

ITEM 4

PROPOSED DECISION AND PARAMETERS AND GUIDELINES

Elections Code Section 3010 as added or amended by 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 sections 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 section 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

- 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 Test Claim Decision and 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.⁹ On September 22, 2020, the State Controller's Office (Controller) filed comments on the Draft Proposed Decision and Parameters and Guidelines.¹⁰ On September 22, 2020, Nichols Consulting also filed comments on the Draft Proposed Decision and Parameters and Guidelines.¹¹ The California Special Districts Association (CSDA) and League of California

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, adopted July 24, 2020.

⁷ Exhibit B, Draft Expedited Parameters and Guidelines, issued July 24, 2020.

⁸ Exhibit C, County of San Diego's Comments on the Draft Expedited Parameters and Guidelines, filed August 14, 2020.

⁹ Exhibit D, Draft Proposed Decision and Parameters and Guidelines, issued September 1, 2020.

¹⁰ Exhibit E, Controller's Comments on the Draft Proposed Decision and Parameters and Guidelines, filed September 22, 2020.

¹¹ Exhibit F, Nichols Consulting's Comments on the Draft Proposed Decision and Parameters and Guidelines.

Cities (League) jointly filed late comments on the Draft Proposed Decision and Parameters and Guidelines on September 25, 2020.¹²

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 that conduct elections that are required by state law.¹³ Thus, Section II. of the Parameters and Guidelines identifies the following eligible claimants: “Any city, county, or city and county that incurs increased costs as a result of this mandate is eligible to claim reimbursement.”

Nichols Consulting¹⁴ and CSDA and the League argue that cities and special districts that do not conduct the election, but are billed by the counties and cities for the election costs, should be eligible to receive reimbursement.¹⁵ This argument is not legally correct.

In the Test Claim Decision, which is final and binding on the parties,¹⁶ the Commission found that cities may call their own municipal elections or request that the county conduct the election.¹⁷ The Commission also found that that the test claim statute does not impose a state-mandated program on school districts, community college districts, and special districts because counties and cities are required by law to conduct elections for these districts.¹⁸ Local entities that do not conduct elections are not mandated by the state to provide prepaid postage on identification envelopes delivered to voters with their vote-by-mail ballots. Thus, even though these entities may incur costs by paying a county or city to conduct their elections for them, they are not required to perform the mandated activity to provide prepaid postage on vote-by-mail identification envelopes. Reimbursement under article XIII B, section 6 is required only when the Commission finds that all of the mandate elements are present, including that the test claim

¹² Exhibit G, California Special Districts Association’s and League of California Cities’ Late Comments on the Draft Proposed Decision and Parameters and Guidelines, filed September 25, 2020.

¹³ Exhibit A, Test Claim Decision, adopted July 24, 2020, pages 20-23.

¹⁴ Exhibit F, Nichols Consulting’s Comments on the Draft Proposed Decision and Parameters and Guidelines, filed September 22, 2020, page 102.

¹⁵ Exhibit G, California Special Districts Association’s and League of California Cities’ Late Comments on the Draft Proposed Decision and Parameters and Guidelines, filed September 25, 2020, page 1.

¹⁶ *California School Board Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200-1201; Government Code sections 17557, 17559(a).

¹⁷ Exhibit A, Test Claim Decision, adopted July 24, 2020, page 23.

¹⁸ Exhibit A, Test Claim Decision, adopted July 24, 2020, page 24.

statute imposes a state-mandated activity on the local agency or school district.¹⁹ Increased costs alone do not result in a reimbursable state-mandated program.²⁰

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

Section IV. of the Proposed Parameters and Guidelines includes 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 to provide this prepaid postage, which includes the cost of the prepaid postage for elections required by state law, is eligible for reimbursement.

In its comments on the Draft Expedited Parameters and Guidelines, the County of San Diego requests reimbursement for the “possible” or “anticipated” increased costs for a high-volume mail subscription (“qualified business reply mail”).²¹ 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.”²² 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.

¹⁹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-882.

²⁰ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 877.

²¹ Exhibit C, County of San Diego’s Comments on the Draft Expedited Parameters and Guidelines, filed August 14, 2020, page 1.

²² Exhibit C, County of San Diego’s Comments on the Draft Expedited Parameters and Guidelines, filed August 14, 2020, page 1.

6. Prior to the passage of AB 216, the Registrar did not have this high volume mail subscription and did not incur this fee.²³

The County's request for reimbursement for the increased costs for mail service subscriptions "for a possible increase in mail" is overbroad, and may include costs that are not mandated by the state. Only the actual costs mandated by the state are eligible for reimbursement under article XIII B, section 6 of the California Constitution.²⁴

Nevertheless, claimants have options on how to comply with the mandate such as choosing between different kinds of business reply mail (BRM) subscriptions (for which only returned mail is charged),²⁵ or may manually affix postage on identification envelopes before mailing ballots. The test claim statute does not specify how to provide the prepaid postage on vote-by-mail identification envelopes.

Since the option to use a BRM subscription (including the pro-rata subscription fee attributable to the mandate) is supported by the declarations filed by the County of San Diego, staff finds that a BRM subscription is a reasonably necessary way to comply with the mandate, and is likely the most cost-effective way for many claimants to comply since only the mailing costs for ballots actually returned by mail plus a subscription fee is charged. However, only the pro-rata costs for labor, postage, and subscription fees actually incurred to provide prepaid postage on the vote-by-mail identification envelopes for the elections required by state law are eligible for reimbursement.

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.²⁶
- Regular local elections compelled by state law.²⁷
- 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,

²³ Exhibit C, County of San Diego's Comments on the Draft Expedited Parameters and Guidelines, filed August 14, 2020, page 4.

²⁴ Government Code section 17519; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-1284.

²⁵ For a summary of the business reply mail options, see Exhibit H, U.S. Postal Service, Business Reply Mail Frequently Asked Questions, <https://faq.usps.com/s/article/Business-Reply-Mail> (accessed on October 14, 2020).

²⁶ Elections Code sections 1200-1202, 13001.

²⁷ 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.²⁸

- 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.²⁹

Reimbursement for this activity includes the cost of labor and postage, including only the pro rata postage subscription costs incurred to provide prepaid postage for the vote-by-mail identification envelopes delivered to voters for the elections required by state law bulleted above.

In their reimbursement claims, claimants shall identify:

- 1) The election(s) required by state law for which costs are claimed;
- 2) The prepaid postage method used to comply with the mandate;
 - A. If utilizing stamps or metered mail (other than business reply mail (BRM)), include the number of prepaid vote-by-mail return identification envelopes provided and the actual labor and postage costs to provide the prepaid postage.
 - B. If utilizing a BRM subscription, include 1) the pro-rata cost of BRM subscription fees attributable to the mandate, 2) the number of prepaid vote-by-mail return identification envelopes provided for the elections required by state law and the actual labor and costs to format (e.g., include the indicia of prepaid postage or barcode on) the return identification envelope (not including the postage costs), and, 3) the number of vote-by-mail ballots returned by mail and the actual costs incurred for the return postage.

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;³⁰ or when cities and counties conduct an election solely on behalf of a school district or

²⁸ 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).

²⁹ Education Code sections 5300 and 5303. Elections Code sections 3024, 10517.

³⁰ Elections Code sections 10002, 10520.

community college district (with no other non-educational issues or elective offices on the ballot).³¹ 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. Claim Preparation and Submission (Section V. of the Parameters and Guidelines)

Section V. of the Proposed 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.

E. 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.”³² The spending limit only applies to revenue that constitutes the local agency’s “proceeds of taxes.”³³ 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 state and federal funds appropriated in the 2018, 2019, 2020, and future budget acts as potentially offsetting revenue when used by the claimant to pay for the mandate. For example, the 2018 State Budget Act appropriates \$3,128,000 for local assistance for elections from the Federal Trust Fund that could be used to pay for the mandate from January 1, 2019 to June 30, 2019.³⁴ 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 2019-2020.³⁵ Also, the 2020

³¹ Elections Code section 10520, Education Code sections 5227, 5420, and 3024; *County of Yolo v. Los Rios Community College District* (1992) 5 Cal.App.4th 1242, 1252.

³² *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.

³³ *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447.

³⁴ Statutes 2018, chapter 29 (SB 840), Item 0890-101-0890.

³⁵ Statutes 2019, chapter 23 (AB 74), Item 0890-101-0890, schedule (1).

State Budget Act appropriates \$36.5 million in state funds and \$72,246,000 in federal funds for local election assistance.³⁶

Also, a Budget Trailer Bill was enacted in 2020 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.”³⁷

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.” Prepaid postage for vote by mail ballots would certainly be among costs reasonably related to administration of an election during the pandemic since it would help to reduce the number of households mixing for extended periods of time at polling places.

In accordance with these appropriations, Section VII. of the Proposed Parameters and Guidelines recognizes 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, 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 2018 State Budget Act (Stats. 2018, ch. 29, SB 840, Item 0890-101-0890), and 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.

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.

³⁶ Statutes 2020, chapter 6 (SB 74) Item 0890-101-0001, schedule (1), and Item 0890-101-0890, schedule (1).

³⁷ Statutes 2020, chapter 7 (AB 89), Item 0890-101-0001, schedule (1), provisions (4) and (5).

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES
FOR:

Elections Code Section 3010 as added or
amended by 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	
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	
Andre Rivera, Representative of the State Treasurer, Vice Chairperson	
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 17514.³⁸ 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.³⁹
- Regular local elections compelled by state law.⁴⁰
- 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.⁴¹
- 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.⁴²

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,

³⁸ Exhibit A, Test Claim Decision, adopted July 24, 2020.

³⁹ Elections Code sections 1200-1202, 13001.

⁴⁰ 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; and Government Code sections 24200, 25304.5.

⁴¹ 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 section 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).

⁴² Education Code sections 5300 and 5303 and Elections Code section 10517.

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.⁴³

II. Procedural History

On July 24, 2020, the Commission adopted the Test Claim Decision⁴⁴ and issued the Test Claim Decision and Draft Expedited Parameters and Guidelines.⁴⁵ On August 14, 2020, the County of San Diego filed comments on the Draft Expedited Parameters and Guidelines.⁴⁶ On September 1, 2020, Commission staff issued the Draft Proposed Decision and Parameters and Guidelines.⁴⁷ On September 22, 2020, the State Controller's Office (Controller) filed comments on the Draft Proposed Decision and Parameters and Guidelines.⁴⁸ On September 22, 2020, Nichols Consulting also filed comments on the Draft Proposed Decision and Parameters and Guidelines.⁴⁹ The California Special Districts Association (CSDA) and League of California Cities (League) jointly filed late comments on the Draft Proposed Decision and Parameters and Guidelines on September 25, 2020.⁵⁰

III. Positions of the Parties, Interested Parties, and Interested Persons

A. County of Los Angeles

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

B. County of San Diego

The 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

⁴³ Elections Code sections 10002, 10517, 10520, and Education Code section 5227.

⁴⁴ Exhibit A, Test Claim Decision, adopted July 24, 2020.

⁴⁵ Exhibit B, Draft Expedited Parameters and Guidelines, issued July 24, 2020.

⁴⁶ Exhibit C, County of San Diego's Comments on the Draft Expedited Parameters and Guidelines, filed August 14, 2020.

⁴⁷ Exhibit D, Draft Proposed Decision and Parameters and Guidelines, issued September 1, 2020.

⁴⁸ Exhibit E, Controller's Comments on the Draft Proposed Decision and Parameters and Guidelines, filed September 22, 2020.

⁴⁹ Exhibit F, Nichols Consulting's Comments on the Draft Proposed Decision and Parameters and Guidelines, filed September 22, 2020.

⁵⁰ Exhibit G, California Special Districts Association's and League of California Cities' Late Comments on the Draft Proposed Decision and Parameters and Guidelines, filed September 25, 2020.

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.)⁵¹

These comments were signed under penalty of perjury by the deputy county counsel to the County of San Diego.⁵²

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.⁵³

The County of San Diego did not file comments on the Draft Proposed Decision and Parameters and Guidelines.

C. Department of Finance

The Department of Finance (Finance) has not filed any comments on the Draft Expedited Parameters and Guidelines or the Draft Proposed Decision and Parameters and Guidelines.

⁵¹ Exhibit C, County of San Diego’s Comments on the Draft Expedited Parameters and Guidelines, filed August 14, 2020, pages 1-2.

⁵² Exhibit C, County of San Diego’s Comments on the Draft Expedited Parameters and Guidelines, filed August 14, 2020, page 2.

⁵³ Exhibit C, County of San Diego’s Comments on the Draft Expedited Parameters and Guidelines, filed August 14, 2020, page 4.

D. State Controller's Office

The Controller filed comments on September 22, 2020, concurring with the Draft Proposed Decision and Parameters and Guidelines.⁵⁴

E. Nichols Consulting

Nichols Consulting filed comments on the Draft Proposed Decision and Parameters and Guidelines on September 22, 2020 regarding eligible claimants, stating that the Draft Parameters and Guidelines do not address 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 election costs related to . . . [the] mandate on their election invoice.” Nichols Consulting argues that other adopted Commission decisions, such as *Racial and Identity Profiling*, 18-TC-02 and *Absentee Ballots*, 02-PGA-02, allowed reimbursement for local governments that are billed by other local governments.⁵⁵

F. California Special Districts Association and League of California Cities

CSDA and the League jointly filed late comments arguing that special districts and cities should be eligible claimants “given that our members are directly billed by counties and cities for election expenses, including mailing costs promulgated by AB 216.”⁵⁶ For support, the comments refer to the same adopted Commission Decisions as the comments from Nichols Consulting: *Racial and Identity Profiling*, 18-TC-02 and *Absentee Ballots*, 02-PGA-02.⁵⁷

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 state-mandated program is imposed solely on counties and cities that conduct elections required by state law, and reimbursement is required only when these local agencies do not have fee authority to pay for the program.⁵⁸

In its comments on the Draft Proposed Decision and Parameters and Guidelines, Nichols Consulting expresses concern about “increased costs for cities and special districts who are billed

⁵⁴ Exhibit E, Controller's Comments on the Draft Proposed Decision and Parameters and Guidelines, filed September 22, 2020, page 1.

⁵⁵ Exhibit F, Nichols Consulting's Comments on the Draft Proposed Decision and Parameters and Guidelines, filed September 22, 2020, pages 1-2.

⁵⁶ Exhibit G, California Special Districts Association's and League of California Cities' Late Comments on the Draft Proposed Decision and Parameters and Guidelines, filed September 25, 2020, page 1.

⁵⁷ Exhibit G, California Special Districts Association's and League of California Cities' Late Comments on the Draft Proposed Decision and Parameters and Guidelines, filed September 25, 2020, page 2.

⁵⁸ Exhibit A, Test Claim Decision, adopted July 24, 2020, pages 20-23, 41-43.

by the counties and cities (as required by their fee authority) who conduct their elections and in turn, bill the portion of election costs related to . . . [the] mandate on their election invoice.” CSDA and the League jointly filed late comments also arguing that special districts and cities should be eligible claimants “given that our members are directly billed by counties and cities for election expenses, including mailing costs promulgated by AB 216.”⁵⁹ Nichols Consulting, as well as the CSDA and the League, argue that past Commission decisions allowed for reimbursement for local governments that are billed by other local governments, such as *Racial and Identity Profiling*, 18-TC-02 and *Absentee Ballots*, 02-PGA-02 and that therefore these Parameters and Guidelines should also allow reimbursement for those local governments that do not conduct, but are billed for, their elections.⁶⁰ However, the Commission finds that this position is not legally correct.

In the Test Claim Decision, the Commission expressly found that cities may call their own municipal elections or request that the county conduct the election.⁶¹ The Commission also concluded that the test claim statute does not impose a state-mandated program on school districts, community college districts, and special districts because counties and cities are required by law to conduct their elections. As the Commission stated in its Decision:⁶²

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.”⁶³ 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.⁶⁴ 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”⁶⁵ The state has not mandated this shift of election duties from the county to the

⁵⁹ Exhibit G, California Special Districts Association’s and League of California Cities’ Late Comments on the Draft Proposed Decision and Parameters and Guidelines, filed September 25, 2020, page 1.

⁶⁰ Exhibit F, Nichols Consulting’s Comments on the Draft Proposed Decision and Parameters and Guidelines, filed September 22, 2020, pages 1-2.

⁶¹ Exhibit A, Test Claim Decision, adopted July 24, 2020, page 23.

⁶² Exhibit A, Test Claim Decision, adopted July 24, 2020, page 24 (with footnotes from the Decision included).

⁶³ See also, Elections Code section 10517; *County of Yolo v. Los Rios Community College Dist.* (1992) 5 Cal.App.4th 1242.

⁶⁴ Education Code sections 5200 et seq., 5220.

⁶⁵ 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

district, and nothing in article XIII B prohibits the shifting of costs between local governmental entities.⁶⁶

The Commission's Test Claim Decision, concluding that the mandated program is imposed solely on counties and cities that conduct elections required by state law, is final and binding on the parties, and the Parameters and Guidelines are required by law to be consistent with the Test Claim Decision.⁶⁷

Although cities that do not conduct elections, as well as school districts and special districts, may incur costs for a county or city to conduct their elections for them, these local governments are not required to perform the mandated activity to provide prepaid postage on vote-by-mail identification envelopes. Reimbursement under article XIII B, section 6 is required only when all of the mandate elements are found, including that the test claim statute imposes a state-mandated activity on the local agency or school district.⁶⁸ Increased costs alone do not result in a reimbursable state-mandated program.⁶⁹

Moreover, the Commission's Decision in *Racial and Identity Profiling*, 18-TC-02, a program that requires law enforcement agencies to electronically report to the Attorney General specified data on all "stops," is consistent with this Decision and authorizes reimbursement only when local government is mandated by the state to perform the required activities. In *Racial and Identity Profiling*, the Commission found that school districts and community college districts are not eligible claimants for that program, even though they may have a law enforcement agency and perform the activities required by the test claim statute, because these districts are not mandated by state law to provide police protection services.⁷⁰ The Commission also found that costs incurred by cities and counties that contract their officers *out* to work for other government or private entities, outside of their own jurisdictions, are not eligible for reimbursement because those costs are triggered by the local discretionary decision to enter into the contract with the other entity, and are not mandated by the state.⁷¹ Cities and counties are only required by law to provide police protection services within their own jurisdictions. If a city or county fulfills its duty to provide police protection and comply with the mandated program within its own

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

⁶⁶ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1815.

⁶⁷ *California School Board Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200-1201; Government Code sections 17557, 17559(a).

⁶⁸ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-882.

⁶⁹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 877.

⁷⁰ Exhibit H, Commission on State Mandates, Test Claim Decision on *Racial and Identity Profiling*, 18-TC-02, adopted May 22, 2020, pages 49-51 (citing *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th. 1355, 1367).

⁷¹ Exhibit H, Commission on State Mandates, Test Claim Decision on *Racial and Identity Profiling*, 18-TC-02, adopted May 22, 2020, pages 51-52.

jurisdiction by contracting for law enforcement services from another jurisdiction, then it is eligible for reimbursement for the contract costs attributable to the mandated program.⁷²

The comments also cite the 2003 Parameters and Guidelines Amendment (PGA) for *Absentee Ballots*, 02-PGA-02. Those Parameters and Guidelines provide reimbursement to local agencies and school districts “that administer their own election program,” but not to school districts when the county election official administers a school district election.⁷³ As described in the staff analysis for that PGA, the *Absentee Ballots* program was approved by the Board of Control in 1981, and authorized reimbursement for school districts. In 2002, the Legislature directed the Commission to amend the Parameters and Guidelines to delete school districts as eligible claimants when the school district election is included with non-education issues on the ballot pursuant to Statutes 2002, chapter 1032 (Elec. Code, § 3024). The Commission found:

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, [Fn. omitted] 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.^{74, 75}

The Board of Control’s 1981 Decision on *Absentee Ballots*, SB90-3713 is not available, so it is not known how the Board originally analyzed the school district issues or what the law stated at that time. The Board of Control was governed by former Revenue and Taxation Code sections

⁷² Exhibit H, Commission on State Mandates, Test Claim Decision on *Racial and Identity Profiling*, 18-TC-02, adopted May 22, 2020, pages 52-54 (citing *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 888).

⁷³ Exhibit H, Commission on State Mandates, Staff Analysis and Proposed Parameters and Guidelines Amendment on *Absentee Ballots*, 02-PGA-02, adopted February 27, 2003, pages 7-8, 12.

⁷⁴ Exhibit H, Commission on State Mandates, Staff Analysis and Proposed Parameters and Guidelines Amendment on *Absentee Ballots*, 02-PGA-02, adopted February 27, 2003, page 1.

⁷⁵ The Commission also considered Elections Code section 3024, as enacted in 2002, in the Test Claim Decision for this program, finding that the counties have no fee authority and 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. (Exhibit A, Test Claim Decision, adopted July 24, 2020, page 42.)

2201 et seq. and was established as a quasi-legislative body.⁷⁶ The Commission is governed by Government Code section 17500 et seq. and, unlike the Board of Control, was established as a quasi-judicial agency to make determinations pursuant to article XIII B, section 6 of the California Constitution.⁷⁷ It was not until 1987, after the Board of Control's Decision in *Absentee Ballots*, that the California Supreme Court issued its first decision that interpreted article XIII B, section 6, noting the differences between the mandate provisions of the former Revenue and Taxation Code and what the voters intended when they adopted article XIII B, section 6.⁷⁸ Thus, the reasoning and analysis in the Board of Control's *Absentee Ballots*, SB90-3713 Decision has no effect on these Parameters and Guidelines.

Accordingly, Section II. of the Parameters and Guidelines states: "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.

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.⁷⁹

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-

⁷⁶ *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1996) 43 Cal.App.4th 1188, 1195-1196.

⁷⁷ *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1996) 43 Cal.App.4th 1188, 1195-1196.

⁷⁸ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 54-56.

⁷⁹ California Code of Regulations, title 2, section 1183.7(d).

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. 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 2018-2019.⁸⁰

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).

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.)⁸¹

⁸⁰ Exhibit A, Test Claim Decision, adopted July 24, 2020, page 42.

⁸¹ Exhibit C, County of San Diego’s Comments on the Draft Expedited Parameters and Guidelines, filed August 14, 2020, pages 1-2.

These comments were signed under penalty of perjury by the deputy county counsel to the County of San Diego.⁸²

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.⁸³

However, the County's request for reimbursement for the increased costs for mail service subscriptions "for a possible increase in mail" is overbroad, and may include costs that are not mandated by the state. Only the actual costs mandated by the state are eligible for reimbursement under article XIII B, section 6 of the California Constitution.⁸⁴

Nevertheless, the County's comments raise issues about the various options that claimants have to comply with mandate. The test claim statute does not specify by what method to provide the prepaid postage on vote-by-mail identification envelopes.⁸⁵ A claimant may choose to pre-meter or buy and place stamps on the identification envelope before mailing the ballots to voters thereby incurring return postage costs for all vote-by-mail ballots delivered to voters (many of whom may not return their ballots, or not return their ballots by mail).

Other claimants, like the County, may choose to use a postage subscription. There are currently five different types of business reply mail (BRM) subscriptions that include prepaid postage, each with its own set of features and requirements that depend on the amount of mail expected to be returned.⁸⁶ Most types of BRM require purchasing a permit or an annual account

⁸² Exhibit C, County of San Diego's Comments on the Draft Expedited Parameters and Guidelines, filed August 14, 2020, page 2.

⁸³ Exhibit C, County of San Diego's Comments on the Draft Expedited Parameters and Guidelines, filed August 14, 2020, page 4.

⁸⁴ Government Code section 17519; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-1284.

⁸⁵ This is unlike the State of Washington, which requires counties to use business reply mail accounts to provide return postage on return ballot envelopes. Exhibit H, State of Washington, Presidential Primary 2020 Advisory #01, November 19, 2019, https://www.sos.wa.gov/assets/elections/01%20reissued_return%20envelope%20declaration%20template.pdf (accessed on October 14, 2020), page 2; see also, regulations adopted as WAC 434-230-135.

⁸⁶ Exhibit H, U.S. Postal Service, Business Reply Mail Frequently Asked Questions, <https://faq.usps.com/s/article/Business-Reply-Mail> (accessed on October 14, 2020). The types of business reply mail that include prepaid postage include 1) basic business reply mail, 2) high

maintenance fee that entitles a sender to distribute BRM mailpieces for return to any Post Office in the United States and its territories. Permit holders agree to pay an annual permit fee and a First-Class Mail or Priority Mail per-piece charge on *returned* mailpieces only.⁸⁷ Thus, claimants with BRM permits only incur postage costs for the ballots actually returned by mail, plus the subscription fee.⁸⁸ There are also formatting elements required when using BRM envelopes (such as a BRM indicia or barcode) so claimants may incur printing costs to comply with the formatting elements for postage on the identification envelope.⁸⁹

Since the Legislature did not require a specific method to provide prepaid postage on the vote-by-mail identification envelopes, and the option to use a BRM subscription (including the pro-rata subscription fee attributable to the mandate) is supported by the declarations filed by the County, these alternatives are reasonably necessary to comply with the mandate. However, only the pro-rata costs for labor, postage, and postage subscription fees actually incurred to provide prepaid postage on the vote-by-mail identification envelopes for the elections required by state law are eligible for reimbursement.

Therefore, to support the actual costs incurred for labor and postage to comply with the mandate, and to account for the options in complying with the mandate (where postage costs may be incurred either before the ballots are mailed or after the ballots are returned), Section IV. of the Parameters and Guidelines requires:

In their reimbursement claims, claimants shall identify:

- 1) The election(s) required by state law for which costs are claimed;
- 2) The prepaid postage method used to comply with the mandate;
 - A. If utilizing stamps or metered mail (other than business reply mail (BRM)), include the number of prepaid vote-by-mail return identification envelopes provided and the actual labor and postage costs to provide the prepaid postage.

volume business reply mail, 3) basic qualified business reply mail, 4) high-volume qualified business reply mail, and 5) metered reply mail.

⁸⁷ Exhibit H, U.S. Postal Service, Business Reply Mail Frequently Asked Questions, <https://faq.usps.com/s/article/Business-Reply-Mail> (accessed on October 14, 2020). Metered reply mail does not require a permit or annual fee, but postage is paid on unreturned mail.

⁸⁸ Payment for BRM can be made either through 1) a postage due account, from which charges for incoming mail will be automatically deducted prior to delivery; 2) a dedicated BRM advance deposit account that requires an additional annual fee to establish and maintain (and is required for a qualified business reply mail subscription); and 3) payment upon delivery, which only requires the BRM permit. See Exhibit H, U.S. Postal Service, Payment Options for Returned Business Reply Mail, <https://pe.usps.com/MailpieceDesign/Index?ViewName=BRMPaymentOptions> (accessed on October 14, 2020).

⁸⁹ Exhibit H, U.S. Postal Service, 505 Return Services, <https://pe.usps.com/text/dmm300/505.htm> (accessed on October 14, 2020).

B. If utilizing a BRM subscription, include 1) the pro-rata cost of BRM subscription fees attributable to the mandate, 2) the number of prepaid vote-by-mail return identification envelopes provided for the elections required by state law and the actual labor and costs to format (e.g., include the indicia of prepaid postage or barcode on) the return identification envelope (not including the postage costs), and, 3) the number of vote-by-mail ballots returned by mail and the actual costs incurred for the return postage.

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.⁹⁰
- Regular local elections compelled by state law.⁹¹
- 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.⁹²
- 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.⁹³

Reimbursement for this activity includes the cost of labor and postage, including only the pro rata postage subscription costs incurred to provide prepaid return postage for the vote-by-mail identification envelopes delivered to voters for the state-mandated elections bulleted above.

⁹⁰ Elections Code sections 1200-1202, 13001.

⁹¹ 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 sections 24200, 25304.5.

⁹² 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 section 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).

⁹³ Education Code sections 5300 and 5303. Elections Code sections 3024, 10517.

In their reimbursement claims, claimants shall identify:

- 1) The election(s) required by state law for which costs are claimed;
- 2) The prepaid postage method used to comply with the mandate;
 - A. If utilizing stamps or metered mail (other than business reply mail (BRM)), include the number of prepaid vote-by-mail return identification envelopes provided and the actual labor and postage costs to provide the prepaid postage.
 - B. If utilizing a BRM subscription, include 1) the pro-rata cost of BRM subscription fees attributable to the mandate, 2) the number of prepaid vote-by-mail return identification envelopes provided for the elections required by state law and the actual labor and costs to format (e.g., include the indicia of prepaid postage or barcode on) the return identification envelope (not including the postage costs), and, 3) the number of vote-by-mail ballots returned by mail and the actual costs incurred for the return postage.

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;⁹⁴ 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).⁹⁵ 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. Claim Preparation and Submission (Section V. 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 neither requested these costs as reasonably necessary to perform the mandated activities nor submitted evidence to support such a request. The remaining sections of the Parameters and Guidelines contain standard boilerplate language.

E. Offsetting Revenues and Reimbursements (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

⁹⁴ Elections Code sections 10002, 10520.

⁹⁵ Elections Code section 10520, Education Code sections 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."⁹⁶ The spending limit only applies to revenue that constitutes the local agency's "proceeds of taxes."⁹⁷ Thus, when a local agency does not spend its own proceeds of taxes, but spends 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 Parameters and Guidelines, in Section VII., identify potentially offsetting revenues appropriated in the 2018, 2019, and 2020 and future budget acts and budget trailer bills for elections that may be used to fund this mandate.

The 2018 State Budget Act (Stats. 2018, ch. 29 (SB 840)), in Item 0890-101-0890 appropriates \$3,128,000 for "local assistance" for elections from the Federal Trust Fund that may be used to pay for the mandate from January 1, 2019 to June 30, 2019.

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 that may also be used to pay for the mandate in fiscal year 2019-2020.⁹⁸

The 2020 State Budget Act (Stats. 2020, ch. 6 (SB 74)) 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:

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

⁹⁶ *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.

⁹⁷ *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447.

⁹⁸ 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." See identical language in Statutes 2018, chapter 29, Item 0890-101-0890, schedule (1), provision (1).

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 addition, federal funds appropriated to counties to “prevent, prepare for, and respond to the coronavirus for the 2020 federal election cycle”⁹⁹ as well as state funds appropriated “to support increased costs associated with the November 2020 Elections”¹⁰⁰ may be used for prepaid postage costs on 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:¹⁰¹

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

⁹⁹ Statutes 2020, chapter 6, Item 0890-101-0890, schedule (1), provision (4).

¹⁰⁰ Statutes 2020, chapter 6, Item 0890-101-0001, schedule (1), provision (1).

¹⁰¹ Note that there are ongoing preexisting postage requirements for which the Secretary of State is required to reimburse counties that are unrelated to this mandate. Elections Code section 2164 states:

(a) The Secretary of State shall pay all postage for all of the following:

(1) Mailing of the voter notification and the address correction service pursuant to Section 2153.

(2) Return to the county elections official of the affidavits of registration pursuant to Section 2157.

(3) Mailing of blank voter registration cards pursuant to subdivision (c) of Section 2158.

(4) Any mailing of blank voter registration cards pursuant to programs adopted under Section 2105.

(b) All payments made pursuant to this section shall be made directly from funds appropriated to the Secretary of State for this purpose.

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 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 0890-101-0890.¹⁰²

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.¹⁰³

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

¹⁰² Emphasis added.

¹⁰³ Exhibit H, California Secretary of State, Memorandum #20153, dated July 17, 2020, <https://elections.cdn.sos.ca.gov/ccrov/pdf/2020/july/20153sl.pdf> (accessed on October 5, 2020), page 1.

November 2020 election and remaining state voting system funding by county, and then reimburse counties for the difference in costs.¹⁰⁴

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.¹⁰⁵

Prepaid postage for vote by mail ballots would certainly be among costs “reasonably related to administration of an election during the pandemic” since it would help to reduce the number of households mixing for extended periods of time at polling places and of course such costs are “increased costs related to all aspects of vote by mail”. Accordingly, Section VII. of the Parameters and Guidelines recognizes the following potentially offsetting revenue: federal funds appropriated in the 2018 State Budget Act (Stats. 2018, ch. 29, SB 840, Item 0890-101-0890), 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 2018 State Budget Act (Stats. 2018, ch. 29, SB 840, Item 0890-101-0890) and 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

¹⁰⁴ Exhibit H, California Secretary of State, Memorandum #20153, dated July 17, 2020, <https://elections.cdn.sos.ca.gov/ccrov/pdf/2020/july/20153sl.pdf> (accessed on October 5, 2020), page 2.

¹⁰⁵ Exhibit H, California Secretary of State, Memorandum #20160, dated July 27, 2020, <https://elections.cdn.sos.ca.gov/ccrov/pdf/2020/july/20160sl.pdf> (accessed on October 5, 2020), page 1.

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.

V. Conclusion

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

PARAMETERS AND GUIDELINES¹⁰⁶

Elections Code Section 3010 as added or amended by 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.¹⁰⁷
- Regular local elections compelled by state law.¹⁰⁸
- 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.¹⁰⁹

¹⁰⁶ 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.

¹⁰⁷ Elections Code sections 1200-1202, 13001.

¹⁰⁸ 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 sections 24200, 25304.5.

¹⁰⁹ 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 section 8026 (death of incumbent or challenger for a nonpartisan statewide, countywide, or citywide office, or for a

- 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.¹¹⁰

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.¹¹¹

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.
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.

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).

¹¹⁰ Education Code sections 5300 and 5303. Elections Code section 10517.

¹¹¹ Elections Code sections 10002, 10517, 10520, and Education Code section 5227.

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.¹¹²
- Regular local elections compelled by state law.¹¹³
- 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

¹¹² Elections Code sections 1200-1202, 13001.

¹¹³ 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 sections 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.¹¹⁴

- 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.¹¹⁵

Reimbursement for this activity includes the cost of labor and postage, including only the pro rata postage subscription costs incurred to provide prepaid postage for the vote-by-mail identification envelopes delivered to voters for the elections required by state law bulleted above.

In their reimbursement claims, claimants shall identify:

- 1) the election(s) required by state law for which costs are claimed;
- 2) the prepaid postage method used to comply with the mandate;
 - A. If utilizing stamps or metered mail (other than business reply mail (BRM)), include the number of prepaid vote-by-mail return identification envelopes provided and the actual labor and postage costs to provide the prepaid postage.
 - B. If utilizing a BRM subscription, include 1) the pro-rata cost of BRM subscription fees attributable to the mandate, 2) the number of prepaid vote-by-mail return identification envelopes provided for the elections required by state law and the actual labor and costs to format (e.g., include the indicia of prepaid postage or barcode on) the return identification envelope (not including the postage costs), and, 3) the number of vote-by-mail ballots returned by mail and the actual costs incurred for the return postage.

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;¹¹⁶ 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

¹¹⁴ 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 section 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).

¹¹⁵ Education Code sections 5300 and 5303. Elections Code sections 3024, 10517.

¹¹⁶ Elections Code sections 10002, 10520.

ballot).¹¹⁷ 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.

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-

¹¹⁷ Elections Code section 10520, Education Code sections 5227, 5420, and 3024; *County of Yolo v. Los Rios Community College District* (1992) 5 Cal.App.4th 1242, 1252.

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 chapter¹¹⁸ 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 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 2018 State Budget Act (Stats. 2018, ch. 29, SB 840, Item 0890-101-0890) and 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

¹¹⁸ This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

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.