy reply mail (CRM) is reply mail other than BRM or MRM enclosed in other mail, with or without prepayment of postage, for return to the address on the reply piece. If postage is required, the customer returning the piece affixes the applicable First-Class Mail postage. Each piece must meet the physical standards in 201.1.0 or 201.2.0. Mailers may use FIM A on letter-size CRM with a preprinted barcode.

2.7 Enclosed Reply Cards and Envelopes

Mailers may enclose reply cards or envelopes (i.e. BRM under 1.0; Permit Reply Mail under 2.1 and 2.4, Prepaid (Metered) Reply under 2.5, or Courtesy Reply Mail under 2.6), addressed for return to a domestic delivery address, within automation mailings subject to provisions in 201.3.0 for enclosures.

3.0 [5-4-20] USPS Returns Service

3.1 Basic Standards

3.1.1 Description

USPS Returns service allows an authorized account holder to pay the postage and fees on single-piece priced commercial Priority Mail, First-Class Package Service — Commercial, or Parcel Select Ground packages returned to the account holder by senders (mailers) via a return label, meeting the standards in 3.1.4, produced by the account holder. Unless otherwise restricted, any mailable matter may be mailed using any of the USPS Returns service options (Priority Mail Return Service, First-Class Package Return Service, and Ground Return Service or Parcel Select Ground). Any content that constitutes First-Class Mail matter may only be mailed using Priority Mail Return Service. USPS Returns service is subject to the following conditions:

- a. *Availability.* USPS Returns service is available to the account holder for mailing to the account holder's designated address on the USPS Returns label(s).
- b. *Payment Guarantee.* The account holder must guarantee payment of the proper postage and fees, including any fees for Extra Services requested by the account holder, on all packages returned bearing a valid barcoded USPS Returns label produced by the account holder. The account holder must have sufficient funds in his or her associated Electronic Payment Account to pay the postage and fees on an ongoing basis.
- c. *Where Service Is Established.* USPS Returns service accounts may be established at any Post Office in the United States and its territories and possessions or at any overseas U.S.

Military Post Office (APO/FPO/DPO). USPS Returns service is not available for returns from any foreign country.

3.1.2 Accounts

USPS Returns service accounts are subject to the following:

- a. *Account Enrollment.* An approved USPS Returns service account may be established by calling the Mailing and Shipping Solutions Center at 1-877-672-0007.
- b. *Advance Deposit Account.* The account holder must pay postage and fees through an Enterprise Payment System (EPS) account, accessed through the Business Customer Gateway (BCG) at gateway.usps.com and agree to the terms and conditions for use of such EPS account as the EPS account holder.
- c. *Mailer Identification Code (MID).* Applicants must request a new MID via the BCG, select the product type of nonmanifested returns, and select the applicable Service Type Codes (STCs) for the desired USPS Returns service products.
- d. *Application Process.* Applicants must have a valid Enterprise Payment Account and be registered in the BCG.
- e. *Canceled Accounts.* If the account is cancelled by the EPS account holder, USPS Returns service packages bearing the sender's return address are returned to the sender; otherwise, they are treated as dead mail.
- f. *Account Cancellation.* USPS may cancel an account if the EPS account holder refuses to accept and pay postage and fees for USPS Returns service packages, fails to keep sufficient funds in the advance deposit account to cover postage and fees, or distributes return labels that do not meet USPS standards.
- g. *Reapplying After Cancellation.* To receive a new account after a previous USPS Returns service account is canceled, the applicant must re-register in the BCG and obtain a new MID for USPS Returns service use. If not using labels generated by the USPS Application Program Interface (API) at usps.com/business/web-tools-apis/welcome.htm, or Merchant Return Application (MRA), applicants must submit for approval two samples for each label format to the National Customer Support Center (NCSC). In addition, applicants must provide evidence that the reasons for the account cancellation are corrected, and maintain funds in their advance deposit account sufficient to cover normal returns for at least 2 weeks.
- h. *Using Other Post Offices.* The authorized EPS account holder using USPS Returns may distribute USPS Returns labels for return through other Post Office locations.

3.1.3 Postage and Prices

Postage and prices are subject to the following:

- a. Postage is calculated based on the weight of the return package and zone associated with the point of origin and delivery ZIP Code subject to the eligibility for commercial prices and fees based on the class of mail under 220, 250, and 280, except that postage for USPS Returns in flat-rate packaging is based on the packaging type used and the associated Universal Product Code (UPC) on the packaging. USPS Returns service packages are charged postage and fees based on the STC embedded in the IMpb and as provided under 3.1.3c. If all or part of the IMpb is unreadable, or the package is unable to be priced based on the data collected, postage will be determined by the Postal Service based on historical data, or default data determined at time of enrollment.
- b. Prices for Priority Mail Return Service, First-Class Package Return Service, and Ground Return Service (Parcel Select Ground) packages are charged as follows:

1. Priority Mail Commercial Base prices are available for account holders using Priority Mail Return Service, when all applicable requirements are met.
 2. Priority Mail Commercial Plus prices are available for Priority Mail Return Service packages that qualify for Commercial Base prices and for which the account holder has a customer commitment agreement with USPS (see 223.1.3).
 3. First-Class Package Service — Commercial prices are available for First-Class Package Return Service packages when all applicable requirements are met.
 4. Parcel Select Ground prices are available for Ground Return Service packages when all applicable requirements are met.
- c. The account holder or mailer may obtain extra and additional services as follows:
1. Insurance is available for USPS Returns service (see 503.0). Insurance is not included with the postage for Priority Mail Return service. Insurance is available to the account holder for a fee on packages that have the applicable STC imbedded into the IMpb on the label, and for which the account holder has provided electronic data that supports the value of the merchandise (see 503.4.3.1a). Only the account holder may file a claim (see 609). Mailers mailing a USPS Returns service package may obtain insurance at their own expense at the time of mailing by presenting the labeled USPS Returns package at a Post Office retail unit to obtain the service.
 2. Signature Confirmation is available for USPS Returns service (see 503.0). Signature Confirmation is available for a fee to the account holder for packages that have the applicable STC for Signature Confirmation imbedded into the IMpb on the label. Mailers mailing a USPS Returns package may obtain Signature Confirmation at their own expense at the time of mailing by presenting the labeled USPS Return package at a Post Office retail unit to obtain the service.
 3. Certificate of Mailing is available only to mailers at their own expense at the time of mailing by presenting the certificate at a Post Office retail unit to obtain the receipt.
 4. Pickup on Demand Service is available for a fee with USPS Returns service (see 507.7.0).

3.1.4 Labels

Distribution and preparation of labels are subject to the following:

- a. *Distribution of Labels.* USPS Returns labels may be distributed to customers via the following:
 1. As an enclosure with merchandise;
 2. As a separate package (including when requested electronically through the BCG for printing and delivery to the customer by USPS);
 3. As an electronic transmission for customer downloading and printing including through Label Broker, which allows customers to have the pre-paid returns label printed for them at a USPS Retail System Software (RSS) enabled retail location via a Label ID or QR code on a smartphone;
 4. On a piece of paper, or written directly on a package presented to the retail associate); or
 5. Through one of the account holder's designated pickup facilities.
- b. *Label Preparation.* The following provisions apply:
 1. USPS Returns labels must meet the standards in the Parcel Labeling Guide available on the PostalPro website at postalpro.usps.com/parcellabelingguide.
 2. The label must include an IMpb, accommodate all required information, be legible, and be prepared in accordance with the standards in Intelligent Mail Package Barcode (IMpb) Implementation Guide, available on the PostalPro website.

3. Standard label sizes are 3 inches by 6 inches, 4 inches by 4 inches, or 4 inches by 6 inches, and must be certified by USPS for use prior to distribution.
4. Except for USPS Returns labels generated by the USPS API or MRA, all returns labels must have a properly constructed IMpb (C01, C05, N02, or N05, as applicable) approved by the NCSC.
5. EPS account holders or their agents may distribute approved returns labels and instructions by means specified in 3.1.4b. EPS account holders or their agents must provide written instructions to the label end-user (mailer) as specified in 3.1.4c. Faxed labels will not be accepted. If all applicable content and format standards are met, USPS Returns labels may be produced by any of the following methods:
 - a. As an impression printed by the EPS account holder directly onto the package to be returned.
 - b. As a separate label preprinted by the EPS account holder to be affixed by the customer onto the package to be returned. The reverse side of the label must bear an adhesive strong enough to bond the label securely to the package. Labels must be printed and delivered by USPS to the customer when requested electronically by the EPS account holder or its agents through the BCG, or provided as an electronic file created by the EPS account holder for local output and printing by the customer.
 - c. The electronic file must include instructions that explain how to affix the label securely to the package, and that caution against covering with tape or other material any part of the label where postage and fee information is to be recorded.
- c. *Labeling Instructions.* Written instructions must be provided with the label that, at a minimum, directs the customer to do the following:
 1. If your name and address are not already preprinted in the return address area, print them neatly in that area or attach a return address label there.
 2. Attach the label squarely onto the largest side of the package, centered if possible. Place the label so that it does not fold over to another side. Do not place tape over any barcodes on the label or any part of the label where postage and fee information will be recorded.
 3. Remove or obliterate any other addresses, barcodes, or price markings on the outside packaging.
 4. Mail the labeled USPS Returns service package at a Post Office, drop it in a collection box, leave it with your USPS carrier, or schedule a package pickup at usps.com.

3.1.5 Noncompliant Labels

USPS Returns account holders must use USPS-certified labels meeting the standards in 3.1.4. When noncompliant labels are affixed to USPS Returns service packages, the permit holder will be assessed the appropriate USPS Retail Ground price calculated from the package's initial entry point (first physical scan) in the USPS network to its delivery address.

3.1.6 Enter and Deposit

The following standards apply:

- a. The EPS account holder's customers may mail the USPS Returns service package via the following:
 1. At any Post Office;
 2. At any associated office, station, or branch;
 3. In any collection box (except a Priority Mail Express box);

4. With any rural carrier;
 5. By package pickup;
 6. On business routes during regular mail delivery if prior arrangements are made with the carrier;
 7. As part of a collection run for other mail (special arrangements might be required); or
 8. At any place designated by the postmaster for the receipt of mail.
- b. USPS Returns service packages with extra services must be mailed either with the rural carrier or at the main Post Office or any associated office, station, or branch. Any such packages deposited in collection boxes may be returned to the sender for the extra service to be purchased appropriately, or it will be processed and the sender charged postage and fees based on the STC embedded in the IMpb on the label and as provided under 3.1.4c.

3.2 Additional Standards

Additional mailing standards applicable to each service option are as follows:

- a. Priority Mail Return service may contain any mailable matter meeting the standards in 201.8.0 and 223.2.0. APO/FPO/DPO mail is subject to standards in 703.2.0 and 703.4.0, and Department of State mail is subject to standards in 703.3.0. Priority Mail Return service receives expeditious handling and transportation, with service standards in accordance with Priority Mail. Priority Mail Return service mailed under a specific customer agreement is charged postage according to the individual agreement. Commercial Base and Commercial Plus prices are the same as for outbound Priority Mail in Notice 123—Price List.
- b. First-Class Package Return service may contain mailable matter meeting the standards in 201.8.0 and 283.2.0. First-Class Package Return service handling, transportation, and eligibility of contents are the same as for outbound First-Class Package Service — Commercial parcels under standards in 283.0. First-Class Package Return service packages may not contain documents or personal correspondence, except that such packages may contain invoices, receipts, incidental advertising, and other documents that relate in all substantial respects to merchandise contained in the package.
- c. Ground Return (Parcel Select Ground) service provides ground transportation for parcels containing mailable matter meeting the standards in 201.8.0 and 153.3.0. Ground Return (Parcel Select Ground) service is required for restricted and hazardous materials mailed using USPS Returns service and as provided in Publication 52, Hazardous, Restricted, and Perishable Mail. Ground Return (Parcel Select Ground) service assumes the handling, transportation, and service objectives for delivery of USPS Retail Ground.

4.0 Parcel Return Service

4.1 Prices and Fees

4.1.1 Permit

The participant must obtain a permit and pay postage at the Post Office where the permit is held through an advance deposit account (see Notice 123—Price List).

4.1.2 Parcel Return Service Prices

Parcel Return Service prices are based on the price that applies to the weight increment of each addressed piece, and on the designated return facility, RDU or RSCF. The price is charged per pound or fraction thereof; any fraction of a pound is considered a whole pound. For example, if an item weighs 4.225 pounds, the weight increment is 5 pounds. The minimum price per piece is the 1-pound price and these additional standards apply:

- a. **Parcel Return Service-Nonmachinable Prices:** Parcels exceeding the maximum machinable dimensions in 201.7.5 or are considered a nonmachinable parcel under 201.7.7 are subject to nonmachinable prices.
- b. **Balloon and Oversized Prices:** RSCF parcels that weigh less than 20 pounds but measure more than 84 inches in combined length and girth are charged the applicable price for a 20-pound parcel (balloon price). Regardless of weight, any parcel that measures more than 108 inches (but not more than 130 inches) in combined length and girth must pay the oversized price.

4.1.3 Postage

There are two PRS price categories:

- a. **Parcel Return Service — RDU.** Parcels returned as USPS Retail Ground to, and retrieved in bulk from, a designated delivery unit.
- b. **Parcel Return Service — RSCF.** Parcels returned as USPS Retail Ground to, and retrieved in bulk from, a designated SCF.

4.2 Basic Standards

4.2.1 Description

Parcel Return Service (PRS) applies to parcels that are picked up in bulk by authorized permit holders or their agents. Permit holders guarantee payment of postage for all parcels mailed with a PRS label. By providing an approved PRS label to its customers, the merchant or other party designates the permit holder identified on the label as their agent for receipt of mail bearing that label, and authorizes the USPS to provide that mail to the permit holder or its designee. PRS permit holders also may retrieve parcels at one or more designated return sectional center facilities (RSCFs) or designated return delivery units (RDUs). Payment for parcels returned under PRS is deducted from a separate advance deposit (postage-due) account funded through the Centralized Account Processing System (CAPS). The permit holder must be authorized to use eVS (see 705.2.9).

4.2.2 Conditions for Mailing

Parcels may be mailed as PRS when all of the following conditions apply:

- a. Parcels contain eligible matter as described in 153.3.0 and 153.4.0.
- b. Parcels bear a PRS label that meets the standards in 4.3.
- c. Parcels show the permit number.

4.2.3 Customer Mailing Options

Returned parcels may be deposited as follows:

- a. At any Post Office, station, or branch.
- b. In any collection box (except a Priority Mail Express box).
- c. With any letter carrier.
- d. As part of a collection run for other mail (special arrangements may be required).
- e. At any place designated by the postmaster for the receipt of mail.
- f. Pickup on Demand service.

4.2.4 Application Process

[1-26-20] Companies who wish to participate in PRS must send a request on company letterhead to the director, Business Acceptance Solutions (see 608.8.0 for address). The request must contain the following information:

- a. Company name and address.
- b. An individual's contact name, telephone number, fax number, and e-mail address.
- c. [1-26-20] The price category or categories to be used, and the proposed retrieval locations (delivery units and sectional center facilities).
- d. A description of the electronic returns manifesting system to be used to document returns listed by location and price eligibility.

4.2.5 Approval

[1-26-20] The director, Business Acceptance Solutions reviews each request and proceeds as follows:

- a. [1-26-20] If the applicant meets the criteria, the director, Business Acceptance Solutions approves the letter of request and sends an authorization letter outlining the terms and conditions for the program. PRS permit holders must submit the authorization letter and PS Form 3801, Standing Delivery Order, to each applicable facility. An acceptable primary form of identification as specified under 608.10.3 is required before each pickup.
- b. [1-26-20] If the application does not meet the criteria, the director, Business Acceptance Solutions denies the request and sends a written notice to the applicant with the reason for denial.

4.2.6 Permit Cancellation

USPS may cancel a PRS permit for any of the following reasons:

- a. The permit holder fails to pay the required postage and fees for returned parcels.
- b. The permit holder does not maintain adequate available funds to cover postage and fees for returned parcels.
- c. The permit holder does not fulfill the terms and conditions of the PRS permit authorization.
- d. The return labels do not conform to the specifications in 5.4.

4.2.7 Reapplying After Cancellation

To receive a new PRS permit after cancellation under 5.1, the mailer must:

- a. [1-26-20] Submit a letter to the director, Business Acceptance Solutions requesting a permit and a new agreement.
- b. Provide evidence showing that the reasons for cancellation no longer exist.
- c. Maintain adequate available funds to cover the expected number of returns.

4.2.8 Extra Services and Endorsement

Pieces using PRS may not bear an ancillary service endorsement (see 102.4.0 and 507.1.5). See 503 for available extra services for PRS.

4.2.9 Pickup Schedule and Location

Permit holders or their agents must set up recurring or standing appointments to retrieve PRS parcels. If the permit holder (or agent) has existing appointments to deliver Parcel Select parcels to destination facilities and those facilities are one of the designated RSCFs or designated RDUs,

those appointments can be used for retrieving PRS parcels at the same time. Permit holders or their agents must retrieve parcels on a regular schedule as follows:

- a. From all listed RSCFs, at a minimum of every 24 hours, excluding Saturdays, Sundays, and USPS holidays, unless otherwise authorized. The Postal Service maintains a list of active RSCFs and provides permit holders 30-day notice of changes to the list. This list is available on the Facility Access and Shipment Tracking system (FAST) at <https://fast.usps.com/fast/>.
- b. From RDUs, at a minimum of 48 hours, excluding Saturdays, Sundays, and USPS holidays, unless otherwise authorized. The USPS maintains a list of active RDUs and provides permit holders 30-day notice of changes to the list. This list is available on the Facility Access and Shipment Tracking system (FAST) at <https://fast.usps.com/fast/>.

4.2.10 [1-26-20] Change or Cancel Retrieval Locations

A customer may change or cancel retrieval locations (delivery units and sectional center facilities) as follows:

- a. *Online.* A customer may change or cancel retrieval locations online at the USPS Business Customer Gateway (BCG) at <https://gateway.usps.com>.
- b. *Letter.* A customer may change or cancel retrieval locations by sending a request on company letterhead to the director, Business Acceptance Solutions (see 608.8.0 for address).

4.2.11 Parcels Endorsed Hold for Pickup

PRS participants must pay the appropriate Parcel Return Service RDU price under 5.3 for any unclaimed, refused, undeliverable as addressed, or recalled parcels that are endorsed “Hold For Pickup” (under 507.3.0) and that bear the marking “PARCEL RETURN SERVICE REQUESTED” or “PRS REQUESTED” followed by a unique 569 prefix ZIP Code.

4.2.12 Noncompliant Labels

PRS permit holders must use USPS-certified labels meeting the standards in 4.3. When noncompliant labels are affixed to PRS parcels, which travel through the Postal network to the delivery address of the label, the permit holder will be assessed the appropriate USPS Retail Ground price, calculated from the parcel’s entry point in the USPS network to its delivery address. If the parcel’s entry point cannot be determined, then postage will be calculated at zone 4.

4.3 Labels

4.3.1 Label Preparation

PRS labels must be certified by the USPS for use prior to distribution as defined in the service agreement. In addition, permit holders must obtain USPS certification for barcode symbologies. Except for by FAX, any photographic, mechanical, or electronic process or any combination of these processes may be used to produce PRS labels. The background of the label may be any light color that allows the address, barcodes, and other required information to be easily distinguished. If labels are electronically transmitted to customers for their local printing, the permit holder must advise customers of these printing requirements as part of the instructions in 4.3.3

4.3.2 Labeling Methods

If all applicable contents and formats are approved (including instructions to the user), permit holders or their agents may distribute a PRS label by any of the methods provided under 3.5.4.

4.3.3 Labeling Instructions

Regardless of label distribution method, permit holders or their agents must always provide written instructions to the user of the PRS label as provided under 3.5.5.

4.3.4 Label Format Elements

PRS labels must meet the standards in the Parcel Labeling Guide available on on PostalPro at <https://postalpro.usps.com>. There is no minimum size for PRS labels; however, the label must be big enough to accommodate all of the label elements and standards in this section. All PRS label elements must be legible. Except where a specific type size is required, elements must be large enough to be legible from a normal reading distance and be separate from other elements on the label.

4.3.5 PRS Label Format Examples

The following are PRS label format examples. Note: The ZIP Code 56999 appears in each example for demonstration purposes only.

- a. Parcel Return Service label using a separate PRS barcode and postal routing barcode.

JOHN DOE
1258 RETURN LN
BETHESDA MD 20817

ZIP - 56999

NO POSTAGE
NECESSARY IF
MAILED IN THE
UNITED STATES

PARCEL RETURN SERVICE
ABC RETURNS PERMIT NO. 77899

USPS PARCEL RETURN SERVICE

AGENT / CLIENT NAME
PARCEL RETURN SERVICE
56999

9202 3912 3456 7806 1500 09

X01

- b. Parcel Return Service label using a concatenated barcode.

JOHN DOE
1258 RETURN LN
BETHESDA MD 20817

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5.0 Bulk Parcel Return Service

5.1 Bulk Parcel Return Service (BPRS) Permit and Fees

5.1.1 Permit and Per Piece Fees

A BPRS permit is required to participate in BPRS; no annual fee is required to obtain a BPRS permit. Each piece returned through BPRS is charged only the per piece fee, not postage, regardless of weight. See Notice 123—Price List for applicable fees.

5.1.2 Advance Deposit Account

The permit holder must pay BPRS fees through an advance deposit account. A separate advance deposit account for BPRS is not required.

5.1.3 Postage Due Weight Averaging

BPRS mailers may participate in the Postage Due Weight Averaging program described in 705.20.0.

5.2 Basic Standards

5.2.1 Description

Bulk parcel return service (BPRS) allows mailers of large quantities of USPS Marketing Mail or Parcel Select Lightweight machinable parcels that are either undeliverable-as-addressed or un-opened and refused by addressees to be returned to designated postal facilities. The mailer has the option of picking up all returned parcels from a designated postal facility at a predetermined frequency specified by the USPS or having them delivered by the USPS in a manner and frequency specified by the USPS. For this service, a mailer establishes a BPRS permit and pays a per piece charge for each parcel returned from an advance deposit account.

5.2.2 Availability

A mailer may be authorized to use BPRS when the following conditions apply:

- a. All returned parcels are initially prepared as regular or Nonprofit USPS Marketing Mail, or Parcel Select Lightweight, and are machinable parcels as defined in 201.7.5.
- b. At least 10,000 USPS Marketing Mail or Parcel Select Lightweight machinable parcels will be returned to a designated postal facility during a 12-month period.
- c. Parcels are returned to the mailer either because they are undeliverable-as-addressed or because they are un-opened and refused by the addressee.
- d. Parcels bear an approved BPRS label or one of the following BPRS endorsements (507.2.0) on the outbound mailpiece:
“Return Service Requested — BPRS”
“Address Service Requested — BPRS”
- e. Parcels have a return address that is in the delivery area of the Post Office that issued the BPRS permit.
- f. The postal facility designated for returned parcels is located in the United States, its territories or possessions, or is a U.S. military Post Office overseas (APO or FPO).
- g. The mailer has a valid postage due advance deposit account and BPRS permit.
- h. BPRS parcels may be combined with the shipper paid forwarding service (507.4.2.9).
- i. USPS Marketing Mail or Parcel Select Lightweight parcels that qualify for a Media Mail or Library Mail price under the applicable standards, and that contain the name of the Package Service price in the mailer’s ancillary service endorsement (507.1.5.3d.), are not eligible for BPRS.

5.2.3 Payment Guarantee

The permit holder guarantees payment of all applicable fees. The Post Office returns BPRS items to the permit holder only when there are sufficient funds in the advance deposit account to pay the fees on returned pieces.

5.2.4 Application Process

To obtain a BPRS permit, a mailer must send a written request to the Postmaster at each Post Office where parcels are to be returned that includes the following:

- a. Request for the BPRS permit.
- b. Information pertinent to each requested delivery point that documents either the receipt of, or that there are reasonable grounds to expect, at least 10,000 machinable parcels originally mailed at regular or non-profit USPS Marketing Mail or Parcel Select Lightweight prices during the past, or next, 12 months.
- c. A description of the returned parcels (e.g., piece size and packaging).
- d. A statement of the desired frequency and location of the parcel pickup or delivery point.
- e. Sample documentation that will be used to substantiate the number of parcels returned daily to each location.
- f. If a label will be furnished for returning opened parcels, the labels must be USPS approved, prepared in accordance with 5.4, and be accompanied by complete instructions for its use as described in 3.5.5.
- g. A written statement agreeing to pay the per piece fee for each returned parcel from a centralized advance deposit account.

5.2.5 Authorization

A BPRS mailer will be required to sign a postage due service agreement with each Post Office that issues a permit for the return of BPRS parcels. Upon approval of a mailer's request, the Post Office issues an authorization letter and provides a postage due service agreement with a BPRS permit number. The permit number is used for account administration and is required on BPRS labels under 5.4, when used.

5.3 Permits

5.3.1 Permit Renewal

A Post Office provides BPRS permit holders with annual renewal notices advising that their permits are due to expire. A notice must be returned to the issuing Post Office by the permit expiration date. Written authorization is not necessary for renewal of a permit if there is no change to the authorization on file at the Post Office where the parcels are returned. If a permit holder does not renew a BPRS permit after having been given notice, the USPS will endorse the mail "Bulk Parcel Return Service Canceled" and will charge postage due at the single-piece First-Class Mail or Priority Mail price as appropriate for the weight of the piece. If the single-piece First-Class Mail or Priority Mail price is not paid, the mail is forwarded to the nearest mail recovery center.

5.3.2 Permit Cancellation

A BPRS permit may be canceled by the USPS for any of the following reasons:

- a. Failure to meet the minimum volume requirement of 10,000 parcels returned during a 12-month period to each postal facility.
- b. Failure of the mailer to pay the required postage and fees for returned parcels.
- c. Insufficient funds in an advance deposit account to cover postage and fees that are due for returned parcels.

- d. Failure to fulfill the terms and conditions of the BPRS permit authorization.
- e. Failure to conform return labels to the specifications in section 5.4.

5.3.3 Reapplying After Cancellation

A mailer must do the following to receive a new BPRS permit at the same Post Office where a permit was previously canceled:

- a. Submit a letter to that office requesting a BPRS permit and new agreement.
- b. Provide evidence showing that the reasons for cancellation of the previous permit no longer exist.
- c. Maintain adequate funds in an advance deposit account to cover the number of returns expected over at least a 2-week period.

5.3.4 Extra Services

Extra services cannot be added to pieces returned via bulk parcel return service.

5.4 Optional BPRS Label

An authorized BPRS permit holder has the option to use a label to identify BPRS parcels for return to a designated postal facility. The label is prepared at the mailer's expense and must meet all format standards in the Parcel Labeling Guide available on on PostalPro at <https://postalpro.usps.com>, including an IMpb meeting the standards in 204.2.0.

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