

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM

Elections Code Section 3010

Statutes 2018, Chapter 120 (AB 216)

Filed on October 15, 2019

County of Los Angeles, Claimant

Case No.: 19-TC-01

*Vote by Mail Ballots: Prepaid Postage*


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

*(Adopted July 24, 2020)*

*(Served July 24, 2020)*

**TEST CLAIM**

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

  
Heather Halsey, Executive Director

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

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

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

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

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

## **Summary of the Findings**

This Test Claim addresses Statutes 2018, chapter 120, which amended Elections Code section 3010 to require elections officials to include prepaid postage on identification envelopes delivered to vote-by-mail voters for returning their ballots.

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

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

Specifically, the Commission finds that the test claim statute imposes a new requirement on city and county elections officials to provide prepaid postage on identification envelopes delivered with vote-by-mail ballots for all state and local elections. Although “elections official” is defined broadly in section 320 of the Elections Code, school districts, community college districts, and special districts do not conduct their own elections. The requirement to provide prepaid postage on identification envelopes is mandated only on counties and on cities that conduct elections.

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

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<sup>1</sup> Elections Code sections 1200-1202, 13001.

<sup>2</sup> 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.

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

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

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

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

Finally, although the legislative history of the test claim statute indicates that some counties were already providing prepaid postage on the identification envelopes at their own discretion,<sup>12</sup> the requirement is now mandated by the state. Government Code section 17565 states that “[i]f a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.”

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

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

<sup>6</sup> Government Code sections 53723 and 54380.

<sup>7</sup> Elections Code section 9603. Government Code section 61008(d).

<sup>8</sup> Elections Code sections 9140 and 9222.

<sup>9</sup> Elections Code section 1405(b).

<sup>10</sup> Government Code section 36512(b). Education Code section 5091.

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

<sup>12</sup> Exhibit C, County of San Diego’s Comments on the Test Claim, page 8. (Assembly Committee on Elections and Reapportionment, Analysis of AB 216 (2017-2018 Reg. Sess.) as introduced January 24, 2017.)

The Commission finds that the mandate imposes a new program or higher level of service on cities and counties. The new requirement is imposed uniquely on city and county elections officials, and provides a governmental service to the public. The requirement to provide prepaid postage on the identification envelope was intended to make the vote-by-mail process more equitable and less costly for voters.<sup>13</sup> The legislative history also indicates that because the required postage can vary depending on the size of the ballot, the prepaid identification envelope may reduce potential confusion for vote-by-mail voters, thereby providing a governmental service to the public.<sup>14</sup>

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

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

Therefore, the Commission partially approves this Test Claim and finds that Elections Code section 3010, as amended by Statutes 2018, chapter 120, imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution on county and city elections officials to provide prepaid postage on identification envelopes delivered to voters with their vote-by-mail ballots, beginning January 1, 2019, for the following elections:

- Statewide general elections, statewide direct primary elections, and the presidential primary elections conducted by counties.<sup>16</sup>
- Regular local elections compelled by state law.<sup>17</sup>
- 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

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<sup>13</sup> Exhibit C, County of San Diego's Comments on the Test Claim, pages 8-9. (Assembly Committee on Elections and Reapportionment, Analysis of AB 216 (2017-2018 Reg. Sess.), as introduced January 24, 2017.)

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

<sup>15</sup> Elections Code section 3024, last amended by Statutes 2007, chapter 508.

<sup>16</sup> Elections Code sections 1200-1202, 13001.

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

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

- 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.<sup>19</sup>

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

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

## COMMISSION FINDINGS

### I. Chronology

- 01/01/2019 Effective date of Statutes 2018, chapter 120, amending Elections Code section 3010.
- 10/15/2019 The claimant filed the Test Claim.<sup>21</sup>
- 01/02/2020 The Department of Finance (Finance) filed comments on the Test Claim.<sup>22</sup>
- 02/03/2020 The County of San Diego filed comments on the Test Claim.<sup>23</sup>

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<sup>18</sup> 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).

<sup>19</sup> Education Code sections 5300 and 5303. Elections Code section 10517.

<sup>20</sup> Elections Code sections 10002, 10517, 10520, and Education Code section 5227.

<sup>21</sup> Exhibit A, Test Claim.

<sup>22</sup> Exhibit B, Finance's Comments on the Test Claim.

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

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

## **II. Background**

### **A. Vote-by-Mail in California**

This Test Claim concerns Statutes 2018, chapter 120, which amended Elections Code section 3010 to require “elections officials” to include prepaid postage on identification envelopes delivered to vote-by-mail voters for returning their ballots. The Elections Code defines a vote-by-mail voter as “any voter casting a ballot in any way other than at the polling place.”<sup>28</sup>

Voting by mail was authorized in California by a constitutional amendment ratified at the November 7, 1922 General Election (Prop. 22)<sup>29</sup> and is governed by statutes enacted in 1923.<sup>30</sup> Originally, voters seeking to vote by mail were required to submit to the elections official a vote-by-mail application with an affidavit to show county residency, duly registered-voter status, and absence from the voting precinct on Election Day.<sup>31</sup> Upon receipt of the application and affidavit, the elections official delivered a ballot and “supplies,” including an identification envelope, to the voter:

[I]t shall be the duty of the county clerk or registrar of voters receiving same [application and affidavit] to deliver to said applicant . . . an official ballot of the precinct of said applicant, together with an identification envelope and a return envelope, and a small rubber stamp and stamp pad for marking said ballot:

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<sup>24</sup> Exhibit D, Claimant’s Late Rebuttal Comments.

<sup>25</sup> Exhibit E, Draft Proposed Decision.

<sup>26</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision.

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

<sup>28</sup> Elections Code section 300. Prior to Statutes 2007, chapter 508, vote-by-mail voters were known as “absentee voters.” Section 300 also defines a “military or overseas voter” (formerly known as a “special absentee voter”).

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

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

<sup>31</sup> Former Elections Code section 1357(b) (Stats. 1923, ch. 283).

*provided, however, that before delivering or mailing such ballot and supplies, the county clerk ... shall satisfy himself from the affidavit of registration of such voter as to the truth of the affidavit....*<sup>32</sup>

The earlier vote-by-mail law required ballots be made available only to voters not able to vote at the polling place due to illness, absence from precinct on the day of election, physical handicap, conflicting religious commitments, or when the voter resided more than 10 miles from the polling place.<sup>33</sup> In 1978, however, the Legislature declared that vote-by-mail ballots “shall be available to any registered voter.”<sup>34</sup>

Since the mid-1970s, elections officials have been required to send to every registered voter an application to vote by mail with the sample ballot (or after 2016, with the county information guide).<sup>35</sup> The application informs the voter of the elections official’s address and specifies the official’s address as the only appropriate destination for mailing the application.<sup>36</sup> The application for a vote-by-mail ballot is made in writing to the elections official having jurisdiction over the election “between the 29<sup>th</sup> and 7<sup>th</sup> day prior to the election,” and “shall be signed by the applicant under penalty of perjury.”<sup>37</sup> Any applications received by the elections official before the 29th day are kept and processed during the application period.<sup>38</sup>

Upon receipt of the vote-by-mail application:

[T]he elections official should determine if the signature and residence address on the ballot application appear to be the same as that on the original affidavit of registration. The elections official may make this signature check upon receiving the voted ballot, but the signature must be compared before the vote-by-mail voter ballot is canvassed.<sup>39</sup>

If the elections official determines that the application does not contain all of the required information or is otherwise defective, the elections official shall mail the voter a vote-by-mail

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

<sup>33</sup> Former Elections Code section 1003 (Stats. 1976, ch. 1275).

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

<sup>35</sup> Former Elections Code section 14621.3 (Stats. 1974, ch. 945); former Elections Code section 1018 (Stats. 1976, ch. 1275); Elections Code section 3022 (Stats. 2016, ch. 422).

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

<sup>37</sup> Elections Code section 3001 (as last amended by Stats. 2013, ch. 501); see also, Elections Code section 3006(e) (as last amended by Stats. 2014, ch. 596).

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

<sup>39</sup> Elections Code section 3009(a) (as last amended by Stats. 2015, ch. 728). “Official canvass” means “the public process of processing and tallying all ballots received in an election . . . .” Elections Code section 335.5.



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

If the elections official deems the applicant entitled to a vote-by-mail ballot, then the ballot is delivered to the voter.<sup>41</sup> Elections Code section 3010, as amended in 2015, stated that the elections official shall deliver to each qualified applicant the vote-by-mail ballot and “all supplies necessary for the use and return of the ballot.”<sup>42</sup> Elections Code section 3011 describes what must be printed on the identification envelope that is delivered with the ballot to vote-by-mail voters, including the voter’s signature, address, date, and notice that the envelope must be signed by the voter for the ballot to be counted.<sup>43</sup>

The voter returns the ballot sealed inside the identification envelope, which must be received by the elections official who issued the ballot, or dropped off at an authorized location within the state, no later than the close of the polls on election day.<sup>44</sup> Upon receiving a vote-by-mail ballot, the elections official is required to compare the signature on the identification envelope with either the signature on the voter’s affidavit of registration or on a form issued by an election official that contains the voter’s signature and is part of the voter’s registration record. If the signatures compare, the elections official deposits the ballot, still in the identification envelope, in a ballot container. If the signatures do not compare, the cause of the rejection is written on the face of the identification envelope.<sup>45</sup> In addition, the identification envelope is not opened and the ballot is not counted unless the voter completes a signature verification process.<sup>46</sup> If the identification envelope is returned unsigned, the ballot is not counted unless the voter completes an unsigned ballot statement.<sup>47</sup> In any event, “[a] ballot shall not be removed from its identification envelope until the time for processing ballots” and a “ballot shall not be rejected for cause after the identification envelope has been opened.”<sup>48</sup> Vote by mail ballots are generally counted and canvassed in the same manner as ballots cast in a precinct polling place.<sup>49</sup>

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

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

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

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

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

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

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

<sup>46</sup> Elections Code section 3019(c) and (d).

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

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

<sup>49</sup> Elections Code section 15109.

<sup>50</sup> Statutes 1982, chapter 1422, former Elections Code sections 1450-1456. Statutes 1994, chapter 920 reorganized the entire Elections Code, including the repeal of the permanent

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

In 2016, the Legislature authorized specified counties beginning January 1, 2018, and all other counties beginning January 1, 2020, to conduct all mail-in elections in which every voter is mailed a ballot and vote centers and ballot drop-off locations are available prior to and on election day in lieu of operating polling places for the election.<sup>53</sup>

County elections officials administer almost every aspect of voting in California including vote-by-mail voting.<sup>54</sup> As explained in the analysis, counties typically administer elections for cities, special districts, and school and community college districts in the county. These local governments then reimburse counties for administering their local elections, based on the portion of the ballot dedicated to the local governments' candidates and issues.<sup>55</sup>

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

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

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

According to the legislative history of the test claim statute, the requirement for prepaid postage on the identification envelope was intended to make the vote-by-mail process more equitable and

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

<sup>51</sup> Statutes 2001, chapter 922, Elections Code sections 3201-3202,

<sup>52</sup> Elections Code section 3203 (Stats. 2013, ch. 560).

<sup>53</sup> Statutes 2016, chapter 832.

<sup>54</sup> Elections Code section 3000 et seq.

<sup>55</sup> Exhibit H, LAO, "Considering the State's Role in Elections, the 2017-2018 Budget," March 30, 2017. Elections Code sections 10002, 10517, 10520, and Education Code section 5227.

free for voters who vote by mail.<sup>56</sup> The legislative history also indicates that because the required postage can vary depending on the size of the ballot, the prepaid identification envelope may reduce potential confusion for vote-by-mail voters.<sup>57</sup>

### **C. Past Commission Decisions on Election Laws**

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

#### Absentee Ballots, CSM-3713

The Board of Control (predecessor to the Commission) determined, at its hearing of June 17, 1981, that Elections Code section 1003 (later renumbered to section 3003)<sup>60</sup> imposed a reimbursable state-mandated program to make “absentee ballots . . . available to any registered voter.” Under prior law, vote-by-mail ballots were made available only to voters not able to vote at the polling place due to illness, absence from precinct on the day of election, physical handicap, conflicting religious commitments, or when the voter resided more than 10 miles from the polling place.<sup>61</sup> Thus, the costs associated with the increase in absentee ballot filings was determined to be reimbursable, based on specified formulas for counties administering the

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<sup>56</sup> Exhibit C, County of San Diego’s Comments on the Test Claim, pages 8-9. (Assembly Committee on Elections and Reapportionment, Analysis of AB 216 (2017-2018 Reg. Sess.) as introduced January 24, 2017.)

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

<sup>58</sup> There has also been no test claim filed on former Elections Code section 1008 (Stats. 1976, ch. 1275), which was renumbered to section 3010 in 1994.

<sup>59</sup> Exhibit H, LAO, “Considering the State’s Role in Elections, the 2017-2018 Budget,” March 30, 2017, page 6, which states:

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

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

<sup>60</sup> This was originally former Elections Code section 1003 (Stats. 1976, ch. 1275, Stats. 1978, ch. 77), but was renumbered to section 3003 by Statutes 1994, chapter 920.

<sup>61</sup> Former Elections Code section 1003 (Stats. 1976, ch. 1275).

elections for other local agencies, and for local agencies and school districts administering their own elections.<sup>62</sup>

The *Absentee Ballots*, CSM-3713 mandate has been suspended every year since 2011-12.<sup>63</sup>

#### *Permanent Absent Voter, CSM-4358*

On September 21, 1989, the Commission adopted the *Permanent Absent Voter*, CSM-4358 Test Claim Statement of Decision, finding that former Elections Code sections 1450-1456 (Stats. 1982, ch. 1422) imposed a reimbursable state-mandated program on counties to: (1) establish and maintain a list of permanent absent voters who provide evidence of physical disability; (2) mail absent voter ballots to such voters for each election in which they are eligible to vote; and (3) delete from the permanent absent voter list any person who fails to return an executed absent voter ballot for any statewide direct primary or general election.<sup>64</sup>

These test claim statutes were repealed and reenacted by Statutes 1994, chapter 920, which required that an application for permanent absent voter status be made available to any voter, and not just to voters with physical disabilities. On December 1, 2011, the Commission determined that reimbursement for this program ended effective June 30, 2010, finding that the mandated activity in the *Permanent Absent Voter II*, 03-TC-11 Parameters and Guidelines (see below), replaced the activity in the *Permanent Absent Voter*, CSM-4358 program.<sup>65</sup> Additionally, the *Permanent Absent Voter*, CSM-4358 mandate has been suspended in the state budget in every year beginning 2011-12.<sup>66</sup>

#### *Absentee Ballots, Tabulation by Precinct, 00-TC-08*<sup>67</sup>

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

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

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

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

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

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

<sup>67</sup> This Test Claim was filed on Elections Code sections 15111, 15321, and 21000 as added or amended by Statutes 1999, chapter 697. The title of this program was *Absentee Ballots II* during the Test Claim phase and was changed during the Parameters and Guidelines phase.

conducted between June 1, 2000, and January 1, 2001; and (3) making available to the Legislature and appropriate legislative committees election returns for each precinct reflecting the total for all ballots cast, including both absentee ballots and ballots cast at polling places, in statewide elections or special elections to fill a vacant congressional or legislative office for elections conducted between June 1, 2000, and January 1, 2001.<sup>68</sup> The Commission also identified offsetting revenues for counties, based on statutes that authorize counties to charge a fee to other local agencies and school districts for the cost to modify absentee ballot lists to include the precinct of each absentee voter, when the ballots include city, school district, community college district, or special district issues or candidates.<sup>69</sup>

The *Absentee Ballots, Tabulation by Precinct*, 00-TC-08 mandate has been suspended every year since 2011-12.<sup>70</sup>

*Permanent Absentee Voters II*, 03-TC-11<sup>71</sup>

On July 26, 2006, the Commission approved the *Permanent Absentee Voters II*, 03-TC-11 Test Claim finding that Elections Code sections 3201 and 3203(b)(2) impose a reimbursable state-mandated program on county elections officials to make an application for permanent absent voter status available to any voter. This replaced the *Permanent Absent Voter*, CSM-4358 program, which was limited to permanent absentee voters who provided evidence of physical limitations. The Commission also approved for reimbursement the requirement for county elections officials to include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and the consequences for failing to return an executed absentee voter ballot for statewide primary or general elections.<sup>72</sup>

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

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<sup>68</sup> Exhibit H, Commission on State Mandates, Statement of Decision for *Absentee Ballots Tabulation by Precinct (Absentee Ballots II)*, 00-TC-08, adopted April 24, 2003, page 10.

<sup>69</sup> Exhibit H, Commission on State Mandates, Statement of Decision for *Absentee Ballots, Tabulation by Precinct (Absentee Ballots II)*, 00-TC-08, adopted April 24, 2003, pages 9-11. The counties' fee authority was based on Elections Code sections 10002, 13001, and 10416.

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

<sup>71</sup> This Test Claim was filed on Elections Code Sections 3100, 3101, 3103, 3104, 3106, 3108, 3110, 3200, 3201, 3202, 3203, 3204, 3205, and 3206; Statutes 1994, chapter 920; Statutes 1996, chapter 724; Statutes 2001, chapter 918; Statutes 2001, chapter 922; Statutes 2002, chapter 664; Statutes 2003, chapter 347. Note that Statutes 1994, chapter 920 reorganized the entire Elections Code, including the repeal of Elections Code sections 1450 through 1456, and reenacted these provisions as Elections Code sections 3200 through 3206.

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

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

*Voter Identification Procedures, 03-TC-23*

On October 4, 2006 the Commission approved the *Voter Identification Procedures, 03-TC-23* Test Claim finding that Elections Code section 14310(c)(1), as amended by Statutes 2000, chapter 260, imposed a reimbursable state-mandated program on city and county elections officials to compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration, and to reject any ballot when the signatures do not compare, for statutorily required elections. The Commission also concluded that when a local government calls a special election that could have otherwise been legally consolidated with the next local or statewide election, holding the special election is a voluntary decision on the part of the local government, and the downstream costs for checking signatures on provisional ballots are not reimbursable.<sup>74</sup>

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

*Post-Election Manual Tally, 10-TC-08*

In July 2014, the Commission adopted the *Post-Election Manual Tally, 10-TC-08* Test Claim Decision, finding that regulations adopted by the Secretary of State imposed a reimbursable state mandate on counties to conduct post-election manual tallies of votes for races with very narrow margins of victory during elections conducted in whole or in part on a mechanical, electromechanical, or electronic voting system.<sup>76</sup> The emergency regulations were effective only from October 20, 2008 until April 12, 2009, coinciding with the November 2008 Presidential General Election. The Commission also found that cities were not eligible claimants because any municipal elections held during the November 2008 Presidential General Election would have been consolidated with the statewide election administered by counties, so city elections officials were not required to comply with the test claim regulations.<sup>77</sup>

**III. Positions of the Parties and Interested Parties**

**A. County of Los Angeles**

The claimant, County of Los Angeles, alleges that the test claim statute imposes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution. Specifically, the claimant alleges reimbursable costs for "supplies necessary for the use and

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

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

<sup>76</sup> This Test Claim was filed on former California Code of Regulations, title 2, division 7, chapter 3, sections 20120, 20121, 20122, 20123, 20124, 20125, 20126, and 20127 (Register 2008, No. 43) effective from October 20, 2008 to April 12, 2009.

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

return of the ballot, including an identification envelope with prepaid postage for return of the envelope by mail ballot.”<sup>78</sup> According to the Test Claim:

With a stamp currently costing \$0.55 per envelope and rising, it would often cost \$1.00 for voters to cast their VBM [vote-by-mail] ballots while voters in other jurisdictions were provided with free postage.<sup>79</sup>

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

The Claimant estimates that it will incur \$620,791 in increased cost to comply with the AB 216 mandate in FY 2019-20.<sup>80</sup>

For fiscal year 2019-2020, the claimant estimates its costs by multiplying the number of vote-by-mail applicants in the 2018 election plus five percent, by the percentage of vote-by-mail responses for the November 2018 election, by the average cost of postage per ballot. Thus, the claimant estimates \$620,791 in increased 2019-2020 costs attributable to the mandate.<sup>81</sup> The Test Claim includes a declaration of these allegations by the Fiscal Operations Branch Manager for the Los Angeles County Registrar Recorder/County Clerk's Office.<sup>82</sup>

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

In its rebuttal comments, the claimant disagrees with Finance's assertion that the test claim statute only increases costs, but does not impose a new program or higher level of service. The claimant argues that the test claim statute “imposes a requirement unique to local governments and requires the local governments to provide a specific service to the public, that is, to provide prepaid postage on VBM ballots. This is not a mere incidental effect of a law of general application.”<sup>84</sup> The claimant also argues that the cases cited by Finance are distinguishable from the test claim statute. In *City of Anaheim v. State*,<sup>85</sup> the test claim statute did not require local governments to do anything. Regarding *San Diego Unified School Dist.*,<sup>86</sup> the claimant states:

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<sup>78</sup> Exhibit A, Test Claim, page 12 (Declaration of Margaret Palacios).

<sup>79</sup> Exhibit A, Test Claim, page 6.

<sup>80</sup> Exhibit A, Test Claim, pages 7, 12-13 (Declaration of Margaret Palacios). The claimant states on page 13 that the “average cost of postage is \$.605.”

<sup>81</sup> Exhibit A, Test Claim, page 18 (Declaration of Margaret Palacios).

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

<sup>83</sup> Exhibit A, Test Claim, page 18 (Declaration of Margaret Palacios).

<sup>84</sup> Exhibit D, Claimant's Late Rebuttal Comments, page 1.

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

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

The Supreme Court of California affirmed the judgment as it provided reimbursement for costs related to the hearings triggered by the mandatory expulsion recommendation. However, the Court reversed the judgment for reimbursement of costs related to hearings triggered by the discretionary expulsion recommendations.<sup>87</sup>

The claimant also asserts that the test claim statute “is not a mere incidental effect of a law of general application. Rather, it falls squarely within the definition of a new program and higher level of service.”<sup>88</sup>

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

### **B. Department of Finance**

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

The requirement to provide prepaid postage does not amount to a new program or higher level of service. Increased costs alone will not result in a reimbursable state mandate (*City of Anaheim v. State* (1987) 189 Cal.App.3d 1478). Reimbursement is not required if the test claim statute merely implements some change that increases the cost of providing a service. (*San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859). Accordingly, the Commission should deny the test claim because AB 216 does not impose a new program or higher level of service.<sup>92</sup>

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<sup>87</sup> Exhibit D, Claimant’s Late Rebuttal Comments, page 1.

<sup>88</sup> Exhibit D, Claimant’s Late Rebuttal Comments, page 1.

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

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

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

<sup>92</sup> Exhibit B, Finance’s Comments on the Test Claim, page 1.



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

Claimant reports a cost of \$668,939 to comply with the AB 216 mandate in fiscal year 2018-19. However, \$584,909 of the cost was invoiced on November 6, 2018, which is prior to AB 216 becoming law. AB 216 went into effect on January 1, 2019.<sup>93</sup>

Finance did not file comments on the Draft Proposed Decision.

### **C. County of San Diego**

The County of San Diego filed comments as an interested party, arguing that the test claim statute imposes a reimbursable state mandate, stating “before the passage of AB 216, the elections officials of local governments were not required to include prepaid postage along with vote by mail (“VBM”) ballots; after the passage of AB 216, they are.”<sup>94</sup> The County also states that the test claim statute meets both alternate definitions of a “program” because it “carries out the governmental function of providing services to the public—i.e., providing payment in advance for the return of VBM ballots.”<sup>95</sup> The County argues that this test claim statute, like the statute at issue in *San Diego Unified School Dist.*, requires an “increase in the actual level or quality of governmental services provided,” which does impose a reimbursable mandate.<sup>96</sup> The County also argues that paying for postage on vote-by-mail ballots “is not a mere incidental effect of a law of general application. Nor is it a requirement that only affects local governments’ cost of compensating their own employees. Rather, it falls squarely within the definition of a program or higher level of service.”<sup>97</sup> The County also states that the statute imposes requirements unique to local governments, and that sending a voter a return envelope with prepaid postage is a new program or higher level of service. The County further argues that this Test Claim is identical in all material respects to a Test Claim the Commission partially approved in 2006, *Permanent Absent Voter II*, 03-TC-11, in which the test claim statute required the elections official to include in absentee ballot mailings some information about the absentee voting procedure that was not required before the enactment of the statute.<sup>98</sup>

The County also points out that the test claim statute applies to both statewide and local elections, and that local governments may incur some costs in addition to postage, such as purchase of a high-volume mail subscription, and costs for unusable identification envelopes that were printed before the test claim statute was enacted.<sup>99</sup>

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

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<sup>93</sup> Exhibit B, Finance’s Comments on the Test Claim, page 1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **IV. Discussion**

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

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

The purpose of article XIII B, section 6 is to “preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”<sup>106</sup> Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”<sup>107</sup>

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

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.<sup>108</sup>
2. The mandated activity constitutes a “program” that either:
  - a. Carries out the governmental function of providing a service to the public; or
  - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.<sup>109</sup>
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.<sup>110</sup>

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

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

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

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

<sup>109</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

<sup>110</sup> *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal3d 830, 835.

4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.<sup>111</sup>

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.<sup>112</sup> The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>113</sup> In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>114</sup>

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

Government Code section 17551(c) states that test claims “shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.”<sup>115</sup>

The effective date of Statutes 2018, chapter 12 is January 1, 2019. The Test Claim was filed on October 15, 2019,<sup>116</sup> within 12 months of the effective date of the test claim statute. Therefore, the Test Claim is timely filed.

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

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<sup>111</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

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

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

<sup>114</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 [citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817].

<sup>115</sup> Government Code section 17551(c).

<sup>116</sup> Exhibit A, Test Claim, page 1.

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

**1. The Test Claim Statute Imposes a New Requirement Solely on City and County Elections Officials to Provide Prepaid Postage on Identification Envelopes Delivered with Vote-By-Mail Ballots for All State and Local Elections.**

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

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

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

Preexisting law requires voters who request to vote by mail to submit an application in writing to the local elections official between the 29th and 7th day prior to the election.<sup>117</sup> Upon approval of the application, the election official delivers to the voter a vote-by-mail ballot and (according to Elec. Code, § 3010, as last amended in 2015) “supplies for the use and return of the ballot.” These ballot “supplies” were not defined in section 3010.<sup>118</sup>

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<sup>117</sup> Elections Code sections 3001, 3006, 3021. “Elections official” is defined in Elections Code section 320 as “any of the following: (a) A clerk or person who is charged with the duty of conducting an election. (b) A county clerk, city clerk, registrar of voters, elections supervisor, or governing board having jurisdiction over elections within any county, city, or district within the state.”

<sup>118</sup> Statutes 2015, chapter 728. Older statutes more clearly indicated the “supplies” for returning the ballot. Former Elections Code section 1357(c) as enacted by Statutes 1923, chapter 283 required, upon receipt of the absentee ballot application and affidavit, “it shall be the duty of the or registrar of voters receiving same to deliver to said applicant . . . an official ballot of the precinct of said applicant, together with an identification envelope and a return envelope, and a small rubber stamp and stamp pad for marking said ballot: *provided, however*, that before delivering or mailing such ballot and supplies, the county clerk . . . shall satisfy himself from the

In examining what “supplies” were required under prior law, the California Supreme Court has said: “we keep in mind that ‘the meaning of the enactment may not be determined from a single word or sentence; the words must be construed in context.’”<sup>119</sup> Also, section 3010 “should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect.”<sup>120</sup>

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

- (a) The identification envelope shall contain all of the following:
  - (1) A declaration, under penalty of perjury, stating that the voter resides within the precinct in which he or she is voting and is the person whose name appears on the envelope.
  - (2) The signature of the voter.
  - (3) The residence address of the voter as shown on the affidavit of registration.
  - (4) The date of signing.
  - (5) A notice that the envelope contains an official ballot and is to be opened only by the canvassing board.
  - (6) A warning plainly stamped or printed on it that voting twice constitutes a crime.
  - (7) A warning plainly stamped or printed on it that the voter must sign the envelope in his or her own handwriting in order for the ballot to be counted.
  - (8) A statement that the voter has neither applied, nor intends to apply, for a vote by mail voter's ballot from any other jurisdiction for the same election.
  - (9) The name of the person authorized by the voter to return the vote by mail ballot pursuant to Section 3017.
  - (10) The relationship to the voter of the person authorized to return the vote by mail ballot.
  - (11) The signature of the person authorized to return the vote by mail ballot.

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affidavit of registration of such voter as to the truth of the affidavit . . . .” (Underlining added, italics in original.)

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

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

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

- (b) Except at a primary election for partisan office, and notwithstanding any other provision of law, the vote by mail voter's party preference may not be stamped or printed on the identification envelope.<sup>121</sup>

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

In addition, the requirement to provide prepaid postage on the identification envelopes applies to all vote-by-mail ballots for each election, so it establishes a requirement for all state and local elections. This is also stated in the legislative history of the test claim statute.<sup>122</sup> “Local elections” are defined as “a municipal, county, or district election,” and may include local governing body elections and local measures, such as tax and bond measures.<sup>123, 124</sup>

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

Elections Code section 13001 provides, however, that “[a]ll expenses authorized and necessarily incurred in the preparation for, and conduct of, elections as provided in this code shall be paid from the county treasuries, except that when an election is called by the governing body of a city the expenses shall be paid from the treasury of the city.” Thus, the county is responsible for providing prepaid postage for vote-by-mail ballots for all statewide elections (statewide general election, statewide direct primary election, and the presidential primary election)<sup>125</sup> and county and municipal elections discussed below.

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<sup>121</sup> Statutes 2015, chapter 728. Section 3011 was amended by Statutes 2018, chapter 203 to add the following subdivision (c): “Notwithstanding paragraphs (9) to (11), inclusive, of subdivision (a), a ballot shall not be disqualified solely because the person authorized to return it did not provide on the identification envelope his or her name, relationship to the voter, or signature.”

<sup>122</sup> Elections Code section 328. See also, Exhibit C, County of San Diego’s Comments on the Test Claim, pages 9, 19 (Assembly Committee on Elections and Redistricting, Analysis of AB 216 (2017-2018 Reg. Sess.) as introduced January 24, 2017; Senate Committee on Appropriations, Analysis of AB 216 (2017-2018 Reg. Sess.) as introduced January 24, 2017).

<sup>123</sup> Elections Code section 328.

<sup>124</sup> See, for example, Elections Code sections 306 (city measures), 312 (county measures), 350 (school measures); 9100 et seq., 9200 et seq., 9300 et seq., 10100 et seq. (Municipal Elections), 24200 (election of county officers); Education Code sections 15100-15126 (school district and community college bond measures).

<sup>125</sup> Elections Code sections 1200-1202.

Cities may conduct their own municipal elections, and as stated in Elections Code 13001, “when an election is called by the governing body of a city the expenses shall be paid from the treasury of the city.”<sup>126</sup> Cities may also request the county to consolidate their elections with other elections. Elections Code section 10002 states:

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

However, school districts, community college districts, and special districts do not conduct their own elections in most circumstances. Under Education Code sections 5300 and 5303, county election officials conduct the elections of school and community college districts “in accordance with the Elections Code.”<sup>127</sup> 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.<sup>128</sup> 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 . . . .”<sup>129</sup> The state has not mandated this shift of election duties from the county to the district, and nothing in article XIII B prohibits the shifting of costs between local governmental entities.<sup>130</sup>

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

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

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

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<sup>126</sup> Elections Code sections 10200 et seq., and 10240.

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

<sup>128</sup> Education Code sections 5200 et seq., 5220.

<sup>129</sup> Elections Code section 10518 states “If, within any portion of a county, only one district has scheduled a general district election, the county elections official *may* authorize the appropriate officer of the district to perform any of the functions required of the county elections official under this part.” (Emphasis added.)

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



use and return of the ballot, including an identification envelope with prepaid postage for the return of the vote by mail ballot.”<sup>131</sup> Elections Code section 354 states that “shall” is mandatory. Although the test claim statute’s legislative history states that some counties were already providing prepaid postage on the identification envelopes, the requirement has now become mandated by the state.<sup>132</sup> Government Code section 17565 states that “[i]f a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.”

Providing prepaid postage on identification envelopes is required for all elections. However, in *Kern High School Dist.*, the California Supreme Court explained that “the proper focus under a legal compulsion inquiry is upon the nature of the claimants’ participation in the underlying programs themselves.”<sup>133</sup> Activities undertaken at the option or discretion of local government, without legal compulsion or compulsion as a practical matter, do not impose a state-mandated program within the meaning of article XIII B, section 6.<sup>134</sup>

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

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

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

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<sup>131</sup> Emphasis added.

<sup>132</sup> Exhibit C, County of San Diego’s Comments on the Test Claim, page 8. (Assembly Committee on Elections and Redistricting, Analysis of AB 216 (2017-2018 Reg. Sess.) as introduced January 24, 2017.)

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

<sup>134</sup> *Dept. of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731; *Dept. of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1365-1366.

<sup>135</sup> Elections Code sections 1200-1202, 13001.

<sup>136</sup> Elections Code sections 1200-1202.

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

State law requires these local elections to be conducted on “established election dates” defined as either the first Tuesday after the first Monday in March of each year, or the second Tuesday of April in each even-numbered year, or the first Tuesday after the first Monday in November of each year, and these dates include the statewide election dates, discussed above.<sup>142</sup> For example, Elections Code 1300 states that an election to select county officers shall be held with the statewide primary election at which candidates for Governor are nominated. Except for the first election after incorporation, section 1301 generally requires municipal elections to be held on “an established election date pursuant to section 1000.” Section 1302 requires that “the regular election to select governing board members in any school district, community college district, or county board of education shall be held on the first Tuesday after the first Monday in November of each odd-numbered year.” State law also establishes these same election dates for special district governing board members.<sup>143</sup> However, school districts and special districts may consolidate their governing-body elections with statewide elections, all of which are in even numbered years.<sup>144</sup>

Beginning January 1, 2018, Elections Code section 14052 through 14057 require that all local elections (except special elections) be held on a *statewide* election date if prior elections resulted in a significant decrease in voter turnout.<sup>145</sup> The legislative history states that this code section will result in almost all local jurisdictions holding their regularly scheduled elections at the same time as a statewide election.<sup>146</sup> Even if a local prior election did *not* result in a significant

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<sup>137</sup> California Constitution, article 6, section 16(b).

<sup>138</sup> California Constitution, article 11, section 1. Government Code section 24200.

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

<sup>140</sup> Education Code sections 5300, 5303, and Elections Code section 10517.

<sup>141</sup> Government Code section 36503.

<sup>142</sup> Elections Code sections 1000 and 1001.

<sup>143</sup> Elections Code section 1303.

<sup>144</sup> Elections Code sections 1302(b) and 1303 (b).

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

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

decrease in voter turnout, the non-special local election must still generally be held on an established election date. Elections Code section 1002 states that “notwithstanding any other provisions of law,” all state, county, municipal, district, and school district elections shall be held on an established election date, *except* as provided in Elections Code section 1003.<sup>147</sup>

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

State law requires recall elections of local officers upon receipt of a voter petition and have to be conducted within statutory deadlines. Therefore, Elections Code section 1003(e) does not require them to be held on an established election date pursuant to Elections Code section 1000.<sup>152</sup> Once it is determined that the voters’ signatures on the recall petition are sufficient, state law requires the governing body to call the election to recall the local officer, which shall be held between 88 and 125 days after the issuance of the governing body’s order, and if a regular or special election is to be held throughout the electoral jurisdiction of the officer sought to be recalled within such time period, the recall election shall be held on the same day and consolidated with the regular or special election.<sup>153</sup>

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

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

<sup>149</sup> Elections Code section 10700.

<sup>150</sup> California Constitution, article II, section 15(a). Elections Code section 11110.

<sup>151</sup> Elections Code section 13001.

<sup>152</sup> Elections Code sections 11200 et seq. govern the recall elections of local officers.

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

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

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

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

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

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

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

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

<sup>154</sup> Education Code section 15100.

<sup>155</sup> Emphasis added.

<sup>156</sup> Education Code section 5091(c)(2).

<sup>157</sup> Education Code sections 5200 et seq., 5220, 5300, 5303; Education Code section 10517.

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

Finally, Education Code section 5093 provides that if a school board vacancy occurs between six months and 130 days prior to a regularly scheduled governing board election and is not scheduled to be filled at such election, then a special election for that position shall be consolidated with the next regular election. Counties and cities, which conduct school district elections, are compelled by state law to conduct these special elections by the deadlines required by Education Code section 5093.<sup>159</sup>

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

- Statewide general elections, statewide direct primary elections, and the presidential primary elections conducted by counties.<sup>160</sup>
- Regular local elections compelled by state law.<sup>161</sup>
- 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.<sup>162</sup>
  - b. Providing prepaid postage on identification envelopes for the vote-by-mail elections is also mandated by the state when the city or county conducts a local discretionary election of school district, community college district, or special district, and when a county is required by state law to conduct a discretionary city election consolidated with a statewide election.

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

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<sup>158</sup> Elections Code section 8026.

<sup>159</sup> Education Code sections 5200 et seq., 5220, 5300, 5303; Education Code section 10517.

<sup>160</sup> Elections Code sections 1200-1202, 13001.

<sup>161</sup> 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.

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

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

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

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

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

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

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

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

<sup>164</sup> Elections Code section 9603. Government Code section 61008(d).

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

Section 9222 states:

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

9100-9126 (for counties) and 9200-9226 (for cities) govern the initiative process, and allow the voters to petition the county or a city to adopt an ordinance. If the initiative petition has a sufficient number of signatures, the governing body of the county or city shall either adopt the ordinance *or* submit the ordinance, without alteration, to the voters pursuant to Elections Code section 1405.<sup>166</sup> Elections Code section 1405 gives cities and counties the option to submit the initiative measure to the voters at the next statewide or regular election, or the city or county may call a special election.

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

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

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<sup>166</sup> Elections Code sections 9118, 9215.

<sup>167</sup> Elections Code sections 9144, 9237.

<sup>168</sup> Elections Code sections 1410, 9145, 9241.

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

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

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

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

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

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

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

<sup>171</sup> Government Code section 36512(b).

<sup>172</sup> Government Code section 36512(b)(1). See also Government Code section 34902.

<sup>173</sup> Government Code section 1780(e)(1).

<sup>174</sup> Government Code section 1780(e)(2).

<sup>175</sup> Education Code section 5091.

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



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

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

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

The Commission agrees that if a county or city is conducting a local election called by a school district, community college district, or special district, then the county or city has no choice but to conduct that local election. As indicated earlier, Education Code sections 5300 and 5303 require county election officials to conduct the elections of school and community college districts “in accordance with the Elections Code.”<sup>180</sup> If a school district is located within the boundaries of a chartered city, the board of education is elected under the laws governing that city.<sup>181</sup> Similarly, with respect to elections for special districts, Elections Code section 10517 requires that “the county elections official of each affected county shall conduct the general district election for the portion of the district located within the county.” In addition, if a city election is consolidated with a statewide election, as is required for entities with low voter turnout pursuant to Elections Code sections 10402.5 and 14052 et seq., then the county is

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

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

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

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

<sup>181</sup> Education Code sections 5200 et seq., 5220.

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

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

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

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

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

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

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

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

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

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

and school districts requested reimbursement for those costs pursuant to article XIII B, section 6.<sup>187</sup> The court rejected the claimants' assertion because:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

constitute a new program or higher level of service, it must also carry out the governmental function of providing a service to the public, or to implement a state policy, impose unique requirements on local government that do not apply generally to all residents and entities in the state.<sup>200</sup> The term “program,” therefore, has “two alternative meanings,” and “only one of these [alternatives] is necessary to trigger reimbursement.”<sup>201</sup>

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

The requirement to provide prepaid postage does not amount to a new program or higher level of service. Increased costs alone will not result in a reimbursable state mandate (*City of Anaheim v. State* (1987) 189 Cal.App.3d 1478).

Reimbursement is not required if the test claim statute merely implements some change that increases the cost of providing a service. (*San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4<sup>th</sup> 859). Accordingly, the Commission should deny the test claim because AB 216 does not impose a new program or higher level of service.<sup>202</sup>

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

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

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

As of June 2016, 52.3% of registered voters in California were registered as permanent vote by mail (PVBM) voters...As more and more voters use mail ballots, either through individual choice or the decision by counties, it is important to ensure that the process of voting is as equitable as possible. Unfortunately, the current system of returning a mail ballot is not. In some counties— such as San Francisco, Santa Clara, Alpine, and Sierra Counties — the postage is pre-paid for mail ballots...With a stamp currently costing 0.47\$ each and a lengthy ballot for most voters this past November, this meant some voters ended up paying almost a dollar in order to vote, while others had the cost of their mail ballot covered or were able to vote at no cost in person— even within the same precinct. For voters who do not regularly carry stamps, voting can be even more costly, as some retailers only sell stamps in books of 20, which cost nearly

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

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

<sup>202</sup> Exhibit B, Finance’s Comments on the Test Claim, page 1.

\$10...AB 216 will standardize this process by requiring postage on mail ballots to be prepaid, ensuring that voting is free for all California voters.<sup>203</sup>

The legislative history also indicates that because the required postage can vary depending on the size of the ballot, the prepaid identification envelope may reduce potential confusion for vote-by-mail voters, thereby providing a governmental service to the public.<sup>204</sup>

Furthermore, this test claim statute is not like the statutes at issue in cases where the courts have found no new program or higher level of service. For example, *County of Los Angeles v. State of California* concerned whether local governments are entitled to reimbursement for costs incurred to provide the same increased level of workers' compensation benefits for their employees as private individuals or organizations were required to provide to employees.<sup>205</sup> The Court held that that law did not meet either test for a “program or higher level of service” because it did not implement a state policy by imposing unique requirements on local governments, but instead applied workers' compensation contribution rules generally to all employers in the state. Nor did the law meet the first test for a “program.” The law increased the cost of employing public servants, but did not in any tangible manner increase the level of service provided by those employees to the public.<sup>206</sup>

Similarly, in *City of Sacramento v. State of California*, the court considered whether a state law implementing federal “incentives” that encouraged states to extend unemployment insurance coverage to all public employees constituted a program or higher level of service under article XIII B, section 6.<sup>207</sup> The court concluded that it did not because:

(1) providing unemployment compensation protection to a city's own employees was not a service to the public; and (2) the statute did not apply uniquely to local governments—indeed, the same requirements previously had been applied to most employers, and extension of the requirement (by eliminating a prior exemption for local governments) merely placed local government employers on the same footing as most private employers.<sup>208</sup>

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<sup>203</sup> Exhibit C, County of San Diego’s Comments on the Test Claim, pages 8-9. (Assembly Committee on Elections and Reapportionment, Analysis of AB 216 (2017-2018 Reg. Sess.) as introduced January 24, 2017.) Ellipses in original.

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

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

<sup>206</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 57-58. The court said “Workers’ compensation is not a program administered by local agencies to provide service to the public.”

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

<sup>208</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876 summarizing the holding of *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 67-68.

In *County of Los Angeles v. Department of Industrial Relations*, counties sought reimbursement for elevator fire and earthquake safety regulations that applied to all elevators, not just those that were publicly owned.<sup>209</sup> The court found that the regulations were plainly not unique to government.<sup>210</sup> The court also found that the regulations did not carry out the governmental function of providing a service to the public, despite declarations by the county that without those elevators, “no peculiarly governmental functions and no purposes mandated on County by State law could be performed in those County buildings . . . .”<sup>211</sup> The court held that the regulations did not constitute an increased or higher level of service, because “[t]he regulations at issue do not mandate elevator service; they simply establish safety measures.”<sup>212</sup> The court continued:

In determining whether these regulations are a program, the critical question is whether the mandated program carries out the governmental function of providing services to the public, not whether the elevators can be used to obtain these services. Providing elevators equipped with fire and earthquake safety features simply is not “a governmental function of providing services to the public.” [FN 5 This case is therefore unlike *Lucia Mar, supra*, 44 Cal.3d 830, in which the court found the education of handicapped children to be a governmental function (44 Cal.3d at p. 835) and *Carmel Valley, supra*, where the court reached a similar conclusion regarding fire protection services. (190 Cal.App.3d at p. 537.)<sup>213</sup>

The cases where courts found no new program or higher level of service involved either costs and activities related to local governments’ capacity as an employer;<sup>214</sup> or generally-applicable laws that impacted local government due to circumstances not relating to any identifiable governmental service (i.e., the award of attorneys’ fees for litigants successful against local government, and the applicability of elevator safety regulations in public buildings).<sup>215</sup> The required costs for postage for vote-by-mail ballots in this test claim statute are unlike any of those.

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

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

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

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

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

<sup>214</sup> *City of Sacramento v. State of California* (1990) 50 Cal.3d 51; *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190. See also, *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.

<sup>215</sup> *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538; *County of Fresno v. Lehman* (1991) 229 Cal.App.3d 340.

Rather, the test claim statute, which was intended to provide simpler, standardized, postage-free voting, as well as more equity and less confusion in the vote-by-mail process, is more like the regulations in *Carmel Valley Fire Protection Dist. v. State of California* that were designed to result in more effective fire protection.<sup>216</sup> Pre-paid postage on ballots makes voting easier and more accessible. In this way, the test claim statute provides “an increase in the actual level or quality of governmental services” and “an enhanced service to the public.”<sup>217</sup>

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

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

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

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

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

[¶] . . . [¶]

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

[¶] . . . [¶]

RR/CC [Register Recorder/County Clerk] estimates that it will incur \$620,791 in increased prepaid postage cost to comply with the AB 216 mandate in FY 2019-205. FY 2019-20 is the FY following the implementation of the mandate. The cost is summarized below:

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

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



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

Primary

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

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

(3) \$0.605 is the average cost for FY 2018-19.<sup>218</sup>

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

Claimant reports a cost of \$668,939 to comply with the AB 216 mandate in fiscal year 2018-19. However, \$584,909 of the cost was invoiced on November 6, 2018, which is prior to AB 216 becoming law. AB 216 went into effect on January 1, 2019.<sup>219</sup>

The claimant's declaration for fiscal year 2018-2019 states that it incurred costs from "7/1/18 through 6/30/19."<sup>220</sup> Any costs that were incurred before the effective date of the test claim statute and period of reimbursement for this claim (i.e., before January 1, 2019) would not be eligible for reimbursement. Specifically, of the \$688,638.92 claimed for fiscal year 2018-2019, any costs incurred before January 1, 2019 (\$584,908.55 indicated<sup>221</sup>) would not be eligible for reimbursement.

For fiscal year 2019-2020, the claimant estimated its costs by multiplying the number of vote-by-mail applicants in the 2018 election plus five percent, by the percentage of vote-by-mail responses for the November 2018 election, by the average cost of postage per ballot. Thus, the claimant estimates \$620,791 in increased 2019-2020 costs attributable to the mandate.<sup>222</sup>

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

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

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

<sup>219</sup> Exhibit B, Finance's Comments on the Test Claim, page 1.

<sup>220</sup> Exhibit A, Test Claim, page 17 (Declaration of Margaret Palacios).

<sup>221</sup> Exhibit A, Test Claim, page 17 (Declaration of Margaret Palacios).

<sup>222</sup> Exhibit A, Test Claim, page 18 (Declaration of Margaret Palacios).

<sup>223</sup> Exhibit A, Test Claim, page 18 (Declaration of Margaret Palacios).

mandate, which in fiscal year 2018-2019 exceeded \$1,000. General law and charter city elections were conducted by the claimant on March 5, 2019.<sup>224</sup> The claimant’s declaration states that 2,571,682 voters requested a vote-by-mail ballot in fiscal year 2018-2019, with an average cost of \$0.605 per identification envelope, which would exceed the minimum dollar amount of \$1,000. In fiscal year 2019-2020, local and municipal elections were held on November 5, 2019, and the presidential primary was held on March 3, 2020.<sup>225</sup>

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

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

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

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

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

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

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

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

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

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

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

With respect to school districts that are included within the boundaries of a chartered city, “the city shall be reimbursed by the district or districts for its actual cost and expense incurred in the conduct of the election or elections.”<sup>227</sup> The costs to conduct a school district election “may include, but need not be limited to” the “cost of printing official ballots, sample ballots, indexes, arguments, statements, official notices, and card notices,” and also include “mailing charges.”<sup>228</sup> Thus, the costs for prepaid postage on vote-by-mail ballots are included as costs to conduct an election.

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

The cost to administer vote by mail ballots where issues and elective offices related to school districts, as defined by Section 17519 of the Government Code, are included on a ballot election with noneducation issues and elective offices shall not be fully or partially prorated to a school district. The Commission on State Mandates shall delete school districts, county boards of education, and community college districts from the list of eligible claimants in the Parameters and Guidelines for the Absentee Ballot Mandates.<sup>229</sup>

Because it involves vote-by-mail ballots, Elections Code section 3024 is a more specific code section and takes precedence over the general statutes cited above regarding school and community college districts covering the costs of their own elections.<sup>230</sup> Additionally, section 3024 “should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect.”<sup>231</sup> Since section 3024 is in the same chapter as the test claim statute and both govern the administration of vote-by-mail ballots, counties and cities may not prorate costs to school and community college districts for prepaid postage on vote-by-mail ballots unless the election is conducted solely on behalf of the district and non-educational issues or elective offices do not appear on the ballot.

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<sup>226</sup> See also Education Code section 5420 et seq.

<sup>227</sup> Education Code section 5227.

<sup>228</sup> Education Code section 5420; *County of Yolo v. Los Rios Community College District* (1992) 5 Cal.App.4th 1242, 1252, where the court finds the costs identified in Education Code section 5420 are costs incurred in actually conducting the election.

<sup>229</sup> Statutes 2002, chapter 1032, amended by Statutes 2007, chapter 508.

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

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

With respect to special district elections, Elections Code section 10517 requires that “the county elections official of each affected county shall conduct the general district election for the portion of the district located within the county,” and section 10520 requires the special district to reimburse the county for the actual costs incurred by the county elections official.<sup>232</sup>

In sum, counties may impose fees sufficient to pay for prepaid postage on identification envelopes on cities and special districts when the county conducts the election for the city or special district. And cities and counties may impose a fee for prepaid postage on identification envelopes on school or community college districts only if the election is conducted solely on their behalf, and non-educational issues or elective offices do not appear on the ballot. In these circumstances, there are no costs mandated by state pursuant to Government Code section 17556(d) and reimbursement is denied.

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

Therefore, the Commission finds that the test claim statute results in increased costs mandated by the state on county and city elections officials within the meaning of article XIII B, section 6 and Government Code section 17514 when counties administer statewide elections, when counties and cities administer their own mandated municipal elections, or when counties and cities administer school and community college district elections that are consolidated with non-educational issues or elective offices.

## **V. Conclusion**

Based on the foregoing analysis, the Commission concludes that Elections Code section 3010, as amended by Statutes 2018, chapter 120, imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution on county and city elections officials to provide prepaid postage on identification envelopes delivered to voters with their vote-by-mail ballots, beginning January 1, 2019, for the following elections:

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

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<sup>232</sup> Also, Government Code section 53072 requires a special district to reimburse a county “in which all or a portion of the district is located” for an election when a special district is formed.

<sup>233</sup> Elections Code sections 1200-1202, 13001.

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

- Special elections called by the Governor or required by state law, including recall elections of local officers, special elections forced by a petition of the voters to issue school bonds or replace an appointee and fill a vacant school board position, and elections required by state law that are conducted by charter cities and counties.<sup>235</sup>
- 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.<sup>236</sup>

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

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

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

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<sup>235</sup> 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).

<sup>236</sup> Education Code sections 5300 and 5303. Elections Code section 10517.

<sup>237</sup> Elections Code sections 10002, 10517, 10520, and Education Code section 5227.

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

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

On July 24, 2020, I served the:

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

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 24, 2020 at Sacramento, California.



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# COMMISSION ON STATE MANDATES

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**Claim Number:** 19-TC-01

**Matter:** Vote by Mail Ballots: Prepaid Postage

**Claimant:** County of Los Angeles

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

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