

1. TEST CLAIM TITLE

Post Election Manual Tally Requirements in
Close Contest

2. CLAIMANT INFORMATION

County of Santa Barbara
Name of Local Agency or School District
Renee Bischof
Claimant Contact
Elections Division Manager
Title
4440 Calle Real - A
Street Address
Santa Barbara, CA 93110
City, State, Zip
805-696-8957
Telephone Number
805-568-2209
Fax Number
rbischo@co.santa-barbara.ca.us
E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Renee Bischof
Claimant Representative Name
Elections Division Manager
Title
Santa Barbara County Clerk-Recorder-Assessor
Organization
4440 Calle Real - A
Street Address
Santa Barbara, CA 93110
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E-Mail Address

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Filing Date
RECEIVED
MAR 28 2011
COMMISSION ON STATE MANDATES
Test Claim #: 10-TC-08

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections, statutes, bill numbers, regulations, and/or executive orders that impose the alleged mandate (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]). When alleging regulations or executive orders, please include the effective date of each one.

Effective October 20, 2008 pursuant to Government Code sections 11346.1 and 11349.6 the Office of Administrative Law for the State of California approved emergency regulations numbered 2008-2009-002E to adopt the following sections to Division 7 of Title 2 of the California Code of Regulations:

Chapter 3. Post Election Manual Tallies
§ 20120, §20121, §20122, §20123, §20124, §20125, § 20126, §20127.

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, and 7 are attached as follows:
5. Written Narrative: pages 1 to 11
6. Declarations: pages 1 to 1
7. Documentation: pages 1 to 17

SECTION 5: WRITTEN NARRATIVE

OVERVIEW

In October of 2008, emergency regulations were adopted by the Office of Administrative Law for the State of California under OAL File No. 2008-1009-02E calling for the manual tally of ten percent (10%) of precincts in contests where the margin of victory is less than half of one percent (0.5%) as of the semi-official canvass of election results.

On October 21, 2008 the Secretary of State issued CCROV 08304 noticing the elections officials in the State of California of this emergency regulatory action that was filed with the Secretary of State and effective October 20, 2008. The emergency regulatory action led to the elections officials in the State of California being required to provide a "higher level of service" than the manual tally of precincts required by California Elections Code section 15360.

Elections Code section 15360 currently reads:

15360. (a) During the official canvass of every election in which a voting system is used, the official conducting the election shall conduct a public manual tally of the ballots tabulated by those devices, including vote by mail voters' ballots, cast in 1 percent of the precincts chosen at random by the elections official. If 1 percent of the precincts is less than one whole precinct, the tally shall be conducted in one precinct chosen at random by the elections official. In addition to the 1 percent manual tally, the elections official shall, for each race not included in the initial group of precincts, count one additional precinct. The manual tally shall apply only to the race not previously counted. Additional precincts for the manual tally may be selected at the discretion of the elections official.

(b) If vote by mail ballots are cast on a direct recording electronic voting system at the office of an elections official or at a satellite location of the office of an elections official pursuant to Section 3018, the official conducting the election shall either include those ballots in the manual tally conducted pursuant to subdivision (a) or conduct a public manual tally of those ballots cast on no fewer than 1 percent of all the direct recording electronic voting machines used in that election chosen at random by the elections official.

(c) The elections official shall use either a random number generator or other method specified in regulations that shall be adopted by the Secretary of State to randomly choose the initial precincts or direct recording electronic voting machines subject to the public manual tally.

(d) The manual tally shall be a public process, with the official conducting the election providing at least a five-day public notice of the time and place of the manual

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tally and of the time and place of the selection of the precincts to be tallied prior to conducting the tally and selection.

(e) The official conducting the election shall include a report on the results of the 1 percent manual tally in the certification of the official canvass of the vote. This report shall identify any discrepancies between the machine count and the manual tally and a description of how each of these discrepancies was resolved. In resolving any discrepancy involving a vote recorded by means of a punchcard voting system or by electronic or electromechanical vote tabulating devices, the voter verified paper audit trail shall govern if there is a discrepancy between it and the electronic record.

The emergency regulations added sections 20120, 20121, 20122, 20123, 20124, 20125, 20126 and 20127 of Chapter 3 to Division 7 of Title 2 of the California Code of Regulations.

At the time of adoption of the emergency regulations, the applicable code sections read as follows:

§ 20120. Purpose and Applicability.

(a) The purpose of this chapter is to establish standards and procedures for conducting increased manual tallies in contests in which the margin of victory is very narrow.

(b) This chapter applies to the Secretary of State and all elections officials within the State of California for all elections in this state conducted in whole or in part on a voting system, the approval of which is conditioned by the Secretary of State on performance of increased manual tallies in contests with narrow margins of victory.

Note: Authority cited: Section 12172.5, Government Code; Sections 10, 19100, 19205, 19222, Elections Code.

Reference: Sections 19100, 19205, 19222, Elections Code.

§ 20121. Increased manual tally in contests with narrow margins of victory.

(a) After each election, the elections official shall determine the margin of victory in each contest based upon the semifinal official canvass results, as defined in Elections Code section 353.5.

(1) For single-winner elections, the margin of victory is the difference between the percentage of votes won by the candidate with the number of votes needed to win the seat and the percentage of votes won by the candidate with the next lowest number of votes.

(2) For multi-winner elections, the margin of victory is the difference between the percentage of votes won by the candidate with the lowest number of votes needed to win a seat and the percentage of votes won by the candidate with the next lowest

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number of votes. For example, for a contest with three open seats, the margin of victory would be the difference between the percentage of the votes won by the third and fourth place candidates.

(3) For ballot measure contests, including recall contests, the margin of victory is the difference between the percentages of votes for and against the ballot measure.

(b) For any contest in which the margin of victory is less than one half of one percent (0.5%), the elections official shall conduct a manual tally, employing the methods set forth in Elections Code section 15360, of ten percent (10%) of randomly selected precincts. The ten percent (10%) manual tally shall apply only to votes cast in the contest or contests with a margin of victory less than one half of one percent (0.5%), not to other contests on the same ballot in which the margin of victory equals or exceeds one half of one percent (0.5%).

(c) Precincts manually tallied under Elections Code section 15360 may be included as part of the ten percent (10%) manual tally.

(d) In any contest in which a ten percent (10%) manual tally would otherwise be required pursuant to subdivision (b), an elections official may instead conduct a one hundred percent (100%) manual tally.

(e) The elections official shall begin the manual tally as soon as practicable after the random selection of precincts for the manual tally.

(f) The manual tally shall be conducted in public view by hand without the use of electronic scanning equipment.

(g) Individuals performing the manual tally shall not at any time during the manual tally process be informed of the corresponding machine tally results.

(h) A poll worker participating in the manual tally shall not be assigned to tally the results from a precinct in which that individual served as a poll worker on Election Day.

(i) The elections official shall take appropriate measures to ensure that direct recording electronic (DRE) ballots that were cancelled before being cast are not inadvertently tallied as valid ballots in the manual tally process.

(j) The elections official shall take appropriate measures to ensure that damaged or defective ballots are not inadvertently tallied as valid ballots in the manual tally process.

Note: Authority cited: Section 12172.5, Government Code; Sections 10, 19100, 19205, 19222, Elections Code.

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Reference: Sections 19100, 19205, 19222, Elections Code.

§ 20122. Contests voted upon in more than one jurisdiction.

(a) In any contest voted upon in more than one jurisdiction, the elections official in each jurisdiction in which votes were cast in the contest shall determine whether a ten percent (10%) manual tally is required by section 20121, subdivision (b), by calculating the overall margin of victory in all jurisdictions in which votes were cast in the contest. The examples in subdivisions (a)(1) and (a)(2) below of contests voted upon in two counties illustrate the application of the general rule stated in this subdivision (a).

(1) If the margin of victory in a contest voted upon in counties A and B is less than one half of one percent (0.5%) within county A but the overall margin of victory in counties A and B combined is more than one half of one percent (0.5%), then a ten percent (10%) manual tally is not required in either county.

(2) If the margin of victory in a contest voted upon in counties A and B is more than one half of one percent (0.5%) within county A but the overall margin of victory in counties A and B combined is less than one half of one percent (0.5%), then County A shall conduct a manual tally of randomly selected ten percent (10%) of the County A precincts in which voters cast ballots for that contest and County B shall conduct a manual tally of randomly selected ten percent (10%) of the County B precincts in which voters cast ballots for that contest.

(b) For a legislative or statewide contest, the elections official shall determine whether a ten percent (10%) manual tally is required based upon the semifinal official canvass results and margin of victory for the entire district for a legislative contest or the entire state for a state contest posted on the canvass website of the Secretary of State.

Note: Authority cited: Section 12172.5, Government Code; Sections 10, 19100, 19205, 19222, Elections Code.

Reference: Sections 19100, 19205, 19222, Elections Code.

§ 20123. Determination, counting and disclosure of variances.

(a) A “variance” is any difference between the machine tally and the manual tally for a contest. For purposes of determining whether additional precincts must be manually tallied under section 20124, variances found in the manual tally sample for a given contest are presumed to exist in at least the same proportion in the remaining ballots cast in the contest. The examples in subdivisions (a)(1) through (a)(3) illustrate how the number of variances in a contest should be calculated.

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(1) If the manual tally establishes that the machine tally erroneously attributed a vote for Candidate A to Candidate B, two variances result because the vote totals for Candidate A and for Candidate B are each changed by one vote in the manual tally.

(2) If the manual tally establishes that the machine tally erroneously attributed a vote for Measure 1 as a vote against Measure 1, two variances result because the vote totals for Measure 1 and against Measure 1 are each changed by one vote in the manual tally.

(3) If the manual tally determines that a vote was cast in a contest on a ballot that the machine tally interpreted as an undervote in the contest, one variance results because the machine tally undervote becomes a vote for a candidate or a vote for or against a measure in the manual tally.

(b) An elections official must document and disclose to the public any variances between the semifinal official canvass results and the manual tally results.

Note: Authority cited: Section 12172.5, Government Code; Sections 10, 19100, 19205, 19222, Elections Code.

Reference: Sections 19100, 19205, 19222, Elections Code.

§ 20124. Manual tally escalation requirements for variances.

(a) The elections official shall calculate the variance percentage for any contest with one or more variances by dividing the total number of variances found in the manual tally sample for the contest by the total number of votes cast for that contest in the manual tally sample. For single-winner contests, only variances that narrow the margin between the winner and any of the losers shall be included in the total number of variances. For multi-winner contests, only variances that narrow the margin of victory between any of the winners and any of the losers shall be included in the total number of variances. If the variance percentage represents at least one-tenth (10%) of the margin of victory for that contest based on the semifinal official canvass results, then additional precincts must be manually tallied for that contest as provided in subdivision (b).

(b) Additional precincts shall be tallied in randomly selected blocks of five percent (5%) until the total number of variances presumed to exist – re-calculated using the method above – is smaller than ten percent (10%) of the margin of victory for that contest, based on the semifinal official canvass results, or until all ballots have been manually tallied, whichever occurs first.

(c) If any variance is found between manually tallied voter verifiable paper audit trail (VVPAT) records and corresponding electronic vote results that cannot be accounted for by some obvious mechanical problem, then the VVPAT records, memory cards and devices, and direct recording electronic (DRE) voting machines must be preserved and the Secretary of State must be notified in order to allow for an

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investigation to determine the cause of the problem. The Secretary of State shall conduct the investigation in such a manner as to minimize adverse impact on the conclusion of the canvass and certification of the election, as well as preparation for any upcoming elections.

Note: Authority cited: Section 12172.5, Government Code; Sections 10, 19100, 19205, 19222, Elections Code.

Reference: Sections 19100, 19205, 19222, Elections Code.

§ 20125. Records To Be Maintained During And After The Manual Tally Process.

(a) The elections official shall keep a log to record the manual tally process, including the results of each round of manual tallying for each precinct included in the sample, how variances were resolved, and details of any actions taken that are contrary to this chapter. The elections official shall make the log available to the public.

(b) The elections official shall track, record in the log and report to the public by precinct the number of undervotes and overvotes discovered in the manual tally of a contest.

Note: Authority cited: Section 12172.5, Government Code; Sections 10, 19100, 19205, 19222, Elections Code.

Reference: Sections 19100, 19205, 19222, Elections Code.

§ 20126. Public Right To Observe.

(a) The elections official shall make any semifinal official canvass precinct tally results available to the public before the manual tally of the results from those precincts begins.

(b) The elections official shall comply with the notice requirements established in Elections Code section 15360 when conducting any post-election manual tallying required by this chapter. This notice requirement may be satisfied by providing a single notice containing the times and places of:

- (1) the initial selection of precincts for the one percent (1%) manual tally and any ten percent (10%) manual tally required;
- (2) the beginning of the manual tally process; and
- (3) any additional random selection of precincts which may become necessary to comply with the escalation requirements.

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(c) The elections official shall permit the public to observe all parts of the manual tally process, including the random selection of precincts, in a manner that allows them to verify the tally. The elections official shall not permit members of the public to touch ballots, voter verifiable paper audit trails or other official materials used in the manual tally process or to interfere in any way with the process.

Note: Authority cited: Section 12172.5, Government Code; Sections 10, 19100, 19205, 19222, Elections Code.

Reference: Sections 19100, 19205, 19222, Elections Code.

§ 20127. Completion Within Official Canvass Period.

For any contest in which an increased manual tally is required by this chapter, the elections official shall complete all tasks and make all reports required by this chapter within the canvass period established by Elections Code sections 10262 and 15372.

Note: Authority cited: Section 12172.5, Government Code; Sections 10, 19100, 19205, 19222, Elections Code.

Reference: Sections 19100, 19205, 19222, Elections Code.

(A) NEW ACTIVITIES

The addition of sections § 20121 - Increased manual tally in contests with narrow margins of victory, § 20122 - Contests voted upon in more than one jurisdiction, and § 20124 - Manual tally escalation requirements for variances had the greatest impact on elections officials.

Determining the margin of victory.

With the addition of § 20121 the election official was required to determine the margin of victory in each contest based on the results as reported in the semifinal official canvass of results and the type of contest; single-winner, multi-winner, or ballot measure contests. As defined in Elections Code 353.5 the “semifinal official canvass” is the public process of collecting, processing, and tallying ballots and, for state or statewide elections, reporting results to the Secretary of State on election night.

Contest voted upon in multiple jurisdictions.

Prior to the adoption of § 20122, elections officials in other jurisdictions acted independently from one another in the conduct of the manual tally provisions set for in Elections Code Section 15360. With the addition of § 20122, for contests voted in more than one jurisdiction, the overall margin of victory in all jurisdictions in which votes were cast for that contest needed be determined. If the combined margin of victory was more than one half of one percent, a ten percent manual tally was not required. If the combined margin of victory

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was less than one half of one percent, a ten percent manual tally was required to be completed. This was true for legislative or statewide contests.

Escalation Requirement:

With the addition of § 20124 when variances occurred between the semifinal results and the manual tally results the elections official was required to do the following:

1. Calculate the variance for each contest.
2. Determine if additional precincts were required to be tallied, which occurred if the variance percentage represented at least 10% of the margin of victory for that contest.
3. Tally randomly selected precincts in 5% increments until the total number of variances recalculated was smaller than 10% of the margin of victory for that contest or until all ballots have been tallied, whichever came first.
4. Notify the Secretary of State's office if any variances exist between manually tallied voter verifiable paper audit trail records and electronic vote results that could not be accounted for by an obvious mechanical problem. In this instance all VVPAT records, memory cards/devices, and direct recording electronic voting machines were required to be preserved for investigation by the Secretary of State.

As an alternative to the 10% manual tally with escalation requirements, the elections official had the option to conduct a 100% manual tally of the ballots in a given contest meeting the Post Election Manual Tally requirement.

The tracking and reporting of undervotes and overvotes was also required for the Post Election Manual Tally by § 20123.

Pages 11-13 of Section 7. Documentation includes a list of tasks associated with meeting the new activities imposed by the emergency regulations.

(B) MODIFIED ACTIVITIES

Elections Code section 15360 requires a public manual tally of both poll and vote by mail ballots tabulated on voting devices in one percent (1%) of the precincts to be chosen at random. Additional precincts are selected if necessary to ensure all contests are tallied.

With the adoption of the Post Election Manual Tally emergency regulations, the potential existed for any elections official in the State of California to be required to manual tally a contest or contests encompassing their entire county, drastically increasing the number of precincts to be tallied. Furthermore, should the number of variances in the initial 10% of precincts for the contest(s) dictate that additional precincts be tallied; this escalation requirements could lead to the manual tally of 100% of votes cast in that contest(s) including a county or statewide contest.

The County of Santa Barbara had three contests that met the requirements of the Post Election Manual Tally. The largest contest tallied was the 19th State Senate District

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encompassing 253 of the 318 precincts in the county. With potentially being required to hand tally 253 precincts by the end of the canvass period, the time frame identified by section 20127, the County of Santa Barbara determined that we did not have the space or staff to complete the Post Election Manual Tally concurrently with other required canvass tasks. In order to comply with these regulations the County completed the following actions:

1. Identified a location to rent for conducting the manual tally;
2. Coordinated with the Sheriff for the security of ballots at an offsite location;
3. Recruited additional staff from our poll worker list and temporary agencies to work on manual tally boards;
4. Organized manual tally boards to ensure that poll workers were not on boards tallying ballots for precincts they worked on Election Day;
5. Created and boxed up all tally sheets and supplies for transport to offsite tally location;
6. Rented a Box Truck to transport ballots to/from offsite manual tally location; and
7. Ensured secure transport of ballots & tally sheets to/from offsite manual tally location.

In order to include precincts tallied as part of the 1% manual tally as part of the 10% Post Election Manual Tally, we were required to also track overvotes and undervotes in those precincts to fulfill the requirements of section 20123 that were not required by Elections Code § 15360.

Section 20126 (b) states the elections official shall comply with the notice requirement outlined in Elections Code § 15360. The escalation of manual tallied precincts required by section 20124 is not applicable to section 15360. Therefore when an elections official determined they must escalate the number of precincts tallied, a supplementary notice of the time and place for the additional random selection of precincts was required to comply with section 20126 (b)(3).

Pages 13-17 of Section 7. Documentation includes a list of tasks associated with meeting the modified existing activities imposed by the emergency regulations.

(C) ACTUAL COSTS

The cost incurred by the County of Santa Barbara, totaling \$250,126.09, represents the lowest possible expenditure in order to completely comply with the requirements set forth in the Post Election Manual Tally Requirements in Close Contest Emergency Regulations. The County did not incur the costs until after November 4, 2008.

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(D) ANNUAL COST ESTIMATES

There are no ongoing costs associated with these emergency regulations adopted in October of 2008 which have since expired. Currently there are no regulations in place related to the Post Election Manual Tally Requirements in Close Contests.

E) STATEWIDE COST ESTIMATES

The statewide cost estimate for Post Election Manual Tallies conducted for the November Presidential General Election in 2008 was \$ 817,479.96. This figure is based on information gathered in a survey conducted by the California Association of County Elections Officials (CACEO). As all counties have not responded to the survey, we do not have the actual cost. Page 10 in Section 7. Documentation outlines the costs per county.

(F) FUNDING SOURCES

The County of Santa Barbara is unaware of any funding sources for the new activities.

(G) PRIOR MANDATE DETERMINATIONS

There were no other prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the Post Election Manual Tally Requirements in Close Contests.

(H) LEGISLATIVELY DETERMINED MANDATE

On October 22, 2009 the California State Association of Counties (CSAC) submitted a letter of intent to the Commission on State Mandates in accordance with Government Code section 17573 to develop a Legislatively Determined Mandate for the Post Election Manual Tally emergency regulations. On November 12, 2009, the Commission on State Mandates notified CSAC and the Department of Finance of their receipt of the letter of intent and advising that the statute of limitation for the filing of a test claim shall be tolled as of October 22, 2009 per Government Code section 17573 (b). The Legislatively Determined Mandate is referred to as *Post Election Manual Tally, 09-LDM-01*.

These two letters are shown on pages 8 and 9 of Section 7. Documentation.

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ELIGIBILITY FOR REIMBURSEMENT

The adoption of the emergency regulations adding Chapter 3. Post Election Manual Tallies which encompassed sections 20120, 20121, 20122, 20123, 20124, 20125, 20126 and 20127 to Division 7 of Title 2 of the California Code of Regulations, for which this test claim is filed, imposed a mandate on the elections officials in the State of California calling for a higher level of service than that which was imposed by California Elections Code Section 15360.

In *County of Los Angeles v. State of California* (1987) 43 Cal.3d, 46 the court defined “program” as one that carries out the “governmental function of providing service to the public, or laws which, to implement state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.”

Section 20120 established that Chapter 3. Post Election Manual Tallies called for increased manual tallies in contests in which the margin of victory was very narrow and applied to the Secretary of State and all elections officials within the State of California for all elections in this state. Both the Secretary of State and election officials in the state are considered a local agency as defined in Government Code section 17518 and therefore, the regulations were unique to local government.

The adoption of these emergency regulations by a State Agency, The Office of Administrative Law, and the calling for the adoption of these regulations by the Secretary of State of California, clearly establishes these regulations as state policy.

The County of Santa Barbara asserts that costs incurred in conjunction with these regulations for which this test claim is filed are “costs mandated by the state” under Article XIII B, section 6 of the California Constitution and Government Code section 17514, which reads as follows:

17514. "Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

CONCLUSION

The executive order adopting Chapter 3. Post Election Manual Tallies including sections 20120, 20121, 20122, 20123, 20124, 20125, 20126 and 20127 to Division 7 of Title 2 of the California Code of Regulations imposed a higher level of service and cost to the County of Santa Barbara and meets the requirements established by the California Constitution and Government Code as a reimbursable state-mandated program.

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Section 6: Declarations

Declaration of Renee Bischof

I, Renee Bischof, state as follows:

1. I have been the Elections Division Manager for the County of Santa Barbara County Clerk-Recorder-Assessor's Office since 2006. I have personal knowledge of the facts stated herein and if called upon to testify, I could do so competently.

2. In satisfying the statutes which are the subject of this test claim, the County of Santa Barbara performed the new activities as identified on pages 7 and 8 of section 5. Written Narrative and the tasks identified on pages 11-13 of section 7. Documentation.

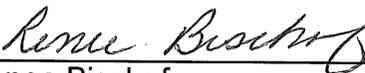
3. Costs incurred by the County of Santa Barbara in satisfying this mandate including staff time, and time and materials totals \$250,126.09. As this mandate has expired there are no ongoing costs.

4. The County of Santa Barbara incurred said costs from November 10, 2008 through November 26, 2008.

5. There are no funding sources available to offset the cost incurred in the implementation of the Post Election Manual Tally Requirements in Close Contests Emergency Regulations.

6. Section 6, subsection (D) is not applicable.

I declare under penalty of perjury that the foregoing is true and correct as based upon my personal knowledge, information or belief, and that this declaration is executed this 25 day of March, 2011, at Santa Barbara, California.



Renee Bischof
Elections Division Manager
County of Santa Barbara

**State of California
Office of Administrative Law**

In re:

Secretary of State

Regulatory Action:

Title 2, California Code of Regulations

Adopt sections: 20120, 20121, 20122,
20123, 20124, 20125,
20126, 20127

Amend sections:

Repeal sections:

NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION

Government Code Section 11349.6

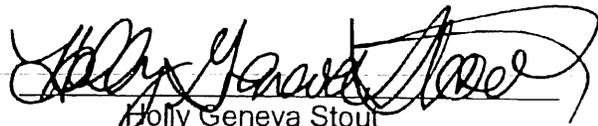
OAL File No. 2008-1009-02 E

This emergency rulemaking adopts the already promulgated post election manual tally requirements in close contests, pursuant to *County of San Diego v. Debra Bowen* (2008) 166 Cal.App.4th 501. It requires that in election contests where the margin of victory is less than half of one percent (0.5%) a manual tally of ten percent of the precincts of the contested race be conducted in addition to that already required by Elections Code section 15360.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 10/20/2008 and will expire on 4/21/2009. The Certificate of Compliance for this action is due no later than 4/20/2009.

Date: 10/20/2008


Holly Geneva Stout
Staff Counsel

For: LINDA C. BROWN
Deputy Director

Original: Debra Bowen
Copy: Pam Giarrizzo

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EMERGENCY

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW
 NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See Instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-08)

NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2008-1009-02E
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For use by Office of Administrative Law (OAL) only

2008 OCT -9 PM 1:17

OFFICE OF ADMINISTRATIVE LAW

NOTICE REGULATIONS

PROCESSED
DATE OF FILING

2008 OCT 20 PM 4:27

[Signature]
 SECRETARY OF STATE

AGENCY WITH RULE MAKING AUTHORITY
 Secretary of State

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE <input checked="" type="checkbox"/> ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Post Election Manual Tally Requirements In Close Contests	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) None
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADAPT 20120, 20121, 20122, 20123, 20124, 20125, 20126, 20127
AMEND
TITLE(S) Title 2
REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs. title 1, §100) <input type="checkbox"/> Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, 544 and Gov. Code §11347.1)
 n.a.

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs. title 1, §100)
<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Pam Giarrizzo, Chief Counsel	TELEPHONE NUMBER (916) 653-7244	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) PGiarrizzo@sos.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Pam Giarrizzo</i>	[2]	DATE 10/9/08
TYPED NAME AND TITLE OF SIGNATORY Pam Giarrizzo, Chief Counsel		

TEXT OF PROPOSED EMERGENCY REGULATIONS

Add Sections 20120, 20121, 20122, 20123, 20124, 20125, 20126 and 20127 of Chapter 3 to Division 7 of Title 2 of the California Code of Regulations.

Chapter 3. Post Election Manual Tallies.

§ 20120. Purpose and Applicability.

(a) The purpose of this chapter is to establish standards and procedures for conducting increased manual tallies in contests in which the margin of victory is very narrow.

(b) This chapter applies to the Secretary of State and all elections officials within the State of California for all elections in this state conducted in whole or in part on a voting system, the approval of which is conditioned by the Secretary of State on performance of increased manual tallies in contests with narrow margins of victory.

Note: Authority cited: Section 12172.5, Government Code; Sections 10, 19100, 19205, 19222, Elections Code.

Reference: Sections 19100, 19205, 19222, Elections Code.

§ 20121. Increased manual tally in contests with narrow margins of victory.

(a) After each election, the elections official shall determine the margin of victory in each contest based upon the semifinal official canvass results, as defined in Elections Code section 353.5.

(1) For single-winner elections, the margin of victory is the difference between the percentage of votes won by the candidate with the number of votes needed to win the seat and the percentage of votes won by the candidate with the next lowest number of votes.

(2) For multi-winner elections, the margin of victory is the difference between the percentage of votes won by the candidate with the lowest number of votes needed to win a seat and the percentage of votes won by the candidate with the next lowest number of votes. For example, for a contest with three open seats, the margin of victory would be the difference between the percentage of the votes won by the third and fourth place candidates.

(3) For ballot measure contests, including recall contests, the margin of victory is the difference between the percentages of votes for and against the ballot measure.

(b) For any contest in which the margin of victory is less than one half of one percent (0.5%), the elections official shall conduct a manual tally, employing the methods set forth in Elections Code section 15360, of ten percent (10%) of randomly selected precincts. The ten percent (10%) manual tally shall apply only to votes cast in the contest

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or contests with a margin of victory less than one half of one percent (0.5%), not to other contests on the same ballot in which the margin of victory equals or exceeds one half of one percent (0.5%).

(c) Precincts manually tallied under Elections Code section 15360 may be included as part of the ten percent (10%) manual tally.

(d) In any contest in which a ten percent (10%) manual tally would otherwise be required pursuant to subdivision (b), an elections official may instead conduct a one hundred percent (100%) manual tally of the ballots.

(e) The elections official shall begin the manual tally as soon as practicable after the random selection of precincts for the manual tally.

(f) The manual tally shall be conducted in public view by hand without the use of electronic scanning equipment.

(g) Individuals performing the manual tally shall not at any time during the manual tally process be informed of the corresponding machine tally results.

~~(h) A poll worker participating in the manual tally shall not be assigned to tally the results from a precinct in which that individual served as a poll worker on Election Day.~~

(i) The elections official shall take appropriate measures to ensure that direct recording electronic (DRE) ballots that were cancelled before being cast are not inadvertently tallied as valid ballots in the manual tally process.

(j) The elections official shall take appropriate measures to ensure that damaged or defective ballots are not inadvertently tallied as valid ballots in the manual tally process.

Note: Authority cited: Section 12172.5, Government Code; Sections 10, 19100, 19205, 19222, Elections Code.

Reference: Sections 19100, 19205, 19222, Elections Code.

§ 20122. Contests voted upon in more than one jurisdiction.

(a) In any contest voted upon in more than one jurisdiction, the elections official in each jurisdiction in which votes were cast in the contest shall determine whether a ten percent (10%) manual tally is required by section 20121, subdivision (b) by calculating the overall margin of victory in all jurisdictions in which votes were cast in the contest. The examples in subdivisions (a)(1) and (a)(2) below of contests voted upon in two counties illustrate the application of the general rule stated in this subdivision (a).

(1) If the margin of victory in a contest voted upon in counties A and B is less than one half of one percent (0.5%) within county A but the overall margin of victory in

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counties A and B combined is more than one half of one percent (0.5%), then a ten percent (10%) manual tally is not required in either county.

(2) If the margin of victory in a contest voted upon in counties A and B is more than one half of one percent (0.5%) within county A but the overall margin of victory in counties A and B combined is less than one half of one percent (0.5%), then County A shall conduct a manual tally of a randomly selected ten percent (10%) of the County A precincts in which voters cast ballots for that contest and County B shall conduct a manual tally of a randomly selected ten percent (10%) of the County B precincts in which voters cast ballots for that contest.

(b) For a legislative or statewide contest, the elections official shall determine whether a ten percent (10%) manual tally is required based upon the semifinal official canvass results and margin of victory for the entire district for a legislative contest or the entire state for a state contest posted on the canvass website of the Secretary of State.

Note: Authority cited: Section 12172.5, Government Code; Sections 10, 19100, 19205, 19222, Elections Code.

Reference: Sections 19100, 19205, 19222, Elections Code.

§ 20123. Determination, counting and disclosure of variances.

(a) A "variance" is any difference between the machine tally and the manual tally for a contest. For purposes of determining whether additional precincts must be manually tallied under section 20124, variances found in the manual tally sample for a given contest are presumed to exist in at least the same proportion in the remaining ballots cast in the contest. The examples in subdivisions (a)(1) through (a)(3) illustrate how the number of variances in a contest should be calculated.

(1) If the manual tally establishes that the machine tally erroneously attributed a vote for Candidate A to Candidate B, two variances result because the vote totals for Candidate A and for Candidate B are each changed by one vote in the manual tally.

(2) If the manual tally establishes that the machine tally erroneously attributed a vote for Measure 1 as a vote against Measure 1, two variances result because the vote totals for Measure 1 and against Measure 1 are each changed by one vote in the manual tally.

(3) If the manual tally determines that a vote was cast in a contest on a ballot that the machine tally interpreted as an undervote in the contest, one variance results because the machine tally undervote becomes a vote for a candidate or a vote for or against a measure in the manual tally.

(b) An elections official must document and disclose to the public any variances between the semifinal official canvass results and the manual tally results.

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Note: Authority cited: Section 12172.5, Government Code; Sections 10, 19100, 19205, 19222, Elections Code.

Reference: Sections 19100, 19205, 19222, Elections Code.

§ 20124. Manual tally escalation requirements for variances.

(a) The elections official shall calculate the variance percentage for any contest with one or more variances by dividing the total number of variances found in the manual tally sample for the contest by the total number of votes cast for that contest in the manual tally sample. For single-winner contests, only variances that narrow the margin between the winner and any of the losers shall be included in the total number of variances. For multi-winner contests, only variances that narrow the margin of victory between any of the winners and any of the losers shall be included in the total number of variances. If the variance percentage represents at least one-tenth (10%) of the margin of victory for that contest based on the semifinal official canvass results, then additional precincts must be manually tallied for that contest as provided in subdivision (b).

(b) Additional precincts shall be tallied in randomly selected blocks of five percent (5%) until the total number of variances presumed to exist – re-calculated using the method above – is smaller than ten percent (10%) of the overall margin of victory in that contest, based on the semifinal official canvass results, or until all ballots have been manually tallied, whichever occurs first.

(c) If any variance is found between manually tallied voter verifiable paper audit trail (VVPAT) records and corresponding electronic vote results that cannot be accounted for by some obvious mechanical problem, then the VVPAT records, memory cards and devices, and direct recording electronic (DRE) voting machines must be preserved and the Secretary of State must be notified in order to allow for an investigation to determine the cause of the problem. The Secretary of State shall conduct the investigation in such a manner as to minimize adverse impact on the conclusion of the canvass and certification of the election, as well as preparation for any upcoming elections.

Note: Authority cited: Section 12172.5, Government Code; Sections 10, 19100, 19205, 19222, Elections Code.

Reference: Sections 19100, 19205, 19222, Elections Code.

§ 20125. Records To Be Maintained During And After The Manual Tally Process.

(a) The elections official shall keep a log to record the manual tally process, including the results of each round of manual tallying for each precinct included in the sample, how variances were resolved, and details of any actions taken that are contrary to this chapter. The elections official shall make the log available to the public.

(b) The elections official shall track, record in the log and report to the public by precinct the number of undervotes and overvotes discovered in the manual tally of a contest.

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Note: Authority cited: Section 12172.5, Government Code; Sections 10, 19100, 19205, 19222, Elections Code.

Reference: Sections 19100, 19205, 19222, Elections Code.

§ 20126. Public Right To Observe.

(a) The elections official shall make any semifinal official canvass precinct tally results available to the public before the manual tally of the results from those precincts begins.

(b) The elections official shall comply with the notice requirements established in Elections Code §15360 when conducting any post-election manual tallying required by this chapter. This notice requirement may be satisfied by providing a single notice containing the times and places of:

- (1) the initial selection of precincts for the one percent (1%) manual tally and any ten percent (10%) manual tally required;
- (2) the beginning of the manual tally process; and
- (3) any additional random selection of precincts which may become necessary to comply with escalation requirements.

(c) The elections official shall permit the public to observe all parts of the manual tally process, including the random selection of precincts, in a manner that allows them to verify the tally. The elections official shall not permit members of the public to touch ballots, voter verifiable paper audit trails or other official materials used in the manual tally process or to interfere in any way with the process.

Note: Authority cited: Section 12172.5, Government Code; Sections 10, 19100, 19205, 19222, Elections Code.

Reference: Sections 19100, 19205, 19222, Elections Code.

§ 20127. Completion Within Official Canvass Period.

For any contest in which an increased manual tally is required by this chapter, the elections official shall complete all tasks and make all reports required by this chapter within the canvass period established by Elections Code sections 10262 and 15372.

Note: Authority cited: Section 12172.5, Government Code; Sections 10, 19100, 19205, 19222, Elections Code.

Reference: Sections 19100, 19205, 19222, Elections Code.

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California State Association of Counties



October 22, 2009

Paula Higashi
Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

1100 K Street
Suite 101
Sacramento
California
95814

Telephone
916.327.7500

Facsimile
916.441.5507

RE: Legislatively-Determined Mandate
Post Election Manual Tally (PEMT)

Dear Executive Director Higashi:

It is the intent of the California State Association of Counties (CSAC) to work with the Department of Finance in following the process set forth in Government Code section 17573 to develop a Legislatively Determined Mandate (LDM) for the Post Election Manual Tally emergency regulations issued on March 24, 2009, referred to by the Secretary of State as CCROV #009048.

By copy of this letter to Carla Castañeda, Department of Finance, we are providing notice of our intent. CSAC requests that the statute of limitation for the filing of a test claim be tolled as of the date of this notice pursuant to Government Code section 17573, subdivision (b).

While the joint request is pending, the DOF or CSAC shall notify the CSM of actions taken as set forth below, in accordance with Government Code section 17573, subdivision (g):

- Provide the CSM with a copy of any communications re development of a joint request, and a copy of a joint request when it is submitted to the Legislature.
- Notify the CSM of the date of (A) the Legislature's action on a joint request in the Budget Act, or (B) the Department of Finance's decision not to submit a joint request.

The principal contact person for the RRM shall be Carla Castañeda, Department of Finance, (916) 327-0103, extension 3090 or Jean Kinney Hurst, CSAC, (916) 327-7500, extension 515.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jean Kinney Hurst', written over a printed name and title.

Jean Kinney Hurst
Legislative Representative

cc: Carla Castañeda, Department of Finance

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STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, Governor

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
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E-mail: csminfo@csm.ca.gov



November 12, 2009

Ms. Jean Kinney Hurst
California State Association
of Counties (CSAC)
1100 K Street, Suite 101
Sacramento, CA 95814-3941

Ms. Carla Castaneda
Department of Finance (A-15)
915 L Street, 12th Floor
Sacramento, CA 95814

RE: **Legislatively Determined Mandate**
Post Election Manual Tally, 09-LDM-01

Dear Ms. Hurst and Ms. Castaneda:

On November 2, 2009, the Commission on State Mandates (Commission) received a letter of intent from the California State Association of Counties (CSAC) to work with the Department of Finance to develop a Legislatively Determined Mandate (LDM) for the *Post Election Manual Tally* program.

Pursuant to Government Code section 17573, subdivision (b), the statute of limitation for the filing of a test claim shall be tolled as of October 22, 2009.

Please contact Heidi Palchik at (916) 323-8218 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy Patton".

NANCY PATTON
Assistant Executive Director

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Post Election Manual Tally Cost by County from CACEO Survey
 Presidential General Election, November 4, 2008

County	Total Costs
Amador	0.00
Alameda	24,885.45
Butte	1,126.81
Calaveras	0.00
Colusa	1,000.00
Contra Costa	11,037.54
Del Norte	0.00
El Dorado	33,184.87
Fresno	9,114.09
Inyo	320.00
Kern	2,534.00
Kings	0.00
Lassen	0.00
Los Angeles	43,919.00
Madera	1,900.00
Merced	0.00
Modoc	0.00
Monterey	3,790.66
Napa	711.74
Nevada	965.00
Orange	57,825.04
Placer	9,840.74
Plumas	1,077.12
Riverside	20,502.00
Sacramento	8,604.85
San Bernardino	52,000.00
San Diego	6,446.37
San Francisco	68,669.70
San Joaquin	0.00
San Luis Obispo	0.00
Santa Barbara	250,126.09
Santa Clara	94,727.00
Santa Cruz	6,307.37
Shasta	3,674.30
Sierra	0.00
Siskiyou	2,600.00
Solano	200.00
Sonoma	25,057.69
Sutter	0.00
Tulare	1,250.00
Ventura	74,082.53
Total costs	817,479.96

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Post Election Manual Tally (PEMT) New and Existing Activities

COUNTY: SANTA BARBARA

(A) New Activities

1. Conducted meetings internally, with other counties and with the Secretary of State to clarify the requirements outlined in the Emergency Regulations.
Labor - staff time including but not limited to reviewing Emergency Regulations and existing mandates required per Election Code §15360 in conducting manual tallies; involvement in meetings and determining course of action based on meeting outcome.
Materials – includes but not limited to printed material for distribution and discussion during meetings.
2. Conducted meetings with Election Division staff to determine activities to be completed in preparation for the Manual Tally.
Labor - staff time including but not limited to discussing necessary activities, identifying staff responsible for each activity, and setting priorities and deadlines.
Materials – includes but not limited to printed material for distribution and discussion during meetings.
3. Identify which local contests are required to be tallied.
Labor - staff time including but not limited to determining the margin of victory for each contest; and for the contest required to be tallied printing reports listing the precincts in that contest.
Materials – includes but not limited to the Election Night Results Summary, district to precinct reports and other printed materials in preparation for the random selection of precincts.
4. Coordinate with Sheriff for security of ballots at offsite location.
Labor - staff time including but not limited to determining where to store ballots while conducting the manual tally and contacting the Sheriff to arrange for access to secure location.
5. Identify location for conducting manual tally and complete contract for location.
Labor - staff time including but not limited to locating potential sites, meeting with the location representative to determine functionality of space and availability, and completing any necessary paperwork for use of space.

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6. Recruit staff from poll worker list and temporary agencies.
Labor - staff time including but not limited to identifying potential poll workers to work, contacting the poll workers, contacting temporary agencies to fill remaining staff positions required to conduct the tally.
7. Organize manual tally boards; ensure that poll workers do not tally ballots for precincts they worked on Election Day.
Labor - staff time including but not limited to compiling a list of all persons assigned to work the manual tally; identifying the source of their employment, either a poll worker and their precinct assignment or a temporary agency, and creating boards from the list with one experienced manual tally staff per board.
Services – includes that of temporary agencies to assist in placing persons to work on the manual tally.
8. Prepare Poll and Vote by Mail ballot boxes for transport.
Labor - staff time including but not limited to identifying all ballots required for the manual tally. Sealing boxes with tamper evident tape.

9. Prepare spreadsheet to track results of manual tally.
Labor - staff time including but not limited to importing data from the semi-official election night results by precinct for each contest; proofing for accuracy and setting up formulas to calculate variances.
10. Box up all tally sheets and supplies for transport to offsite tally location.
Labor - staff time including but not limited to packing the tally sheets and supplies required to conduct the manual tally.
Materials – includes but not limited to tally sheets, red pens, reports, rulers
11. Ensure secure transport of ballots to/from offsite manual tally location
Labor - staff time including but not limited to making sure boxes of ballots are sealed, loading the ballots on a truck and securing the ballots at the offsite location in dual custody.
Materials – includes but not limited to tamper evident tape, boxes and labels to identify what ballots are stored in the boxes.
Services – renting a truck to transport ballots from manual tally location to secure offsite location.
12. Setup tables with board numbers and supplies
Labor - staff time including but not limited to setting up tables and chairs, labeling them with a tally board number, taking down the tables and chairs in the evening when an event was being held at the offsite location that evening.

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13. Call roll and assign staff to their tally board/table
 - Labor - staff time including but not limited to calling the names of the board members, checking them in as present, assigning them to their tally board table, reallocating staff to fill boards where there are vacancies.
14. Update spreadsheet with Vote by Mail ballot manual tally results
 - Labor - staff time including but not limited to gathering tally sheets when tally is completed from each board and entering the number of votes cast for each candidate along with the overvotes and undervotes based on the tally.
 - Materials – includes but not limited to the completed tally sheets and reports from tabulation to verify the totals.
15. Check totals to determine if variance exists and if escalation of precincts tallied is required.
 - Labor - staff time including but not limited to reviewing the manual tally spreadsheet to determine if there is a need to escalate based on whether or not there truly is any variance, what those variances are and determining how to resolve the variances.
 - Materials – includes but not limited to tally sheets, ballots, tabulation reports to verify totals.
16. Randomly select precincts in 5% increments for contests requiring escalation.
 - Labor - staff time including but not limited to identifying the precincts in the contest requiring escalation, placing those precinct ranges in a random integer generator program, listing precinct selections in order.
 - Materials – includes but not limited to precinct reports by contest.
17. Prepare report of cost for Post Election Manual Tally
 - Labor - staff time including but not limited to tracking the cost of the Post Election Manual Tally and preparing a report of costs.

(B) Existing Activities

1. Prepare notice of date and time of random selection of manual tally precincts for publication/posting.
 - Labor - staff time including but not limited to identifying the date and time of the random selection of precincts, preparing the notice of these dates and times, updating the website with the notice and posting the notice in all three of our offices, and coordinating with the local papers the publication of the notice.
 - Materials – includes but not limited to paper on which the notice is printed.
 - Services – publishing notice in the local newspapers.

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2. Generate random precinct numbers for tally
 - Labor - staff time including but not limited to printing reports which show the precincts per contest, selecting the method by which to randomly select the precincts, entering the number ranges to choose from, randomly selecting the precincts, and listing the precincts in the order in which they were drawn.
 - Materials – includes but not limited to precinct reports by contest, computer with random integer generator program (or internet capability), and media (paper and pen) or computer used to document the selection of precincts.
 3. Generate machine count reports for precincts selected
 - Labor - staff time including but not limited to loading the semi official results from election night on the tabulation server; exporting polling place results by precinct for the contest and precincts in question.
 4. Generate central count deck reports for precincts selected
 - Labor - staff time including but not limited to loading the semi official results from election night on the tabulation server; printing central count reports by precinct showing the decks that have Vote By Mail or Mail Ballots for that precinct.
 5. Identify staffing needs for supervision and manual tally boards (4 member board*)
 - Labor - staff time including but not limited to estimating the number of hours it would take to complete the manual tally process, determining the number of hours available to complete the tally, determining the number of boards necessary to complete the tally in the timeline required and how many supervisors would be needed based on one per four boards.
- * Tally Board consists of one caller, one observer, and two markers.
6. Prepare notice of dates, times and locations of manual tally for publication/posting
 - Labor - staff time including but not limited to identifying the dates and times of the manual tally, preparing the notice of these dates and times, updating the website with the notice and posting the notice in all three of our offices, and at the location where the tally was conducted, and coordinating with the local papers the publication of the notice.
 - Materials – includes but not limited to paper on which the notice is printed.
 - Services – publishing notice in the local newspapers.

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7. Escort public observers
Labor - staff time including but not limited to the preparation of observer instructions, logging in observers, providing the instructions to the observers, escorting the observers through each process while explaining what is being observed and answering questions.
Materials – includes but not limited to paper on which the instructions are printed.
Services
8. Locate and pull counted poll ballots for selected precincts
Labor -staff time including but not limited to finding out what Vote Center (polling place) the precincts were located at, finding the boxes for that Vote Center, finding the write-in ballot envelopes for the Vote Center/precincts, and making sure that all containers are sealed for transport.
Materials – seals for boxes and envelopes to be transported
9. Prepare supply list and order supplies for manual tally process
Labor -staff time including but not limited to finding the boxes that contained the poll ballots for those precincts, finding the write-in ballot envelopes for the precincts, and making sure that the containers were sealed for transport.
Materials – seals for boxes and envelopes to be transported
10. Prepare tally sheets for each contest/precinct selected for both poll and Vote By Mail ballots
Labor -staff time including but not limited to generating a list of each candidate per contest to be tallied, identifying which precincts are part of the One Percent Manual Tally per Elections Code 15360 and Post Election Manual Tally, and adding the rows for tracking overvotes and undervotes for those in both, prepare master sheets for each contest, and print out sets of tally sheets for each precinct for both Vote By Mail and polling place ballots.
Materials – Ledger size paper, paper clips, staples, toner cartridges
11. Prepare Pull List to track precincts and contests tallied
Labor - staff time including but not limited to preparing logs to track which tables/boards are assigned which precincts, whether they are Vote By Mail (Central Count) or Polling Place Precincts, which contests have been tallied, which tallies need to be reviewed or are complete, whether they are part of the One Percent Manual Tally, Post Election Manual Tally or both.
Materials – paper, clipboard, pens
12. Train boards on manual tally process
Labor - staff time including but not limited to preparing instructions, informing the boards on every step of the process including separating the precinct ballots, calling and marking the tally sheets, what to do if a mark is questionable, and how to complete the tally sheets at the end of counting.

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13. Provide tally boards working on Vote By Mail ballots with deck report for central count and tally sheets for a selected precinct
Labor - staff time including but not limited to generating the deck reports from central count for selected precincts, pulling the deck report for the precinct the tally board is working on along with the corresponding tally sheets, logging the precinct and board assignments on the Pull List.
14. Locate central count deck in box of Vote By Mail ballots, one at a time
Labor - staff time including but not limited to referring to the deck reports from central count to determine which deck you need, referring to a box log to determine which box the deck was stored in, finding that box and pulling the deck.
15. Sort vote by mail ballots by precinct
Labor - staff time including but not limited to looking at each ballot in the deck to identify the precinct number and pulling out the one for the precinct you are tallying.
Materials – Sort Qwik fingertip moistener

16. Conduct Manual Tally on Vote By Mail ballots.
Labor - staff time including but not limited to looking at each ballot for that precinct to find the contest to tally, calling the vote for the contest being tallied, two markers marking the tally sheets while the observer watches what is being called and marked; this is done for each deck. Tallying each deck individually, so we can verify the counts at the deck level in case the tally is off. This makes it easier to identify variances and resolve the issue.
Materials –red pens, colored pencils (not erasable), post-its, rulers
17. Supervisor compares manual tally with machine count for Vote By Mail ballots by precinct.
Labor - staff time including but not limited to comparing the boards tally sheets with the deck and statement of votes cast to see if the totals match without providing the board with the numbers.
Materials – Statement of Votes Cast Reports by precinct, and by deck, when needed to resolve any variances.

Post Election Manual Tally Requirements in Close Contests Test Claim
County of Santa Barbara
Section 7: Documentation

18. Provide tally board with polling place ballots and tally sheets for a selected precinct
Labor - staff time including but not limited to locating the Vote Center (polling place) containing the precinct you are looking for, located the boxes for that Vote Center, pulling the write-in and uncounted ballot envelopes for that Vote Center/precinct and providing them along with the tally sheets for the selected precinct to a tally board, and logging out the precinct/Vote Center ballots on the Pull List.
19. Sort polling place ballots by precinct
Labor - staff time including but not limited to looking at each ballot in the boxes for the Vote Center and pulling out any ballots for the precinct being tallied.
Materials – Sort Qwik finger moistener
20. Conduct Polling Place ballot Manual Tally
Labor - staff time including but not limited to looking at each ballot, calling the vote for the contest being tallied, two markers marking the tally sheets while the observer watches what is being called and marked, this is done for each precinct selected.
Materials – Tally Sheets, red pens, colored pencils (not erasable), post-its, rulers
21. Supervisor compares manual tally with machine count for polling place ballots by precinct.
Labor - staff time including but not limited to looking at the boards tally sheets against the statement of votes cast to see if the totals match without providing the board with the numbers.
22. Investigate any variances
Labor - staff time including but not limited to reviewing the marks on the ballots to determine which votes may or may not have been read by the voting system, sorting out undervotes and overvotes and making sure those counts match, reviewing the uncounted ballots to see if they were truly uncounted or erroneously pulled by the pollworkers.
23. Reconcile and resolve variances if necessary
Labor - staff time including but not limited to documenting any variances once identified and resolving them by deleting and rerunning the precinct effected. Once resolved, update the tracking spreadsheet with a description of how the variance was resolved.
24. Prepare tally reports for Secretary of State
Labor - staff time including but not limited to preparing the Secretary of State reports on the Manual Tally and sending them to the Secretary of State.

8. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission.**

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Renee Bischof

Print or Type Name of Authorized Local Agency
or School District Official

Elections Division Manager

Print or Type Title

Renee Bischof

Signature of Authorized Local Agency or
School District Official

March 25, 2011

Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*