ITEM 3

TEST CLAIM

PROPOSED DECISION

Elections Code Section 3010

Statutes 2018, Chapter 120 (AB 216)

Vote by Mail Ballots: Prepaid Postage

19-TC-01

County of Los Angeles, Claimant

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For CSM Use Only
Filing Date: RECEIVED October 15, 2019 Commission on State Mandates
Test Claim #: 19-TC-01

STATE *of* CALIFORNIA
COMMISSION ON STATE MANDATES

TEST CLAIM FORM

Section 1

Proposed Test Claim Title:

Vote by Mail Ballots: Identification Envelopes: Prepaid Postage

Section 2

Local Government (Local Agency/School District) Name:

County of Los Angeles

Name and Title of Claimant's Authorized Official pursuant to CCR, tit.2, § 1183.1(a)(1-5):

Arlene Barrera, Auditor-Controller

Street Address, City, State, and Zip:

500 West Temple Street, Room 525, Los Angeles, CA 90012

Telephone Number	Fax Number	Email Address
(213) 974-8301	(213) 626-5427	abarrera@auditor.lacounty.gov

Section 3

Claimant Representative: Hasmik Yaghobyan Title Supervising Accountant

Organization: County of Los Angeles, Department of Auditor-Controller

Street Address, City, State, Zip:

500 West Temple Street, Room 603, Los Angeles, CA 90012

Telephone Number	Fax Number	Email Address
(213) 974-9653	(213) 617-8106	hyaghobyan@auditor.lacounty.gov

Revised 11/2018

Section 4 – Please identify all code sections (include statutes, chapters, and bill numbers; e.g., Penal Code section 2045, Statutes 2004, Chapter 54 [AB 290]), regulatory sections (include register number and effective date; e.g., California Code of Regulations, title 5, section 60100 (Register 1998, No. 44, effective 10/29/98), and other executive orders (include effective date) that impose the alleged mandate pursuant to Government Code section 17553 and don't forget to check whether the code section has since been amended or a regulation adopted to implement it (refer to your completed WORKSHEET on page 7 of this form):

Assembly Bill 216, Chapter 120, Statutes of 2018

Amending Section 3010 of the Election Code, relating to elections.

☒ Test Claim is Timely Filed on [Insert Filing Date] [select either A or B]: 10 / 15/2019

☒ A: Which is not later than 12 months following [insert the effective date of the test claim statute(s) or executive order(s)] 01 / 01 /2019 , the effective date of the statute(s) or executive order(s) pled; or

☐ B: Which is within 12 months of [insert the date costs were *first* incurred to implement the alleged mandate] ___/___/_____, which is the date of first incurring costs as a result of the statute(s) or executive order(s) pled. *This filing includes evidence which would be admissible over an objection in a civil proceeding to support the assertion of fact regarding the date that costs were first incurred.*

(Gov. Code § 17551(c); Cal. Code Regs., tit. 2, §§ 1183.1(c) and 1187.5.)

Section 5 – Written Narrative:

☒ Includes a statement that actual and/or estimated costs exceed one thousand dollars ($1,000). (Gov. Code § 17564.)

☒ Includes all of the following elements for each statute or executive order alleged ***pursuant to Government Code section 17553(b)(1) (refer to your completed WORKSHEET on page 7 of this form)***:

☒ Identifies all sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate, including a detailed description of the *new* activities and costs that arise from the alleged mandate and the existing activities and costs that are *modified* by the alleged mandate;

☒ Identifies *actual* increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate;

☒ Identifies *actual or estimated* annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed;

☒ Contains a statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed;
Following FY: 2019 - 2020 Total Costs: $5,500,000

☒ Identifies all dedicated funding sources for this program; State: N/A

Federal: N/A Local agency's general purpose funds: ______________

Other nonlocal agency funds: N/A

Fee authority to offset costs: N/A

☒ Identifies prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate: N/A

☒ Identifies a legislatively determined mandate that is on the same statute or executive order: N/A

Section 6 – The Written Narrative Shall be Supported with Declarations Under Penalty of Perjury Pursuant to <u>Government Code Section 17553(b)(2)</u> and <u>California Code of Regulations, title 2, section 1187.5</u>, as follows (refer to your completed WORKSHEET on page 7 of this form):

☒ Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.

☒ Declarations identifying all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.

☒ Declarations describing new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program).

☒ If applicable, declarations describing the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to <u>Government Code section 17573</u>, and the authority to file a test claim pursuant to paragraph (1) of subdivision (c) of <u>Government Code section 17574</u>.

☒ The declarations are signed under penalty of perjury, based on the declarant's personal knowledge, information, or belief, by persons who are authorized and competent to do so.

Section 7 – The Written Narrative Shall be Supported with Copies of the Following Documentation Pursuant to <u>Government Code section 17553(b)(3)</u> and <u>California Code of Regulations, title 2, § 1187.5</u> (refer to your completed WORKSHEET on page 7 of this form):

☒ The test claim statute that includes the bill number, and/or executive order identified by its effective date and register number (if a regulation), alleged to impose or impact a mandate. Pages 11 to 11.

☒ Relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate. Pages ___12___ to ___30___.

☒ Administrative decisions and court decisions cited in the narrative. (Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement.) Pages _31_ to _142_.

☐ Evidence to support any written representation of fact. *Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.* (*Cal. Code Regs., tit. 2, § 1187.5*). Pages _____ to _______.

Section 8 –TEST CLAIM CERTIFICATION Pursuant to Government Code section 17553

☒ The test claim form is signed and dated at the end of the document, under penalty of perjury by the eligible claimant, with the declaration that the test claim is true and complete to the best of the declarant's personal knowledge, information, or belief.

Read, sign, and date this section. Test claims that are not signed by authorized claimant officials pursuant to California Code of Regulations, title 2, section 1183.1(a)(1-5) will be returned as incomplete. In addition, please note that this form also serves to designate a claimant representative for the matter (if desired) and for that reason may only be signed by an authorized local government official as defined in section 1183.1(a)(1-5) of the Commission's regulations, and not by the representative.

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 is true and complete to the best of my own personal knowledge, information, or belief. All representations of fact are supported by documentary or testimonial evidence and are submitted in accordance with the Commission's regulations. (Cal. Code Regs., tit.2, §§ 1183.1 and 1187.5.)

Arlene Barrera	Auditor-Controller
Name of Authorized Local Government Official pursuant to Cal. Code Regs., tit.2, § 1183.1(a)(1-5)	**Print or Type Title**
Arlene Barrera	11-25-19
Signature of Authorized Local Government Official pursuant to Cal. Code Regs., tit.2, § 1183.1(a)(1-5)	**Date**

Revised 11/2018

Test Claim Form Sections 4-7 WORKSHEET

Complete Worksheets for Each New Activity and Modified Existing Activity Alleged to Be Mandated by the State, and Include the Completed Worksheets With Your Filing.

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number: AB 216, Chapter 120, Statutes of 2018

Activity: It requires the elections official to deliver to each qualified Vote By Mail applicant an identification envelope for the return of the Vote By Mail ballot with prepaid postage.

Initial FY: 18 - 19 Cost: $688,639 Following FY: 19 - 20 Cost: $620,791

Evidence (if required): Declaration of Margaret Palacios

All dedicated funding sources; State: $0.00 Federal: $0.00

Local agency's general purpose funds: $0.00

Other nonlocal agency funds: $0.00

Fee authority to offset costs: $0.00

Revised 11/2018

COUNTY OF LOS ANGELES TEST CLAIM

VOTE BY MAIL BALLOTS: IDENTIFICATION ENVELOPES: PREPAID POSTAGE

Assembly Bill 216: Chapter 120, Statutes of 2018
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SECTION 5: WRITTEN NARRATIVE
COUNTY OF LOS ANGELES TEST CLAIM

VOTE BY MAIL BALLOTS: IDENTIFICATION ENVELOPES: PREPAID POSTAGE

Assembly Bill (AB) 216: Chapter 120, Statutes of 2018
Amending Section 3010 of the Election Code

I. STATEMENT OF THE TEST CLAIM

In 2001, the California Legislature enacted AB 1520, Chapter 922, Statutes of 2001, allowing voters to become a permanent Voter By Mail ("VBM"). This resulted in a significant increase in the percentage of VBM voters in the State of California. In 2016, approximately 58% of voters in the primary election and 59% of voters in general election casted their ballots by using VBM[1].

With a stamp currently costing $0.55 per envelope and rising, it would often cost $1.00 for voters to cast their VBM ballots while voters in other jurisdictions were provided with free postages.

In order to standardize the VBM process and to ensure that voting is free for all Californians, the California Legislature enacted AB 216, Chapter 120, Statutes of 2018.

AB 216, titled "Vote by mail ballots: identification envelopes: prepaid postage" amended Section 3010 of the Election Code relating to elections. This bill requires local election officials to deliver to each qualified applicant for VBM an identification envelope for the return of the VBM with a prepaid postage[2].

The County of Los Angeles ("Claimant") hereby submits this Test Claim seeking to recover its cost in performing VBM activity as imposed by AB 216.

A. DESCRIPTION OF THE NEW ACTIVITIES

AB 216 amended California Election Code § 3010, mandating the following activities on the Claimant:

a) The elections official shall deliver all the following to each qualified applicant:

(1) The ballot for the precinct in which 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.

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[1] SENATE RULES COMMITTEE, Office of Senate Floor Analyses, THIRD READING.

[2] Declaration of Margaret Palacios, page 1, ¶2.

(2) All supplies necessary for the use and return of the ballot, including an identification envelope with prepaid postage for return of the envelope by mail ballot.

b) An officer of this state shall not make a charge for services rendered to a voter under this chapter.

As a result of AB 216, the Claimant is required to provide newly mandated services and incur additional mandated costs as detailed below[3]. Thus, the Claimant is seeking reimbursement of the cost incurred in meeting the newly mandated requirement.

B. DESCRIPTION OF THE EXISTING ACTIVITIES AND COSTS MODIFIED BY THE MANDATE

Prior to AB 216, election officials were only required to deliver to each qualified applicant:

a) The ballot for the precinct in which he or she 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, and

b) All supplies necessary for the use and return of the ballot.

AB 216 amended Section 3010 of the Election Code to include activities described in Part A.

C. ACTUAL INCREASED COSTS INCURRED BY THE CLAIMANT DURING THE FISCAL YEAR FOR WHICH THE CLAIM WAS FILED TO IMPLEMENT THE ALLEGED MANDATE

The Claimant's increased cost to comply with the AB 216 mandate in Fiscal Year (FY) 2018-19 was totaled at $688,639[4] [total number of returned mail (171,455) x the cost of stamp ($.605)], well in excess of $1,000[5], pursuant to Government Code § 17564.

D. ACTUAL OR ESTIMATED ANNUAL COSTS THAT WILL BE INCURRED BY THE CLAIMANT TO IMPLEMENT ALLEGED MANDATE DURING THE FISCAL YEAR IMMEDIATELY FOLLOWING THE FISCAL YEAR FOR WHICH THE CLAIM WAS FILED

The Claimant estimates that it will incur $620,791 in increased cost to comply with the AB 216 mandate in FY 2019-20[6].

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[3] Declaration of Margaret Palacios, page 1 ¶ 2.

[4] Declaration of Margaret Palacios, page 2, ¶ 3.

[5] Declaration of Margaret Palacios, page 1 ¶ 2.

[6] Declaration of Margaret Palacios, page 3, ¶ 4.

E. STATEWIDE COST ESTIMATE OF THE INCREASED COSTS

According to the Assembly Appropriations Committee: "If 8.4 million voters (the number of VBM voters in 2016 General Election) voted by mail at an average cost of $0.65 per envelope, the cost of prepaid postage would be about $5.5 million[7]."

F. IDENTIFICATION OF ALL DEDICATED FUNDING SOURCES FOR THIS PROGRAM

The Claimant is not aware of any state, federal, or other non-local agency funds available for this program[8]. All the increased cost was paid and will be paid from the Claimant's General Fund appropriations.

G. IDENTIFICATION OF PRIOR MANDATED DETERMINATIONS MADE BY THE BOARD OF CONTROL OR COMMISSION ON STATE MANDATES

The Claimant is not aware of any prior determination made by the Board of Control or the Commission on State Mandates related to this matter[9].

H. IDENTIFICATION OF LEGISLATIVELY DETERMINED MANDATES THAT IS ON THE SAME STATUE OR EXECUTIVE ORDER

The Claimant is not aware of any legislatively determined mandates related to AB 216, Chapter 120, Statutes of 2018, pursuant to Government Code § 17573[10].

II. MANDATE MEETS BOTH SUPREME COURT TESTS

In *County of Los Angeles v. State of California*, 43 Cal.3d 46 (1987), the Supreme Court was called upon to interpret the phrase "new program or higher level of service" that was approved by the voters when they passed Proposition 4 in 1979, adding article XIII B to the California Constitution. In reaching its decision, the Court held that:

> "...the term 'higher level of service' ... must be read in conjunction with the predecessor phrase 'new program' to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing 'programs.' But the term 'program' itself is not defined in article XIII B. What programs then did the electorate have in mind when section 6 was adopted? We

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7 SENATE RULES COMMITTEE, Office of the senate Floor Analyses, THIRD READING.

8 Declaration of Margaret Palacios, page 3 ¶ 6.

9 Declaration of Margaret Palacios, page 3, ¶ 7.

10 Declaration of Margaret Palacios, page 4, ¶ 8.

> conclude that the drafters and the electorate had in mind the commonly understood meanings of the term programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local government and do not apply generally to all residents and entities in the state[11]."

The definition as set forth in *County of Los Angeles* has two alternative prongs, only one of which has to apply in order for the mandate to qualify as a program, *Carmel Valley Fire Protection Dist. v. State of California*, 190 Cal.App.3d 521, 537 (1987). The activities mandated by AB 216 meet both prongs as discussed below:

III. MANDATE IS UNIQUE TO LOCAL GOVERNMENT

The sections of the law alleged in this Test Claim are unique to government as election services are uniquely provided by local governmental agencies.

IV. MANDATE CARRIES OUT STATE POLICY

The new State statute, the subject of this Test Claim imposes a higher level of service by requiring local agencies to provide prepaid postage to VBM voters.

V. STATE MANDATE LAW

Article XIII B, § 6 requires the state to provide a subvention of funds to local government agencies any time the legislature or a state agency requires the local government agency to implement a new program or provide a higher level of service under an existing program. Section 6 states in relevant part:

> "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 governments for the cost of such program or increased level of service . . ."

The purpose of § 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 [12]." The section "was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues[13]." In order to implement § 6, the legislature enacted a comprehensive

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

[12] *County of San Diego v. State of California, 15 Cal.4th 68, 81 (1997); County of Fresno v. State of California, 53 Cal.3d 482, 487 (1991).*

[13] *County of Fresno, supra, 53 Cal.3d at 487; Redevelopment Agency v. Commission on State Mandates, 55 Cal.App.4th 976-985 (1997).*

administrative scheme to define and pay mandate claims[14]. Under this scheme, the legislature established the parameters regarding what constitutes a state mandated cost, defining "costs mandated by the state" to include:

> ". . . any increased costs which a local agency 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 § 6 of Article XIII B of the California Constitution[15]."

VI. STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code § 17556 which could serve to bar recovery of "costs mandated by the state," as defined in Government Code § 17556. None of the seven disclaimers apply to this Test Claim:

1. The claim is submitted by a local agency or school district which requests legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon the local agency or school district requesting the legislative authority.

2. The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

3. The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

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

5. The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts or includes additional revenue that was specifically intended to fund costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

6. The statute or executive order imposes duties which were expressly included in a ballot measure approved by the voters in statewide election.

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[14] Government Code § 17500, et seq.; *Kinlaw v. State of California*, 54 Cal.3d 326, 331, 333 (1991) (statutes establish "procedure by which to implement and enforce § 6").

[15] Government Code §17514.

7. The statute created a new crime or infraction, eliminated a crime or infraction, or changed penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

None of the disclaimers or other statutory or constitutional provisions that would relieve the state from its constitutional obligation to provide reimbursement have any applications to this Test Claim.

The enactment of AB 216, Chapter 120, Statutes of 2018, which amended Elections Code § 3010, imposes a new state mandated program and cost on the Claimant.

VII. CONCLUSION

AB 216, Chapter 120, Statutes of 2018, imposes state mandated activities and increased costs on Claimant for providing all supplies necessary for the use and return of the ballot, including an identification envelope with prepaid postage for return of the envelope by mail. These state-mandated costs are not exempted from subvention requirements of § 6, there are no other funding sources, and Claimant lacks authority to develop and impose fees to fund any of these new state mandated activities. Claimant, therefore, respectfully requests that the Commission find that the mandated activities set forth in this Test Claim are state mandates that require subvention under § 6.

SECTION 6: DECLARATIONS

PURSUANT TO GOVERNMENT CODE § 17553(b)(2) AND CALIFORNIA CODE OF REGULATIONS, TITLE 2, § 1187.5

DECLARATION OF MARGARET PALACIOS

I, Margaret Palacios, declare under the penalty of perjury under the laws of the State of California that the following is true and correct based on my personal knowledge, information, and belief[1]:

1) I am the Fiscal Operations Branch Manager for the Los Angeles County Registrar-Recorder/County Clerk's (RR/CC) Office. I started working in the RR/CC's Budget Section in December 2001 as a Health Care Financial Analyst. In September 2018, I was promoted to the Fiscal Operations Manager. I am responsible for the Budget and Financial Services Sections. The Budget Section consists of 5 staff and Financial Services Section consists of 35 staff. I am responsible for the complete and timely recovery of costs mandated by the State.

2) Election Code Section 3010, Statutes of 2018, Chapter 120 (AB 216), effective 1/1/2019, contains an alleged statutory mandate that requires local agencies conducting elections to provide a new and higher level of service by performing a new activity related to elections. The specific section of the statute alleged to mandate this activity is Election Code § 3010 (a)(2) which mandates election officials to provide: "The supplies necessary for the use and return of the ballot, including an identification envelope with prepaid postage for return of the envelope by mail ballot[2]". As a result, local agencies will incur cost from the mandated activity that will exceed $1,000[3].

3) As the Fiscal Operations Branch Manager, I am familiar with the new activity and cost stemming from the alleged statutory mandate in AB 216. The cost and the activity are accurately described in sections A, B, C, D, and E of the written narrative, as well as summarized here by Fiscal Year (FY) as follows:

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[1] California Evidence Code - EVID § 1200-Hearsay
(a) "Hearsay evidence" is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.
(b) Except as provided by law, hearsay evidence is inadmissible.
(c) This section shall be known and may be cited as the hearsay rule.

Exception to Hearsay Rule: Business Records Exception:
As used in this section, "a business" includes every kind of business, governmental activity, profession, occupation, calling, or operation of institutions, whether carried on for profit or not. Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if:
(a) The writing was made in the regular course of a business;
(b) The writing was made at or near the time of the act, condition, or event;
(c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and
(d) The sources of information and method and time of preparation were such as to indicate its trustworthiness.

[2] Government code §17553(b)(2)(C).

[3] Government Code § 17564 (a) No claim shall be made pursuant to Sections 17551, 17561, or 17573, nor shall any payment be made on claims submitted pursuant to Sections 17551 or 17561, or pursuant to a legislative determination under Section 17573, unless these claims exceed one thousand dollars ($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[4]:

Registrar-Recorder/County Clerk Financial Services Section Fiscal Year 2018-19 Actual Cost of AB 216		
Invoice Date	**Number of Vote By Mail ballot returned**	**Cost of Postage (1)**
11/6/2018	966,791	$584,908.55
5/16/2019	13,128	7,942.44
5/17/2019	15,267	9,236.54
5/20/2019	11,495	6,954.48
5/21/2019	2,080	1,258.40
5/22/2019	8,832	5,343.37
5/23/2019	7,520	4,549.60
5/24/2019	7,948	4,808.55
5/25/2019	82	49.61
5/28/2019	10,171	6,153.46
5/29/2019	2,398	1,450.80
5/30/2019	14,878	9,001.20
5/31/2019	13,093	7,921.27
6/1/2019	8,759	5,299.20
6/1/2019	36	21.78
6/3/2019	17,510	10,593.56
6/4/2019	4,295	2,598.48
6/4/2019	585	353.93
6/5/2019	15,750	9,528.75
6/6/2019	14,165	8,569.83
6/6/2019	128	77.44
6/7/2019	3,335	2,017.68
Total	**1,138,246**	**$688,638.92**

(1) The average cost of postage is $.605 ($688,638.92/1,138,246).

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[4] Government Code §17553(b)(2)(A).

4) RR/CC estimates that it will incur $620,791 in increased prepaid postage cost to comply with the AB 216 mandate in FY 2019-20[5]. FY 2019-20 is the FY following the implementation of the mandate. The cost is summarized below[6]:

Registrar-Recorder/County Clerk Financial Services Section Fiscal Year 2019-20 Estimated Cost of AB 216				
		A	**B**	**C**
Election Date	**Election Name**	**Vote By Mail (1)**	**B=A x 0.38 (2)**	**C= B x $0.605 (3)**
VARIOUS	Presidential Primary	2,700,266	1,026,101	$620,791

(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.

5) According to the Assembly Appropriations Committee: "If 8.4 million voters (the number of Vote By Mail voters in 2016 General Election) voted by mail at an average cost of $0.65 per envelope, the cost of prepaid postage would be about $5.5 million[7]." Therefore, the statewide cost estimate for AB 216 would be $5.5 million.

6) RR/CC has not received any local, state, or federal funding and does not have a fee authority to offset its increased direct (has no indirect cost) postage cost of providing prepaid postage in compliance with AB 216. RR/CC has incurred actual cost of $688,639 for FY 2018-19 and will incur an estimated cost of $620,791 for FY 2019-2020[8].

7) RR/CC is not aware of any prior determination made by the Board of Control or the Commission on State Mandates related to this matter[9].

8) RR/CC is not aware of any legislatively determined mandate related to AB 216, Chapter 120, Statutes of 2018[10].

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[5] See Footnote #1, on page 1.

[6] Government Code §17553(b)(2)(A).

[7] SENATE RULES COMMITTEE, Office of the senate Floor Analyses, THIRD READING, page 2, ¶ 6.

[8] Government Code §17553(b)(2)(B).

[9] Government Code §17553(b)(2)(B).

[10] Government Code § 17573.

9) I have examined the AB 216 Test Claim prepared by the Claimant (County of Los Angeles) and based on my personal knowledge, information, and belief, the costs incurred in this test claim were incurred to implement AB 216. Based on my personal knowledge, information, and belief, I find such costs to be correctly computed and are "costs mandated by the State," as defined in Government Code §17514:

> ". . . any increased costs which a local agency 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 § 6 of Article XIII B of the California Constitution."

I have personal knowledge of the foregoing facts and information presented in this Test Claim, and if so required, I could and would testify to the statements made herein.

Executed this 25th day of November in Norwalk, CA

Margaret Palacios

Margaret Palacios
Fiscal Operations Branch Manager
Registrar-Recorder/County Clerk
County of Los Angeles

SECTION 7: SUPPORTING DOCUMENTS

PURSUANT TO GOVERNMENT CODE § 17553(b)(3) AND CALIFORNIA CODE OF REGULATIONS, TITLE 2, § 1187.5

AB-216 Vote by mail ballots: identification envelopes: prepaid postage. (2017-2018)

Date Published: 07/18/2018 09:00 PM

Assembly Bill No. 216

CHAPTER 120

An act to amend Section 3010 of the Elections Code, relating to elections.

[Approved by Governor July 18, 2018. Filed with Secretary of State July 18, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 216, Gonzalez Fletcher. Vote by mail ballots: identification envelopes: prepaid postage.

Existing law provides for the procedures by which a voter may apply for and receive a vote by mail ballot. Existing law requires the elections official to deliver to each qualified applicant the ballot for the precinct in which the applicant resides and all supplies necessary for the use and return of the ballot. Existing law prescribes the contents of an identification envelope and requires a voter to return his or her vote by mail ballot in the identification envelope, as specified.

This bill would clarify that the elections official is required to deliver to each qualified applicant an identification envelope for the return of the vote by mail ballot and would require the identification envelope to have prepaid postage.

By imposing additional duties on local elections officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

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

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 3010 of the Elections Code is amended to read:

3010. (a) The elections official shall deliver all of the following to each qualified applicant:

(1) The ballot for the precinct in which 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) An officer of this state shall not make a charge for services rendered to a voter under this chapter.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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Cal Elec Code § 3010

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Deering's California Codes Annotated **ELECTIONS CODE** **Division 3** **Vote By Mail Voting, New Resident, and New Citizen Voting** **Chapter 1** **Vote By Mail Application and Voting Procedures**

Notice

This section has more than one version with varying effective dates.

§ 3010. Delivery of ballot and other materials [Effective until January 1, 2019]

The elections official shall deliver to each qualified applicant:

(a) The ballot for the precinct in which he or she 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.

(b) All supplies necessary for the use and return of the ballot.

No officer of this state may make any charge for services rendered to any voter under this chapter.

History

Added Stats 1994 ch 920 § 2 (SB 1547). Amended Stats 1998 ch 199 § 5 (SB 1533); Stats 2015 ch 728 § 72 (AB 1020), effective January 1, 2016, operative September 26, 2016.

Annotations

Notes

Historical Derivation:
Editor's Notes—
Amendments:
Note—

Historical Derivation:

(a) Former Elec C § 1008, as added Stats 1976 ch 1275 § 18, amended Stats 1979 ch 667 § 7.

(b) Former Elec C §§ 14630–14632.

(c) Former Elec C §§ 5907–5909.

(d) Former Pol C § 1357, as added Stats 1923 ch 283 § 1, amended Stats 1927 ch 362 § 1, Stats 1931 ch 785 § 1, Stats 1937 ch 604 § 2.

Editor's Notes—

For disposition of former provisions, see the table at the beginning of Volume 1 Elec C.

For legislative intent, see the 1994 note following Elec C § 3000.

The California Secretary of State certified VoteCal on September 26, 2016, as the statewide voter registration database that complies with the requirements of the federal Help America Vote Act of 2002 (52 U.S.C. Sec. 20901 et seq.).

Amendments:
1998 Amendment:

Substituted "also be accompanied by the ballot for the central committee of the party with which the voter is affiliated, if any" for "be the ballot for the party with which he or she is affiliated or, when appropriate, a nonpartisan ballot" in the second sentence of subd (a).

2015 Amendment:

Substituted "for which the voter has disclosed a preference" for "with which the voter is affiliated" in the second sentence of subd (a).

2018 Amendment (ch 120):

Added designations (a) and (b); added "all of the following" in the introductory language of (a); redesignated former (a) and (b) as (a)(1) and (a)(2); in (a)(1), substituted "the voter" for "he or she" in the first sentence, and added comma following "elections" in the second sentence; added "ballot, including an identification envelope with prepaid postage for the return of the vote by mail" in (a)(2); and in (b), substituted "An officer" for "No officer", "shall not" for "may" and "a" for "any" twice.

Note—

Stats 2015 ch 728 provides:

SEC. 88. (a) This act shall become operative only if the Secretary of State certifies that the state has a statewide voter registration database that complies with the requirements of the federal Help America Vote Act of 2002 (52 U.S.C. Sec. 20901 et seq.).
(b) Notwithstanding subdivision (a), any of Sections 27.5, 28.5, 61.5, 62.5, and 74.5 that becomes operative pursuant to Section 86 shall become operative on January 1, 2016.

Notes to Decisions

1. Generally

It was proper not to count vote-by-mail (VBM) ballots because it was not shown that the voters were registered VBM voters returning their own ballots or were designated to return household members' VBM ballots. Clark v. McCann (Cal. App. 4th Dist. Dec. 24, 2015), 243 Cal. App. 4th 910, 196 Cal. Rptr. 3d 547, 2015 Cal. App. LEXIS 1183.

Research References & Practice Aids

Cross References:

"Party" defined: Elec C § 338.

Designation of political affiliation in registering as voter: Elec C §§ 2151, 2152.

Requirement that voter be provided with only primary election ballot of political party which he is registered as intending to affiliate: Elec C § 13102.

Supplies furnished election officers: Elec C § 14105.

Return of supplies to clerk: Elec C §§ 14430 et seq.

Clerk's disposition of supplies returned from precincts: Elec C §§ 15550 et seq.

Jurisprudences:

Cal Jur 3d (Rev) Elections § 156.

Cal Elec Code § 3010

Deering's California Codes are current through all urgency legislation of the 2018 Regular Session and all other 2018 legislation except Chapters 554, 564, 599, 626, 634, 662, 665, 703, 726, 743, 769, 801, 896, 958, 1000, and 1011.

Deering's California Codes Annotated ELECTIONS CODE Division 3 Vote By Mail Voting, New Resident, and New Citizen Voting Chapter 1 Vote By Mail Application and Voting Procedures

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(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) An officer of this state shall not make a charge for services rendered to a voter under this chapter.

History

Added Stats 1994 ch 920 § 2 (SB 1547). Amended Stats 1998 ch 199 § 5 (SB 1533); Stats 2015 ch 728 § 72 (AB 1020), effective January 1, 2016, operative September 26, 2016; Stats 2018 ch 120 § 1 (AB 216), effective January 1, 2019.

Annotations

Notes

Historical Derivation:
Editor's Notes—
Amendments:
Note—
Historical Derivation:

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Supplies furnished election officers: Elec C § 14105.

Return of supplies to clerk: Elec C §§ 14430 et seq.

Clerk's disposition of supplies returned from precincts: Elec C §§ 15550 et seq.

Jurisprudences:

Cal Jur 3d (Rev) Elections § 156.

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: AB 216
Author: Gonzalez Fletcher (D) and Low (D), et al.
Amended: 9/1/17 in Senate
Vote: 21

SENATE ELECTIONS & C.A. COMMITTEE: 5-0, 7/12/17
AYES: Stern, Anderson, Allen, Hertzberg, Leyva

SENATE APPROPRIATIONS COMMITTEE: 5-2, 9/1/17
AYES: Lara, Beall, Bradford, Hill, Wiener
NOES: Bates, Nielsen

ASSEMBLY FLOOR: 61-10, 5/31/17 - See last page for vote

SUBJECT: Vote by mail ballots: identification envelopes: prepaid postage

SOURCE: Author

DIGEST: This bill requires the postage on return envelopes for vote by mail (VBM) ballots to be prepaid.

ANALYSIS: Existing law requires an elections official to deliver to each qualified applicant for a VBM ballot the ballot for the precinct in which the voter resides and all supplies necessary for the use and return of the ballot, including a return envelope, as specified.

This bill requires an elections official, when delivering a VBM ballot to a voter, to include a return envelope with postage prepaid.

Background

Rates of VBM Voting. AB 1520 (Shelley, Chapter 922, Statutes of 2001) allowed any voter to become a permanent VBM voter. Since that time, the percentage of voters in California who choose to receive a VBM ballot has increased significantly. A majority of California voters now choose to vote using a VBM ballot, either by returning that ballot through the mail or by dropping off their VBM ballot in person. In 2016, about 58% of votes in the primary election and about 59% of votes in the general election were cast using VBM ballots. In 2014, when voter turnout was lower, an even larger percentage of votes were cast on VBM ballots: over 60% of the general election votes and nearly 70% of the votes in the primary election were cast using VBM ballots.

VBM postage. Since existing law does not require the return postage on VBM ballots to be prepaid, in most counties, a VBM voter must affix the correct amount of postage on the return envelope of their ballot. The amount of postage required can vary depending on the size of the ballot, potentially causing confusion for voters. Some jurisdictions in California already prepay return postage on their VBM ballots even though it is not currently required by state law.

According to California Common Cause, the variations in postage requirements that currently exist between counties and even within elections in the same county add an unreasonable degree of confusion and uncertainty for voters.

Although California has one of the highest mail ballot rejection rates in the country, it does not appear that insufficient postage is a significant factor in the rejection of mail ballots. In a statewide survey of the 58 county elections offices conducted in 2014, the California Civic Engagement Project (CCEP) found that the top reasons for rejection of VBM ballots were ballots not arriving on time (50%), or having issues with signatures (37%) including ballots not being signed, or because the signatures could not be verified. CCEP research also found that every California county that responded to their survey (54 of the state's 58 counties sent a response) reported that the county covered the cost of insufficient postage for VBM ballots.

Furthermore, in order to protect against the inadvertent disenfranchisement of voters, it is the policy of the United States Postal Service (Postal Service) that VBM ballots with insufficient postage "must not be detained or treated as unpaid mail." Instead, under Postal Service policy, postal workers are supposed to deliver the ballot to the appropriate elections official, and to seek to recover the postage due from the elections official. Notwithstanding this policy, ballots nonetheless are occasionally returned to voters for insufficient postage.

Could prepaid return postage delay ballots? One of the most common methods of providing prepaid postage is by using Business Reply Mail. The advantage of using Business Reply Mail is that postage is paid only on the pieces that are sent back to the county. The disadvantage however, is that Business Reply Mail can increase processing time and delay the delivery of ballots to the elections official.

A 2014 California Voter Foundation study of the VBM process in three California counties cautioned about possible delays when counties use Business Reply Mail to prepay the return postage on VBM ballots. The study found that in Sacramento County, the ballots that had prepaid postage through the use of Business Reply Mail could be delayed at the post office, because those ballots had to be processed through the business reply unit of the post office in order to be charged against the county's business reply account. The study noted that "[w]hen only one person works in the business reply unit, mail can be delayed if that person is out of the office or if there is a surge of business reply mail from other sources, possibly disenfranchising a voter who waited until close to the election to return his or her ballot." While the report did not recommend against providing prepaid return postage for VBM ballots, it cautioned that "[w]hile some have suggested providing postage-paid envelopes to all VBM voters (and not just those overseas or living in an all vote-by-mail precinct as current law provides), doing so can actually delay VBM ballot processing since postage paid mail is typically sent business class, not first class."

Additionally, the restructuring of the Postal Service in recent years has closed many smaller processing plants across the country, adversely impacting the speed of processing. The Bipartisan Policy Center's report *New Realities of Voting by Mail* cautions "without realizing that voting by mail in 2016 is very different than in years past, voters are more likely to unwittingly disenfranchise themselves." Business Reply Mail takes longer to reach recipients since "The Postal Service of 2016 does not operate under the same service standards as it did even one or two presidential cycles ago. Mail volume is down, and the USPS has adjusted its infrastructure accordingly. Delivery standards have also changed." This is problematic especially during the lead up to Election Day when a higher volume of ballots are expected.

Under SB 29 (Correa, Chapter 618, Statutes of 2014), ballots that are postmarked by Election Day are able to be counted if they are received by the elections official by the third day after the election. While SB 29 may help protect against voters being inadvertently disenfranchised if ballots are delayed due to the use of Business Reply Mail under this bill, if delays in the return of VBM ballots nonetheless persist, the timeframe for ballots to be received that was established in SB 29 may need to be revisited to ensure that voters are not inadvertently disenfranchised.

Impact of SB 450 vote center model. SB 450 (Allen, Chapter 832, Statutes of 2016) permits specified counties beginning in 2018, and all other counties beginning in 2020, to conduct 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, subject to certain conditions. Counties in California that opt to conduct elections in accordance with SB 450 generally will be required to send VBM ballots to all registered voters 28 days before election day. As counties implement SB 450, the number of voters who receive a ballot in the mail will increase, which may also increase the number of VBM ballots that are returned by mail. On the other hand, because SB 450 requires participating counties to make ballot drop-off locations available, an increasing number of voters may choose to return VBM ballots in person, rather than through the mail. In any case, SB 450 likely will increase the involvement of the postal system in elections conducted in the state, but SB 450 did not require the return postage on VBM ballots to be prepaid.

Comments

1) According to the author, voting by mail is becoming more popular both for individual voters and for conducting entire elections. Since 2012, between 50 percent and 60 percent of ballots cast in California statewide elections have been by mail. As of June 2016, 52.3 percent of registered voters in California were registered as permanent vote by mail (PVBM) voters.

   Furthermore, counties are increasingly turning to mail ballot elections for their potential to increase efficiency, increase turnout, and reduce costs. Limited pilot programs for mail ballot elections have previously been established in Monterey, Sacramento, San Mateo, Yolo and San Diego counties. Most recently, SB 450 (Allen, 2015) authorized counties in California to conduct any election as a mail ballot election provided certain conditions, such as the establishment of required vote centers and ballot drop off locations, are met. Some counties will be eligible to begin implementing this starting in 2018.

   With a stamp currently costing 47 cents 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 $10. These inequities and confusing patchwork of rules will only increase as counties begin opting into the all-mail ballot elections established by SB 450 in 2018, and affect more voters for whom a stamp becomes an obstacle to voting.

AB 216 will standardize this process by requiring postage on mail ballots to be prepaid, ensuring that voting is free for all California 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. In other counties, such as Yolo, registered PVBM voters in mail-only precincts receive return envelopes with the postage prepaid, but those in the same mail-only precinct who are not PVBM have to provide their own stamps when mailing back their ballot, as do PVBM voters in precincts with polling stations. For the all-mailed ballot pilot program options in San Diego, San Mateo, Yolo and Monterey Counties, postage is required to be prepaid.

2) *Unpaid state mandates*. The last six state budgets have suspended various state mandates as a mechanism for cost savings. Among the mandates that were suspended were all existing elections-related mandates, including VBM programs. All the existing elections-related mandates have been proposed for suspension again by the Governor in his budget for the 2017-18 fiscal year. This bill adds another elections-related mandate by requiring local elections official to prepay the return postage for VBM ballots.

Related/Prior Legislation

This bill is similar to AB 800 (Gomez, 2015), AB 1519 (De La Torre, 2009), and SB 117 (Murray, 2005), which were all held on the Assembly Appropriations Committee's suspense file, and to SB 1062 (Block, 2014), which was held on the Senate Appropriations Committee's suspense file.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriation Committee, by requiring VBM ballots to have prepaid postage, this bill creates a state-mandated local program. To the extent the Commission on State Mandates determines the provisions of this bill create a new program or impose a higher level of service on local agencies, local agencies could claim reimbursement of those costs (General Fund). If 8.4 million voters (the number of VBM voters in the 2016 General Election) voted by mail at an average cost of $.65 per envelope, the cost of prepaid postage would be about $5.5 million. State mandate costs for future local elections would be unknown, also potentially in the millions of dollars.

SUPPORT: (Verified 5/29/18)

Advancement Project California
American Civil Liberties Union of California
California Association of Nonprofits
California Calls
California Immigrant Policy Center
California Labor Federation
California League of Conservation Voters
California Professional Firefighters
California State Association of Letter Carriers
California Teachers Association
California Voter Foundation
California Young Democrats
Disability Rights California
Equal Justice Society
Equality California
Japanese American Citizens League, Northern California-Western Nevada-Pacific District
League of Women Voters of California
Service Employees International Union
The Arc and United Cerebral Palsy California Collaboration
University of California Student Association

OPPOSITION: (Verified 5/29/18)

California State Association of Counties

ASSEMBLY FLOOR: 61-10, 5/31/17

AYES: Acosta, Aguiar-Curry, Arambula, Berman, Bigelow, Bloom, Bocanegra, Bonta, Burke, Caballero, Calderon, Cervantes, Chau, Chávez, Chiu, Chu, Cooley, Cooper, Dababneh, Daly, Frazier, Friedman, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gomez, Gonzalez Fletcher, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Levine, Limón, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Quirk, Quirk-Silva, Reyes, Ridley-Thomas, Rodriguez, Rubio, Salas, Santiago, Steinorth, Mark Stone, Thurmond, Ting, Weber, Wood, Rendon

NOES: Travis Allen, Baker, Brough, Cunningham, Dahle, Harper, Mathis, Obernolte, Patterson, Waldron

NO VOTE RECORDED: Chen, Choi, Eggman, Flora, Fong, Gallagher, Mayes, Melendez, Voepel

Prepared by: Darren Chesin / E. & C.A. / (916) 651-4106
5/29/18 11:53:43

**** END ****

Cal Gov Code § 17500

Deering's California Codes are current through Chapters 1-6, 18, and 22 of the 2019 Regular Session, including all legislation effective June 26, 2019 or earlier.

Deering's California Codes Annotated > GOVERNMENT CODE (§§ 1 — 500000–500049) > Title 2 Government of the State of California (Divs. 1 — 5) > Division 4 Fiscal Affairs (Pts. 1 — 8) > Part 7 State-Mandated Local Costs (Chs. 1 — 6) > Chapter 1 Legislative Intent (§ 17500)

§ 17500. Legislative findings and declarations

The Legislature finds and declares that the existing system for reimbursing local agencies and school districts for the costs of state–mandated local programs has not provided for the effective determination of the state's responsibilities under Section 6 of Article XIIIB of the California Constitution. The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state–mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi–judicial decisions and providing an effective means of resolving disputes over the existence of state–mandated local programs.

It is the intent of the Legislature in enacting this part to provide for the implementation of Section 6 of Article XIIIB of the California Constitution. Further, the Legislature intends that the Commission on State Mandates, as a quasi–judicial body, will act in a deliberative manner in accordance with the requirements of Section 6 of Article XIIIB of the California Constitution.

History

Added Stats 1984 ch 1459 § 1. Amended Stats 2004 ch 890 § 2 (AB 2856).

Annotations

Notes

Amendments:

Note—

Amendments:

2004 Amendment:

Deleted "and to consolidate the procedures for reimbursement of statutes specified in the Revenue and Taxation Code with those identified in the constitution" at the end of the first sentence in the second paragraph.

Note—

Stats 2005 ch 72 provides:

SEC. 17. (a) Notwithstanding any other provision of law, the Commission on State Mandates, no later than June 30, 2006, shall reconsider its test claim statement of decision in CSM-4202 on the Mandate Reimbursement Program to determine whether Chapter 486 of the Statutes of 1975 and Chapter 1459 of the Statutes of 1984 constitute a reimbursable mandate under *Section 6 of Article XIII B of the California Constitution* in light of federal and state statutes enacted and federal and state court decisions rendered since these statutes were enacted. If a new test claim is filed on Chapter 890 of the Statutes of 2004, the commission shall, if practicable, hear and determine the new test claim at the same time as the reconsideration of CSM-4202. The commission, if necessary, shall revise its parameters and guidelines in CSM-4485 to be consistent with this reconsideration and, if practicable, shall include a reasonable reimbursement methodology as defined in *Section 17518.5 of the Government Code*. If the parameters and guidelines are revised, the Controller shall revise the appropriate claiming instructions to be consistent with the revised parameters and guidelines. Any changes by the commission to the original statement of decision in CSM-4202 shall be deemed effective on July 1, 2006.

(b) Notwithstanding any other provision of law, the Commission on State Mandates shall set-aside all decisions, reconsiderations, and parameters and guidelines on the Open Meetings Act (CSM-4257) and Brown Act Reform (CSM-4469) test claims. The operative date of these actions shall be the effective date of this act. In addition, the Commission on State Mandates shall amend the appropriate parameters and guidelines, and the Controller shall revise the appropriate reimbursement claiming instructions, as necessary to be consistent with any other provisions of this act.

NOTES OF DECISIONS

1.Generally

1.5.Particular Determinations

2.Legislative Intent

2.5.Construction

3.Construction with Other Law

4.Jurisdiction

1. Generally

Gov C § *17500-17630* was enacted to implement Cal Const Art XIII B § *6*. *County of Fresno v. State (Cal. Apr. 22, 1991), 53 Cal. 3d 482, 280 Cal. Rptr. 92, 808 P.2d 235, 1991 Cal. LEXIS 1363*.

Gov C § *17556(d)* declares that the commission shall not find costs mandated by the state if, after a hearing, the commission finds that the local government has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. *County of Fresno v. State (Cal. Apr. 22, 1991), 53 Cal. 3d 482, 280 Cal. Rptr. 92, 808 P.2d 235, 1991 Cal. LEXIS 1363*.

1.5. Particular Determinations

State's practice of paying only a nominal amount for mandated programs, while indefinitely deferring the remaining costs, did not comply with the mandate reimbursement requirements of Cal Const Art XIII B § 6, and the implementing statutes contained in Gov C §§ 17500 et seq., as clearly expressed in Gov C § 17561. Thus, school districts were entitled to declaratory relief under CCP § 1060. California School Bds. Assn. v. State of California (Cal. App. 4th Dist. Feb. 9, 2011), 192 Cal. App. 4th 770, 121 Cal. Rptr. 3d 696, 2011 Cal. App. LEXIS 164.

2. Legislative Intent

In enacting Gov C §§ 17500 et seq., the Legislature established the Commission on State Mandates as a quasi-judicial body to carry out a comprehensive administrative procedure for resolving claims for reimbursement of state-mandated local costs arising out of Cal Const Art XIII B § 6. The Legislature did so because the absence of a uniform procedure had resulted in inconsistent rulings on the existence of state mandates, unnecessary litigation, reimbursement delays, and, apparently, resultant uncertainties in accommodating reimbursement requirements in the budgetary process. It is apparent from the comprehensive nature of this legislative scheme, and from the Legislature's expressed intent, that the exclusive remedy for a claimed violation of Cal Const Art XIII B § 6, lies in these procedures. The statutes create an administrative forum for resolution of state mandate claims, and establish procedures that exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created. In short, the Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce Cal Const Art XIII B § 6. Thus, the statutory scheme contemplates that the commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. Redevelopment Agency v. California Comm'n on State Mandates (Cal. App. 4th Dist. Mar. 7, 1996), 43 Cal. App. 4th 1188, 51 Cal. Rptr. 2d 100, 1996 Cal. App. LEXIS 267.

2.5. Construction

Although the State may require local entities to provide new programs or services, it may not require the local entities to use their own revenues to pay for the programs. Payment at some later, undefined time is impermissible. California School Bds. Assn. v. State of California (Cal. App. 4th Dist. Feb. 9, 2011), 192 Cal. App. 4th 770, 121 Cal. Rptr. 3d 696, 2011 Cal. App. LEXIS 164.

3. Construction with Other Law

The Legislature's initial appropriation to reimburse counties for the costs of Pen C § 987.9 (funding by court for preparation of defense for indigent defendants in capital cases), was not a final and unchallengeable determination that the statute constitutes a state mandate, nor did the Commission on State Mandates err in finding that the statute is not a state mandate, despite the Legislature's finding to the contrary in a later appropriations bill. The commission was not bound by the Legislature's determination, and it had discretion to determine whether a state mandate existed. The comprehensive administrative procedures for resolution of claims arising out of Cal Const Art XIII B § 6 (Gov C §§ 17500 et seq.), are the exclusive procedures by which to implement and enforce the constitutional provision. Thus, the commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. Any legislative findings are irrelevant to the issue of whether a state mandate exists, and the commission properly determined that no such mandate existed. In any event, the Legislature itself ceased to regard the provisions of Pen C § 987.9, as a state mandate in 1983. County of Los Angeles v. Commission on State Mandates (Cal. App. 2d Dist. Feb. 24, 1995), 32 Cal. App. 4th 805, 38 Cal. Rptr. 2d 304, 1995 Cal. App. LEXIS 161.

While the legislative history of an amendment to Lab C § 4707 may have evinced the understanding or belief of the Legislature that the amendment created a state mandate, such understanding or belief was irrelevant to the issue of whether a state mandate existed. The Legislature has entrusted that determination to the Commission on State

Mandates, subject to judicial review (Gov C §§ 17500, 17559), and has provided that the initial determination by Legislative Counsel is not binding on the Commission. (Gov C § 17575.) *City of Richmond v. Commission on State Mandates (Cal. App. 3d Dist. May 28, 1998), 64 Cal. App. 4th 1190, 75 Cal. Rptr. 2d 754, 1998 Cal. App. LEXIS 546.*

4. Jurisdiction

The superior court had jurisdiction to adjudicate a county's assertion that the Legislature's transfer to counties of the responsibility for providing health care services for medically indigent adults constituted a new program that required state funding under Cal Const Art XIII B § 6 (reimbursement to local government for costs of new state-mandated program). Although the administrative procedures for determining state-mandated local costs, set forth in Gov C §§ 17500 et seq., are the exclusive means by which the state's obligations under Cal Const Art XIII B § 6, are to be determined, in this case requiring the county to resort to the statutory procedures would have unduly restricted the county's constitutional right. Other counties' test claim to determine the state's obligations, which was supposed to create an administrative process capable of resolving all disputes, was settled and dismissed without resolving the pertinent issues. This undermined the adequacy of the statutory procedures. Moreover, the county had twice filed claims for reimbursement with the Commission on State Mandates, but the commission did not respond. Requiring the county to pursue further, futile administrative procedures would have resulted in irreparable harm in light of the county's expressed intent to terminate, for lack of funding, its program for the medically indigent. *County of San Diego v. State of California (Cal. App. 4th Dist. Apr. 18, 1995), 33 Cal. App. 4th 1787, 40 Cal. Rptr. 2d 193, 1995 Cal. App. LEXIS 364*, review granted, depublished, *(Cal. July 13, 1995), 46 Cal. Rptr. 2d 586, 904 P.2d 1197, 1995 Cal. LEXIS 4446*, reprinted, *(Cal. App. 4th Dist. Apr. 18, 1995), 38 Cal. App. 4th 1151*.

In a water quality regulation dispute, Gov C §§ 17500 et seq., deprived the trial court of jurisdiction to consider an issue regarding state-mandated costs. *San Joaquin River Exchange Contractors Water Authority v. State Water Resources Control Bd. (Cal. App. 3d Dist. Apr. 13, 2010), 183 Cal. App. 4th 1110, 108 Cal. Rptr. 3d 290, 2010 Cal. App. LEXIS 514*, modified, *(Cal. App. 3d Dist. May 5, 2010), 2010 Cal. App. LEXIS 610*.

Research References & Practice Aids

Jurisprudences

Cal. Forms Pleading & Practice (Matthew Bender®) ch 324 "Jurisdiction: Subject Matter Jurisdiction".

Treatises:

Cal. Forms Pleading & Practice (Matthew Bender) ch 474 "Availability of Judicial Review of Agency Decisions".

Cal. Employment Law (Matthew Bender), § 21.02.

9 Witkin Summary (10th ed) Taxation § 122.

Hierarchy Notes:

Cal Gov Code Tit. 2, Div. 4

Cal Gov Code Tit. 2, Div. 4, Pt. 7

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Carmel Valley Fire Protection Dist. v. State of California

Court of Appeal of California, Second Appellate District, Division Five

February 19, 1987

Nos. B006078, B011941, B011942

Reporter
190 Cal. App. 3d 521 *; 234 Cal. Rptr. 795 **; 1987 Cal. App. LEXIS 1266 ***

CARMEL VALLEY FIRE PROTECTION DISTRICT et al., Plaintiffs and Respondents, v. THE STATE OF CALIFORNIA et al., Defendants and Appellants. RINCON DEL DIABLO MUNICIPAL WATER DISTRICT et al., Plaintiffs and Respondents, v. THE STATE OF CALIFORNIA et al., Defendants and Appellants. COUNTY OF LOS ANGELES, Plaintiff and Respondent, v. THE STATE OF CALIFORNIA et al., Defendants and Appellants

Subsequent History: [***1] As Modified March 10, 1987. A petition for a rehearing was denied March 17, 1987, and appellants' petition for review by the Supreme Court was denied May 14, 1987. Eagleson, J., did not participate therein.

Prior History: Superior Court of Los Angeles County, No. C437471, Norman L. Epstein, Judge; No. C514623 and No. C515319, Jack T. Ryburn, Judge.

Disposition: As modified, the judgment is affirmed. Respondents to recover costs on appeal.

Core Terms

reimbursement, appropriations, costs, funds, Budget, local agency, state-mandated, executive order, Statutes, offset, parties, code section, trial court, Relations, subdivision, modified, collateral estoppel, state mandate, expenditures, mandates, writ of mandate, new program, forfeitures, proceedings, provisions, declares, invalid, issues, orders, fines

Case Summary

Procedural Posture

Appellant state challenged the judgments of the Superior Court of Los Angeles County (California), which ordered appellant to reimburse respondent county for state-mandated costs in three consolidated appeals.

Overview

Respondent county purchased protective clothing and equipment for firefighters within its employ as required by Cal. Code Regs. tit. 8, §§ 3401- 3409 (1978). Respondent argued that it was entitled to reimbursement from appellant state for these expenditures because they constituted a state-mandated "new program" or "higher level of service" under Cal. Rev. & Tax. Code §§ 2207 and 2231 and Cal. Const. art. XIII B, § 6. Respondent filed a test claim with the California Sate Board of Control (board) for these costs and the board determined that there was a state mandate and that respondent should have been reimbursed. Appellant did not seek judicial review of the decision and respondent filed a petition for writ of mandate and complaint for declaratory judgment. The trial court issued a writ of mandate and ordered appellant to pay the costs. On appeal, three cases were consolidated. The court affirmed with modifications and held that appellant had waived its right to challenge the board's findings and also was collaterally estopped from doing so. The court also held that the expenditures were pursuant to a new program within the meaning of Cal. Const. art. XIII B, § 6.

Outcome

The court affirmed the judgments, ordering appellant state to reimburse respondent county for state-mandated costs because appellant was collaterally estopped from challenging findings of the California State Board of Control and because the reimbursement was for a new program within the meaning of the California Constitution. The court modified the judgments primarily to command the comptroller to draw warrants if necessary.

LexisNexis® Headnotes

Governments > State & Territorial Governments > Finance

HN1[] Finance

See Cal. Rev. & Tax. Code § 2207.

Governments > State & Territorial Governments > Finance

HN2[] Finance

See Cal. Rev. & Tax. Code § 2231(a).

Governments > State & Territorial Governments > Finance

HN3[] Finance

See Cal. Const art. XIII B, § 6.

Governments > Local Governments > Finance

HN4[] Finance

The right to reimbursement is triggered when the local agency incurs costs mandated by the state in either complying with a new program or providing an increased level of service of an existing program. Cal. Rev. & Tax. §§ 2207, 2231.

Civil Procedure > ... > Responses > Defenses, Demurrers & Objections > Waiver & Preservation of Defenses

HN5[] Waiver & Preservation of Defenses

Waiver occurs where there is an existing right; actual or constructive knowledge of its existence; and either an actual intention to relinquish it, or conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief that it has been waived. A right that is waived is lost forever. The doctrine of waiver applies to rights and privileges afforded by statute.

Administrative Law > Agency Adjudication > Decisions > Collateral Estoppel

Civil Procedure > Judgments > Preclusion of Judgments > General Overview

Civil Procedure > ... > Preclusion of Judgments > Estoppel > General Overview

Civil Procedure > ... > Preclusion of Judgments > Estoppel > Collateral Estoppel

HN6[] Collateral Estoppel

Collateral estoppel has been applied to bar relitigation of an issue decided in a prior court proceeding. In order for the doctrine to apply, the issues in the two proceedings must be the same, the prior proceeding must have resulted in a final judgment on the merits, and the same parties or their privies must be involved.

Administrative Law > Agency Adjudication > Decisions > Collateral Estoppel

Administrative Law > Judicial Review > Reviewability > General Overview

Civil Procedure > ... > Preclusion of Judgments > Estoppel > General Overview

Civil Procedure > ... > Preclusion of Judgments > Estoppel > Collateral Estoppel

Criminal Law & Procedure > Commencement of Criminal Proceedings > Double Jeopardy > Collateral Estoppel

HN7[] Collateral Estoppel

The doctrine of collateral estoppel applies to a final adjudication of an administrative agency of statutory creation so as to preclude relitigation of the same issues in a subsequent criminal case. Collateral estoppel applies to such prior adjudications where three requirements are met: (1) the administrative agency acts in a judicial capacity; (2) it resolves disputed issues properly before it; and (3) all parties are provided with the opportunity to fully and fairly litigate their claims.

Governments > Local Governments > Administrative Boards

Administrative Law > ... > Formal Adjudicatory Procedure > Hearings > General Overview

HN8[] Administrative Boards

The California State Board of Control (board) exercises quasi-judicial powers in adjudging the validity of claims against the State of California and is the sole administrative remedy available to local agencies seeking reimbursement for state-mandated costs. Cal. Rev. & Tax. Code § 2250. Board examiners have the power to administer oaths, examine witnesses, issue subpoenas, and receive evidence. Cal. Gov't Code § 13911. The hearings are adversarial in nature and allow for the presentation of evidence by claimant, the Department of Finance, and any other affected agency. Cal. Rev. & Tax. Code § 2252.

Civil Procedure > ... > Preclusion of Judgments > Estoppel > Collateral Estoppel

HN9[] Collateral Estoppel

The courts have held that the agents of the same government are in privity with each other, since they represent not their own rights but the right of the government.

Civil Procedure > ... > Preclusion of Judgments > Estoppel > Collateral Estoppel

HN10[] Collateral Estoppel

A prior judgment on a question of law decided by a court is conclusive in a subsequent action between the same parties where both causes involved arise out of the same subject matter or transaction, and where holding the judgment to be conclusive will not result in an injustice.

Administrative Law > Agency Adjudication > Decisions > Collateral Estoppel

Governments > Local Governments > Licenses

Civil Procedure > Judgments > Preclusion of Judgments > General Overview

Civil Procedure > ... > Preclusion of Judgments > Estoppel > General Overview

Civil Procedure > ... > Preclusion of Judgments > Estoppel > Collateral Estoppel

HN11[] Collateral Estoppel

There is no policy reason to limit the application of the collateral estoppel doctrine to successive court proceedings.

Administrative Law > Agency Adjudication > Decisions > Collateral Estoppel

Civil Procedure > ... > Responses > Defenses, Demurrers & Objections > Waiver & Preservation of Defenses

Civil Procedure > Judgments > Preclusion of Judgments > General Overview

Civil Procedure > ... > Preclusion of Judgments > Estoppel > General Overview

Civil Procedure > ... > Preclusion of Judgments > Estoppel > Collateral Estoppel

HN12[] Collateral Estoppel

Questions of law decided by an administrative agency invoke the collateral estoppel doctrine only when a determination of conclusiveness will not work an injustice. Likewise, the doctrine of waiver is inapplicable if a litigant has no actual or constructive knowledge of his rights.

Governments > Local Governments > Duties & Powers

HN13[] Duties & Powers

Fire protection is a peculiarly governmental function. Police and fire protection are two of the most essential and basic functions of local government.

Governments > Legislation > Interpretation

HN14[] Interpretation

A different interpretation of a word in a statute must fall before a constitutional provision of similar import.

Governments > State & Territorial Governments > Finance

HN15[] **Finance**

Cal. Const. art. XIII B, § 6 and *Cal. Rev. & Tax. Code §§ 2207*, *2231* are not appropriations measures.

Governments > State & Territorial Governments > Employees & Officials

HN16[] **Employees & Officials**

See *Cal. Const. art. III, § 3*.

Governments > State & Territorial Governments > Finance

HN17[] **Finance**

See *Cal. Const. art. XVI, § 7*.

Governments > State & Territorial Governments > Finance

HN18[] **Finance**

Once funds have already been appropriated by legislative action, a court transgresses no constitutional principle when it orders the state controller or other similar official to make appropriate expenditures from such funds.

Governments > State & Territorial Governments > Finance

Constitutional Law > Separation of Powers

HN19[] **Finance**

As long as appropriated funds are reasonably available for the expenditures in question, the separation of powers doctrine poses no barrier to a judicial order directing the payment of such funds.

Governments > State & Territorial Governments > Finance

HN20[] **Finance**

The California Occupational Safety and Health Act, 1973 Cal. Stat. ch. 993 is modeled after federal law and is designed to assure safe working conditions for all California workers. A legislative disclaimer appears in 1973 Cal. Stat. ch. 993, § 106 at 1954.

Governments > State & Territorial Governments > Finance

HN21[] **Finance**

See 1973 Cal. Stat. ch. 993, § 106 at 1954.

Governments > State & Territorial Governments > Finance

HN22[] **Finance**

See 1974 Cal. Stat. ch. 1284, § 106 at 2787.

Governments > State & Territorial Governments > Finance

HN23[] **Finance**

See 1981 Cal. Stat. ch. 1090, § 3 at 4193.

Governments > State & Territorial Governments > Finance

HN24[] **Finance**

California Budget Acts of 1981, 1983, and 1984 prohibit encumbering appropriations to reimburse costs incurred under the executive orders, except under certain limited circumstances. 1981 Cal. Stat. ch. 99, § 28.40 at 606; 1983 Cal. Stat. ch. 324, § 26.00 at 1504; 1984 Cal. Stat. ch. 258, § 26.00.

Governments > Local Governments > Finance

Governments > State & Territorial Governments > Finance

HN25[] **Finance**

The concept of federally mandated costs has provided local agencies with a financial escape valve ever since passage of the Property Tax Relief Act of 1972 (Act), 1972 Cal. Stat. ch. 1406, § 1 at 2931. That Act limited local governments' power to levy property taxes, while requiring that they be reimbursed by the state for providing compulsory increased levels of service or new programs. However, under *Cal. Rev. & Tax. Code § 2271*, costs mandated by the federal government are not subject to reimbursement and local governments are permitted to levy taxes in addition to the maximum property tax rate to pay such costs.

Governments > Local Governments > Finance

HN26[] **Finance**

The limitation on local government's ability to raise property taxes, and the duty of the state to reimburse for state-mandated costs, is a part of *Cal. Const. art. XIII B, § 6*, which directs state subvention similar in nature to that required by the preexisting provisions of *Cal. Rev. & Tax. Code §§ 2207*, *2231*.

Governments > Local Governments > Finance

HN27[] **Finance**

Cal. Rev. & Tax. Code § 2206 defines nonreimbursable costs mandated by the federal government to include the following: costs resulting from enactment of a state law or regulation where failure to enact such law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state.

Governments > Legislation > Interpretation

HN28[] **Interpretation**

Interpretation of statutory language is purely a judicial function. Legislative declarations are not binding on the courts and are particularly suspect when they are the product of an attempt to avoid financial responsibility.

Governments > Legislation > Interpretation

HN29[] **Interpretation**

See *Cal. Const. art. IV, § 9*.

Governments > Legislation > Interpretation

HN30[] **Interpretation**

The single subject rule essentially requires that a statute have only one subject matter and that the subject be clearly expressed in the statute's title. The rule's primary purpose is to prevent "log-rolling" in the enactment of laws. This disfavored practice occurs where a provision unrelated to a bill's main subject matter and title is included in it with the hope that the provision will remain unnoticed and unchallenged. By invalidating these unrelated clauses, the single subject rule prevents the passage of laws which otherwise might not have passed had the legislative mind been directed to them. However, in order to minimize judicial interference in the legislature's activities, the single subject rule is to be construed liberally. A provision violates the rule only if it does not promote the main purpose of the act or does not have a necessary and natural connection with that purpose.

Governments > Legislation > Effect & Operation > Operability

Governments > Legislation > Effect & Operation > Retrospective Operation

Governments > Legislation > Effect & Operation > General Overview

HN31[] **Operability**

A retroactive statute is one that relates back to a previous transaction and gives that transaction a legal effect different from that which it had under the law when it occurred. Absent some clear policy requiring the contrary, statutes modifying liability in civil cases are not to be construed retroactively.

Governments > State & Territorial Governments > Finance

HN32[] Finance

See 1981 Cal. Stat. ch. 99, § 28.40 at 606; 1983 Cal. Stat. ch. 324, § 26 at 1504; 1984 Cal. Stat. ch. 258, § 26.00.

Governments > State & Territorial Governments > Finance

HN33[] Finance

Cal. Const. art. XIV, § 4 concerns the power to enact workers' compensation statutes and regulations. It does not focus on the issue of reimbursement for state-mandated costs, which is covered by Cal. Rev. & Tax. Code §§ 2207, 2231, and Cal. Const. art. XIII B, § 6. Since these latter provisions do not effect a pro tanto repeal of the legislature's plenary power over workers' compensation law, they do not conflict with Cal. Const. art. XIV, § 4.

Governments > State & Territorial Governments > Finance

HN34[] Finance

Under Cal. Const. art. XIII B, § 6(c), the legislature may reimburse mandates enacted prior to January 1, 1975, and must reimburse mandates passed after that date, but does not have to begin such reimbursement until the effective date of article XIII B which is July 1, 1980. In other words, the amendment of article XIII B, § 6(c) operates on "window period" mandates even though the reimbursement process may not actually commence until later.

Governments > State & Territorial Governments > Claims By & Against

Governments > Legislation > Statute of Limitations > Time Limitations

Governments > Legislation > Statute of Limitations > General Overview

HN35[] Claims By & Against

Cal. Civ. Proc. Code § 335 is a general introductory section to the statute of limitations for all matters except recovery of real property. Cal. Civ. Proc. Code § 338(1) requires an action upon a liability created by statute to be commenced within three years.

Civil Procedure > ... > Justiciability > Exhaustion of Remedies > Administrative Remedies

Administrative Law > Judicial Review > Reviewability > Exhaustion of Remedies

Civil Procedure > ... > Justiciability > Exhaustion of Remedies > General Overview

Labor & Employment Law > Collective Bargaining & Labor Relations > Enforcement of Bargaining Agreements > Exhaustion of Remedies

HN36[] Administrative Remedies

A claimant does not exhaust its administrative remedies and cannot come under the court's jurisdiction until the legislative process is complete.

Governments > Local Governments > Claims By & Against

HN37[] Claims By & Against

See Cal. Gov't Code § 17612(b).

Governments > State & Territorial Governments > Finance

HN38[] Finance

The remedy under Cal. Gov't Code § 17612 is purely a discretionary course of action. By using the permissive word "may," the legislature does not intend to override Cal. Const. art. XIII B, § 6 and Cal. Rev. & Tax. Code §§ 2207 and 2231. These constitutional and statutory imprimaturs each impose upon the state an obligation to reimburse for state-mandated costs. Once that determination is finally made, the state is under a clear and present ministerial duty to reimburse. In the absence of compliance, traditional mandamus lies. Cal.

Civ. Proc. Code § 1085.

Governments > Legislation > Interpretation

HN39[] Interpretation

The Cal. Const. is supreme. Any statute in conflict therewith is invalid.

Governments > State & Territorial Governments > Finance

HN40[] Finance

Cal. Rev. & Tax. Code § 2255(c) cannot abrogate the constitutional directive to reimburse.

Civil Procedure > ... > Jury Trials > Right to Jury Trial > Actions in Equity

Governments > State & Territorial Governments > Claims By & Against

HN41[] Actions in Equity

The right to offset is a long-established principle of equity. Either party to a transaction involving mutual debits and credits can strike a balance, holding himself owing or entitled only to the net difference. Although this doctrine exists independent of statute, its governing principle has been partially codified. Cal. Civ. Proc. Code § 431.70. The doctrine has been applied in favor of a local agency against the state.

Governments > State & Territorial Governments > Finance

HN42[] Finance

See Cal. Gov't Code § 12419.5.

Governments > State & Territorial Governments > Finance

HN43[] Finance

See Cal. Gov't Code § 16304.1.

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview

Civil Procedure > ... > Joinder of Parties > Compulsory Joinder > Necessary Parties

Civil Procedure > Parties > Joinder of Parties > General Overview

HN44[] See Cal. Civ. Proc. Code § 389(a).

Governments > Local Governments > Duties & Powers

HN45[] Duties & Powers

The Auditor Controller is an officer of the county and is subject to the direction and control of the county board of supervisors. Cal. Gov't Code §§ 24000(d), (e), 26880; L.A. County Code, § 2.10.010.

Governments > State & Territorial Governments > Claims By & Against

Civil Procedure > Remedies > Judgment Interest > General Overview

Governments > Local Governments > Finance

HN46[] Claims By & Against

Cal. Civ. Code § 3287(a) allows interest to any person entitled to recover damages certain, or capable of being made certain by calculation. Interest begins on the day that the right to recover vests in the claimant. By its own terms, this section applies to any judgment debtor, including the state or any political subdivision of the state.

Civil Procedure > Remedies > Judgment Interest > General Overview

HN47[] An invalid statute voluntarily enacted and promulgated by the state is not a defense to its obligation to pay interest under Cal. Civ. Code §

3287(a).

Civil Procedure > Appeals > Standards of Review > General Overview

HN48[] An appellate court is not limited by the interpretation of statutes given by the trial court.

Civil Procedure > ... > Joinder of Parties > Compulsory Joinder > Necessary Parties

HN49[] Necessary Parties

Through the notion of privity, a government agent can be held in contempt for knowingly violating a court order issued against another agent of the same government.

Governments > Courts > Authority to Adjudicate

HN50[] Authority to Adjudicate

An appellate court is empowered to add a directive that the trial court order be modified to include charging orders against funds appropriated by subsequent budget acts.

Headnotes/Summary

Summary
CALIFORNIA OFFICIAL REPORTS SUMMARY

The trial court, in separate proceedings brought by three counties against the state for reimbursement of funds expended by the counties in complying with a state order to provide protective clothing and equipment for county fire fighters, issued writs of mandate compelling the state to reimburse the counties. Previously, the counties had filed test claims with the State Board of Control for reimbursement of similar expenses. The board determined that there was a state mandate and the counties should be reimbursed. The state did not seek judicial review of the board's decision. Thereafter, a local government claims bill, Sen. Bill No. 1261 (Stats. 1981, ch. 1090, p. 4191) was introduced to provide appropriations to pay some of the counties' claims for the state-mandated costs. After various amendments, the legislation was enacted into law without the appropriations. The counties then sought reimbursement by filing petitions for writs of mandate and complaints for declaratory relief. (Superior Court of Los Angeles County, No. C437471, Norman L. Epstein, Judge; No. C514623 and No. C515319, Jack T. Ryburn, Judge.)

In a consolidated appeal, the Court of Appeal affirmed with certain modifications. It held that, by failing to seek judicial review of the board's decision, the state had waived its right to contest the board's finding that the counties' expenditures were state mandated. Similarly, it held that the state was collaterally estopped from attacking the board's findings. It also held that the executive orders requiring the expenditures constituted the type of "program" that is subject to the constitutional imperative of subvention under Cal. Const., art. XIII B, § 6. The court also held that the trial courts had not ordered an appropriation in violation of the separation of powers doctrine, and that the trial courts correctly determined that certain legislative disclaimers, findings, and budget control language did not exonerate the state from its constitutionally and statutorily imposed obligation to reimburse the counties' state-mandated costs. Further, the court held that the trial courts properly authorized the counties to satisfy their claims by offsetting fines and forfeitures due to the state, and that the counties were entitled to interest. (Opinion by Eagleson, J., with Ashby, Acting P. J., and Hastings, J., concurring.)

Headnotes
CALIFORNIA OFFICIAL REPORTS HEADNOTES

Classified to California Digest of Official Reports, 3d Series

CA(1a)[] (1a) CA(1b)[] (1b)

Estoppel and Waiver § 23—Waiver—Trial and Appeal—Failure to Seek Judicial Review of Administrative Decision—Waiver of Right to Contest Findings.

--In a proceeding by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the state waived its right to contest findings made by the State Board of Control in a previous proceeding. The board found that the costs were state-mandated and that the county was entitled to reimbursement. The state failed to seek judicial review of the board's decision, and the statute of limitations applicable to such review had passed. Moreover, the state, through its agents, had acquiesced in the board's findings by seeking an appropriation to satisfy the validated claims, which, however, was rebuffed by the Legislature.

CA(2)[] (2)

Estoppel and Waiver § 19—Waiver—Requisites.

--Waiver occurs where there is an existing right; actual or constructive knowledge of its existence; and either an actual intention to relinquish it, or conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief that it has been waived. A right that is waived is lost forever. The doctrine of waiver applies to rights and privileges afforded by statute.

CA(3a)[] (3a) CA(3b)[] (3b) CA(3c)[] (3c) CA(3d)[] (3d)

Judgments § 81—Res Judicata—Collateral Estoppel—County's Action for Reimbursement of State-mandated Costs—Findings of State Board of Control.

--In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the state was collaterally estopped from attacking the findings made, in a previous proceeding, by the State Board of Control that the costs were state-mandated and that the county was entitled to reimbursement. The issues were fully litigated before the board. Similarly, although the state was not a party to the board hearings, it was in privity with those state agencies which did participate. Moreover, a determination of conclusiveness would not work an injustice.

CA(4)[] (4)

Judgments § 81—Res Judicata—Collateral Estoppel—Elements.

--In order for the doctrine of collateral estoppel to apply, the issues in the two proceedings must be the same, the prior proceeding must have resulted in a final judgment on the merits, and the parties or their privies must be involved.

CA(5)[] (5)

Judgments § 84—Res Judicata—Collateral Estoppel—Identity of Parties—Privity—Governmental Agents.

--The agents of the same government are in privity with each other for purposes of collateral estoppel, since they represent not their own rights but the right of the government.

CA(6)[] (6)

Judgments § 96—Res Judicata—Collateral Estoppel—Matters Concluded—Questions of Law.

--A prior judgment on a question of law decided by a court is conclusive in a subsequent action between the same parties where both causes involved arose out of the same subject matter or transaction, and where holding the judgment to be conclusive will not result in an injustice.

CA(7)[] (7)

State of California § 11—Fiscal Matters—Reimbursement to County for State-mandated Costs—New Programs.

--A "new program," for purposes of determining whether the program is subject to the constitutional imperative of subvention under Cal. Const., art. XIII B, § 6, is one which carries out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.

CA(8)[] (8)

State of California § 7—Actions—Reimbursement of County Funds for State-mandated Costs—New Programs.

--In an action brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with state executive orders to provide protective clothing and equipment to county fire fighters, the trial court properly determined that the executive orders constituted the type of "new program" that was subject to the constitutional imperative of subvention under Cal. Const., art. XIII B, § 6. Fire protection is a peculiarly governmental function. Also, the executive orders manifest a state policy to provide updated equipment to all fire fighters, impose unique requirements on local governments, and do not apply generally to all residents and entities in the state, but only to those involved in fire fighting.

CA(9)[] (9)

Constitutional Law § 37—Doctrine of Separation of Powers—Violations of Doctrine—Judicial Order of Appropriation.

--In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the trial court's judgment granting the writ was not in violation of the separation of powers doctrine. The court order did not directly compel the Legislature to appropriate funds or to pay funds not yet appropriated, but merely affected an existing appropriation.

CA(10)[] (10)

Constitutional Law § 40—Distribution of Governmental Powers—Between Branches of Government—Judicial Power and Its Limits—Order Directing Treasurer to Pay on Already Appropriated Funds.

--Once funds have been appropriated by legislative action, a court transgresses no constitutional principle when it orders the State Controller or other similar official to make appropriate expenditures from such funds. Thus, a judgment which ordered the State Controller to draw warrants and directed the State Treasurer to pay on already-appropriated funds permissibly compelled performance of a ministerial duty.

CA(11)[] (11)

State of California § 12—Fiscal Matters—Appropriations—Reimbursement to County for State-mandated Costs.

--Appropriations affected by a court order need not specifically refer to the particular expenditure in question in order to be available. Thus, in a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the funds appropriated for the Department of Industrial Relations for the prevention of industrial injuries and deaths of state workers were available for reimbursement, despite the fact that the funds were not specifically appropriated for reimbursement. The funds were generally related to the nature of costs incurred by the county.

CA(12a)[] (12a) CA(12b)[] (12b)

Fires and Fire Districts § 2—Statutes and Ordinances—County Compliance With State Executive Order to Provide Protective Equipment—Federal Mandate.

--A county's purchase of protective clothing and equipment for its fire fighters was not the result of a federally mandated program so as to relieve the state of its obligation (Cal. Const., art. XIII B, § 6) to reimburse the county for the cost of the purchases. The county had made the purchase in compliance with a state executive order. The federal government does not have jurisdiction over local fire departments and there are no applicable federal standards for local government structural fire fighting clothing and equipment. Hence, the county's obedience to the state executive orders was not federally mandated.

CA(13)[] (13)

Statutes § 20—Construction—Judicial Function—Legislative Declarations.

--The interpretation of statutory language is purely a judicial function. Legislative declarations are not binding on the courts and are particularly suspect when they are the product of an attempt to avoid financial responsibility.

CA(14a)[] (14a) CA(14b)[] (14b)

Statutes § 10—Title and Subject Matter—Single Subject Rule.

--In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters (Cal. Admin. Code, tit. 8, §§ 3401-3409), the trial court properly invalidated, as violating the single subject rule, the budget control language of Stats. 1981, ch. 1090, § 3. The express purpose of ch. 1090 was to increase funds available for reimbursing certain claims. The budget control language, on the other hand, purported to make the reimbursement provisions of Rev. & Tax. Code, § 2207, and former Rev. & Tax. Code, § 2231, unavailable to the county. Because the budget control language did not reasonably relate to the bill's stated purpose, it was invalid.

CA(15)[] (15)

Statutes § 10—Title and Subject Matter—Single Subject Rule.

--The single subject rule essentially requires that a statute have only one subject matter and that the subject be clearly expressed in a statute's title. The rule's primary purpose is to prevent "logrolling" in the enactment of laws, which occurs where a provision unrelated to a bill's main subject matter and title is included in it with the hope that the provision will remain unnoticed and unchallenged. By invalidating these unrelated clauses, the single subject rule prevents the passage of laws which might otherwise not have passed had the legislative mind been directed to them. However, in order to minimize judicial interference in the Legislature's activities, the single subject rule is to be construed liberally. A provision violates the rule only if it does not promote the main purpose of the act or does not have a necessary and natural connection with that purpose.

CA(16)[] (16)

Statutes § 5—Operation and Effect—Retroactivity—Reimbursement to County for State-mandated Costs.

--The budget control language of Stats. 1981, ch. 1090, § 3, which purported to make the reimbursement provisions of Rev. & Tax. Code, § 2207 and former Rev. & Tax. Code, § 2231, unavailable to a county seeking reimbursement (Cal. Const., art. XIII B, § 6) for expenditures made in purchasing state-required protective clothing and equipment for county fire fighters (Cal. Admin. Code, tit. 8, §§ 3401-3409), was invalid as a retroactive disclaimer of the county's right to reimbursement for debts incurred in prior years.

CA(17)[] (17)

State of California § 13—Fiscal Matters—Limitations on Disposal—Reimbursement to Counties for State-mandated Costs.

--The budget control language of § 28.40 of the 1981 Budget Act and § 26.00 of the 1983 and 1984 Budget Acts did not exonerate the state from its constitutional and statutory obligations to reimburse a county for the expenses incurred in complying with a state mandate to purchase protective clothing and equipment for county fire fighters. The language was invalid in that it violated the single subject rule, attempted to amend existing statutory law, and was unrelated to the Budget Acts' main purpose of appropriating funds to support the annual budget.

CA(18)[] (18)

Constitutional Law § 4—Legislative Power to Create Workers' Compensation System—Effect on County's Right to Reimbursement.

--Cal. Const., art. XIV, § 4, which vests the Legislature with unlimited plenary power to create and enforce a complete workers' compensation system, does not affect a county's right to state reimbursement for costs incurred in complying with state-mandated safety orders.

CA(19)[] (19)

Constitutional Law § 7—Mandatory, Directory, and Self-executing Provisions—Subvention Provisions—County Reimbursement for Statemandated Costs.

--The subvention provisions of Cal. Const., art. XIII B, § 6, operate so as to require the state to reimburse counties for state-mandated costs incurred between January 1, 1975, and June 30, 1980. The amendment, which became effective on July 1, 1980, provided that the Legislature "may, but need not," provide reimbursement for mandates enacted before January 1, 1975. Nevertheless, the Legislature must reimburse mandates passed after that date, even though the state did not have to begin reimbursement until the effective date of the amendment.

CA(20)[] (20)

Mandamus and Prohibition § 5—Mandamus—Conditions Affecting Issuance—Exhaustion of Administrative Remedies—County Reimbursement for

State-mandated Costs.

--A county's right of action in traditional mandamus to compel reimbursement for state-mandated costs did not accrue until the county had exhausted its administrative remedies. The exhaustion of remedies occurred when it became unmistakably clear that the legislative process was complete and that the state had breached its duty to reimburse the county.

CA(21)[] (21)

Mandamus and Prohibition § 13—Mandamus—Conditions Affecting Issuance—Existence and Adequacy of Other Remedy.

--A party seeking relief by mandamus is not required to exhaust a remedy that was not in existence at the time the action was filed.

CA(22a)[] (22a) CA(22b)[] (22b)

State of California § 7—Actions—Reimbursement to County for State-mandated Costs—County's Right to Offset Fines and Forfeitures Due to State.

--In a proceeding by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment for county fire fighters, the trial court did not err in authorizing the county to satisfy its claims by offsetting fines and forfeitures due to the state. The order did not impinge upon the Legislature's exclusive power to appropriate funds or control budget matters.

CA(23)[] (23)

Equity § 5—Scope and Types of Relief—Offset.

--The right to offset is a long-established principle of equity. Either party to a transaction involving mutual debits and credits can strike or balance, holding himself owing or entitled only to the net difference. Although this doctrine exists independent of statute, its governing principle has been partially codified in Code Civ. Proc., § 431.70 (limited to cross-demands for money).

CA(24)[] (24)

State of California § 7—Actions—Reimbursement to County for State-mandated Costs—State's Use of Statutory Offset Authority.

--In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the trial court did not err in enjoining the exercise of the state's statutory offset authority (Gov. Code, § 12419.5) until the county was fully reimbursed. In view of the state's manifest reluctance to reimburse, and its otherwise unencumbered statutory right of offset, the trial court was well within its authority to prevent this method of frustrating the county's collection efforts from occurring.

CA(25)[] (25)

State of California § 7—Actions—Reimbursement to County for State-mandated Costs—State's Right to Revert or Dissipate Undistributed Appropriations.

--In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the trial court properly enjoined, and was not precluded by *Gov. Code, § 16304.1*, from enjoining, the state from directly or indirectly reverting the reimbursement award sum from the general fund line item accounts, and from otherwise dissipating that sum in a manner that would make it unavailable to satisfy the court's judgment in favor of the county.

CA(26)[] (26)

Parties § 2—Indispensable Parties—County Auditor Controller—County Action to Collect Reimbursement From State.

--In an action brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the county auditor-controller was not an indispensable party whose absence would result in a loss of the trial court's jurisdiction. The auditor-controller was an officer of the county and was subject to the direction and control of the county board of supervisors. He was indirectly represented in the proceedings because his principal, the county, was the party litigant. Additionally, he claimed no personal interest in the action and his pro forma absence in no way impeded complete relief.

CA(27)[] (27)

Parties § 2—Indispensable Parties—Fines and Forfeitures—County Action to Collect Reimbursement From State.

--In an action brought by a county for a writ of mandate to compel reimbursement by the state for costs expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the funds created by the collected fines and forfeitures which the county was allowed to offset to satisfy its claims against the state were not "indispensable parties" to the litigation. The action was not an in rem proceeding, and the ownership of a particular stake was not in dispute. Complete relief could be afforded without including the specified funds as a party.

CA(28)[] (28)

Interest § 4—Interest on Judgments—County Action for Reimbursement of State-mandated Costs—State Reliance on Invalid Statute.

--An invalid statute voluntarily enacted and promulgated by the state is not a defense to its obligation to pay interest on damages under Civ. Code, § 3287, subd. (a). Thus, in an action brought by a county for writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the state could not avoid its obligation to pay interest on the funds by relying on invalid budget control language which purported to restrict payment on reimbursement claims.

CA(29)[] (29)

Appellate Review § 127—Review—Scope and Extent—Interpretation of Statutes.

--An appellate court is not limited by the interpretation of statutes given by the trial court.

CA(30)[] (30)

Appellate Review § 162—Determination of Disposition of Cause—Modification—Action Against State—Appropriation.

--In an action against the state, an appellate court is empowered to add a directive that the trial court order be modified to include charging orders against funds appropriated by subsequent budget acts.

Counsel: John K. Van de Kamp, Attorney General, N. Eugene Hill, Assistant Attorney General, Marilyn K. Mayer and Carol Hunter, Deputy Attorneys General, for Defendants and Appellants.

De Witt Clinton, County Counsel, Amanda F. Susskind, Deputy County Counsel, Ross & Scott, William D. Ross and Diana P. Scott, for Plaintiffs and Respondents.

Judges: Opinion by Eagleson, J., with Ashby, Acting P. J., and Hastings, J., concurring.

Opinion by: EAGLESON

Opinion

[*529] [799]** These consolidated appeals arise from three separate trial court proceedings concerning the heretofore unsuccessful efforts of various local agencies to secure reimbursement of state-mandated costs.

Case No. 2d Civ. B006078 (Carmel Valley et al. case) was the first matter decided by the trial **[***2]** court. The memorandum of decision in that case was judicially noticed by the trial court which heard the consolidated matters in 2d Civ. B011941 (Rincon et al. case) and 2d Civ. B011942 (County of Los Angeles case). Issues common to all three cases will be discussed together **[*530]** under the County of Los Angeles appeal, while issues unique to the other two appeals will be considered separately.

We identify the parties to the various proceedings in footnote 1. [1] For literary convenience, however, we will

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[1] *2d Civ. B006078*: The petitioners below and respondents on appeal are Carmel Valley Fire Protection District, City of Anaheim, Aptos Fire Protection District, Citrus Heights Fire Protection District, Fair Haven Fire Protection District, City of Glendale, City of San Luis Obispo, County of Santa Barbara and Ventura County Fire Protection District.

The respondents below and appellants here are State of California, Kenneth Cory and Jesse Marvin Unruh.

refer to all appellants as the State and all respondents as the County unless otherwise indicated.

[***3] Appeal In Case No. 2 Civil B011942

(County of Los Angeles Case)

Facts and Procedural History

County employs fire fighters for whom it purchased protective clothing and equipment, as required by title 8, California Administrative Code, sections 3401-3409, enacted in 1978 (executive orders). County argues that it is entitled to State reimbursement for these expenditures because they constitute a state-mandated "new program" or "higher level of service." County relies on Revenue and Taxation Code section 2207 [2] [***4] and former [*531] section 2231, [3] and California Constitution, article XIII B, section 6 [4] to support its claim.

[***5] [**800] County filed a test claim with the State Board of Control (Board) for these costs incurred during fiscal years 1978-1979 and 1979-1980. [5] After hearings were held on the matter, the Board determined on November 20, 1979, that there was a state mandate and that County should be reimbursed. State did not seek judicial review of this quasi-judicial decision of the Board.

Thereafter, a local government claims bill, Senate Bill Number 1261 (Stats. 1981, ch. 1090, p. 4191) (S.B. 1261) was introduced to provide appropriations to pay some of County's claims for these state-mandated costs. This bill was amended by the Legislature to delete all appropriations for the payment of these claims. Other claims [***6] of County not provided for in S.B. 1261 were contained in another local government claims bill, Assembly Bill Number 171 (Stats. 1982, ch. 28, p. 51) (A.B. 171). The appropriations in this bill were deleted by the Governor. Both pieces of legislation, sans appropriations, were enacted into law. [6]

On September 21, 1984, following these legislative rebuffs, County sought reimbursement by filing a petition for writ of mandate (Code Civ. Proc., § 1085)

2d Civ. B011941: The petitioners below and respondents on appeal are Rincon Del Diablo Municipal Water District, Twenty-Nine Palms Water District, Alpine Fire Protection District, Bonita-Sunnyside Fire Protection District, Encinitas Fire Protection District, Fallbrook Fire Protection District, City of San Luis Obispo, Montgomery Fire Protection District, San Marcos Fire Protection District, Spring Valley Fire Protection District, Vista Fire Protection District and City of Coronado.

Respondents below and appellants here are State of California, State Department of Finance, State Department of Industrial Relations, State Board of Control, Kenneth Cory, State Controller, Jesse Marvin Unruh, State Treasurer, and Mark H. Bloodgood, Auditor-Controller, County of Los Angeles.

2d Civ. B011942: The County of Los Angeles is the petitioner below and respondent on appeal. Respondents below and appellants here are State of California, State Department of Finance, State Department of Industrial Relations, Kenneth Cory, and Jesse Marvin Unruh.

All respondents on appeal are conceded to be "local agencies," as defined in Revenue and Taxation Code section 2211.

[2] HN1[] The pertinent parts of Revenue and Taxation Code section 2207 provide: "'Costs mandated by the state' means any increased costs which a local agency is required to incur as a result of the following: [para.] (a) Any law enacted after January 1, 1973, which mandates a new program or an increased level of service of an existing program; [para.] (b) Any executive order issued after January 1, 1973, which mandates a new program; [para.] (c) Any executive order issued after January 1, 1973, which (i) implements or interprets a state statute and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973. . . ."

[3] HN2[] The pertinent parts of former Revenue and Taxation Code section 2231, subdivision (a) provide: "The state shall reimburse each local agency for all 'costs mandated by the state', as defined in Section 2207." This section was repealed (Stats. 1986, ch. 879, § 23), and replaced by Government Code section 17561. We will refer to the earlier code section.

[4] HN3[] The pertinent parts of section 6, article XIII B of the California Constitution, enacted by initiative measure, provide: "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 program or increased level of service, except that the Legislature may, but need not, provide such subvention of

and complaint for declaratory relief. After appropriate responses were filed and a hearing was held, the court executed a judgment on February 6, 1985, granting a peremptory writ of mandate. A writ of mandate was issued and other findings and orders made. It is from this judgment of [*532] February 6, 1985, that State appeals. The relevant portions of the judgment are set forth verbatim below. [7]

[***7] [*533] [**801] Contentions

State advances two basic contentions. It first asserts that the costs incurred by County are not state mandated because they are not the result of a "new program," and do not provide a "higher level of service." Either or both of these requirements are the sine qua non of reimbursement. Second, assuming a "new program" or "higher level of service" exists, portions of the trial court order aimed at assisting the reimbursement process were made in excess of the court's jurisdiction.

These contentions are without merit. We modify and affirm all three judgments.

Discussion

I

Issue of State Mandate

The threshold question is whether County's expenditures are state mandated. HN4[] The right to reimbursement is triggered when the local agency incurs "costs mandated by the state" in either complying with a "new program" or providing "an increased level of

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funds for the following mandates: [para.] . . . . [para.] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." This constitutional amendment became effective July 1, 1980.

[5] County filed its test claim pursuant to former Revenue and Taxation Code section 2218, which was repealed by Statutes 1986, chapter 879, section 19.

Additionally, the Board is no longer in existence. The Commission on State Mandates has succeeded to these functions. (Gov. Code, §§ 17525, 17630.)

[6] The final legislation did include appropriations for other local agencies on other types of approved claims.

[7] "1. The Court adjudges and declares that funds appropriated by the Legislature for the State Department of Industrial Relations for the Prevention of Industrial Injuries and Deaths of California Workers within the Department's General Fund may properly be and should be spent for the reimbursement of state-mandated costs incurred by Petitioner as established in this action.

"2. A peremptory writ of mandamus shall issue under the seal of this Court, commanding Respondent State of California, through its Department of Finance, to give notification in writing as specified in Section 26.00 of the Budget Act of 1984 (Chapter 258, Statutes of 1984) of the necessity to encumber funds in conformity [with] this order and, unless the Legislature approves a bill that would enact a general law, within 30 days of said notification that would obviate the necessity of such payment, Respondent [Kenneth] Cory, the State Controller of the State of California, or his successors in office, if any, shall draw warrants on funds appropriated for the State Department of Industrial Relations for the 1984-85 Budget Year in account numbers 8350-001-001, 8350-001-452, 8350-001-453, and 8350-001-890 as implemented in Chapter 258 Statutes of 1984, sufficient to satisfy the claims of Petitioner, plus interest, as set forth in the motion and accompanying writ of mandamus. Said writ shall also issue against Jessie [*sic*] Marvin Unruh, the State Treasurer of the State of California, and his successors in office, if any, commanding him to make payment on the warrants drawn by Respondent Kenneth Cory.

"3. Pending the final disposition of this proceeding, or the payment of the applicable reimbursement claims and interest as set forth herein, Respondents, and each of of [*sic*] them, their successors in office, agents, servants and employees and all persons acting in concert [or] participation with them, are hereby enjoined and restrained from directly or indirectly expending from the 1984-85 General Fund Budget of the State Department of Industrial Relations as is more particularly described in paragraph number 2 hereinabove, any sums greater than that which would leave in said budget at the service of an existing program." [8] State advances many conclusion of the 1984-85 fiscal year an amount less than the reimbursement amounts on the aggregate amount of $ 307,685 in this case, together with interest at the legal rate through payment of said reimbursement amounts. Said amounts are hereinafter referred to collectively as the 'reimbursement award sum'.

"4. Pending the final disposition of this proceeding or the payment of the reimbursement award sum at issue herein, Respondents, and each of them, their successors in office, agents, servants and employees, and all persons acting in concert or participation with them, are hereby enjoined and restrained from directly or indirectly reverting the reimbursement award sum from the General Fund line-item accounts of the Department of Industrial Relations to the General Funds of the State of California and from otherwise dissipating the reimbursement award sum in a manner that would make it unavailable to satisfy this Court's judgment.

"5. In addition to the foregoing relief, Petitioner is entitled to offset amounts sufficient to satisfy the claims of Petitioner, plus interest, against funds held by Petitioner as fines and forfeitures which are collected by the local Courts, transferred to the Petitioner and remitted to Respondents on a monthly basis. Those fines and forfeitures are levied, and their distribution provided, as set forth in Penal Code Sections 1463.02, 1463.03, 14[6]3.5[a], and 1464; Government Code Sections 13967, 26822.3 and 72056, Fish and Game Code Section 13100; Health and Safety Code Section 11502 and Vehicle Code Sections 1660.7, 42004, and 41103.5.

"6. The Court adjudges and declares that the State has a continuing obligation to reimburse Petitioner for costs incurred in fiscal years subsequent to its claim for expenditures in the 1978-79 and 1979-80 fiscal years as set forth in the petition and the accompanying motion for the issuance of a writ of mandate.

"7. The Court adjudges and declares that deletion of funding and prohibition against accepting claims for expenditures incurred as a result of the state-mandated program of Title 8, California Administrative Code Sections 3401 through 3409 as contained in Section 3 of Chapter [1090], Statutes of 1981 were invalid and unconstitutional.

"8. The Court adjudges and declares that the expenditures incurred by Petitioner as a result of the state-mandated program of Title 8, California Administrative Code Sections 3401 through 3409 were not the result of any federally mandated program.

"9. A peremptory writ of mandamus shall issue under the seal of this Court commanding Respondent State Board of Control, or its successor-in-interest, to hear and approve the claims of Petitioner for costs incurred in complying with the state-mandated program of Title 8, California Administrative Code Sections 3401 through 3409 subsequent to fiscal year 1979-80.

". . . .

"11. The Court [adjudges] and declares that the State Respondents are prohibited from offsetting, or attempting to implement an offset against moneys due and owing Petitioner until Petitioner is completely reimbursed for all of its costs in complying with the state mandate of Title 8, California Administrative Code Sections 3401 through 3409."

theories as to why the Board erred in concluding that these expenditures are state-mandated costs. One of these arguments is whether the executive orders are a "new program" as that phrase has been recently defined by our Supreme Court in County [***8] of Los Angeles [**802] v. State of California (1987) 43 Cal.3d 46 [233 Cal.Rptr. 38, 729 P.2d 202].

[*534] As we shall explain, State has waived its right to challenge the Board's findings and is also collaterally estopped from doing so. Additionally, although State is not similarly precluded from raising issues presented by the *State of California* case, we conclude that the executive orders are a "new program" within the meaning of article XIII B, section 6.

A. *Waiver*

CA(1a)[] **(1a)** We initially conclude that State has waived its right to contest the Board's findings. CA(2)[] **(2)** HN5[] Waiver occurs where there is an existing right; actual or constructive knowledge of its existence; and either an actual **[***9]** intention to relinquish it, or conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief that it has has been waived. (*Medico-Dental etc. Co. v. Horton & Converse (1942) 21 Cal.2d 411, 432 [132 P.2d 457]; Loughan v. Harger-Haldeman (1960) 184 Cal.App.2d 495, 502-503 [7 Cal.Rptr. 581].*) A right that is waived is lost forever. (*L.A. City Sch. Dist. v. Landier Inv. Co. (1960) 177 Cal.App.2d 744, 752 [2 Cal.Rptr. 662].*) The doctrine of waiver applies to rights and privileges afforded by statute. (*People v. Murphy (1962) 207 Cal.App.2d 885, 888 [24 Cal.Rptr. 803].*)

CA(1b)[] **(1b)** State now contends to be an aggrieved party and seeks to dispute the Board's findings. However it failed to seek judicial review of that

[8] This language is taken from Revenue and Taxation Code section 2207 and former section 2231. Article XIII B, section 6 refers to "higher" level of service rather than "increased" level of service. We perceive the intent of the two provisions to be identical. The parties also use these words interchangeably.

November 20, 1979 decision (Code Civ. Proc., § 1094.5) as authorized by former Revenue and Taxation Code section 2253.5. The three-year statute of limitations applicable to such review has long since passed. (Green v. Obledo (1981) 29 Cal.3d 126, 141, fn. 10 [172 Cal.Rptr. 206, 624 P.2d 256]; Code Civ. Proc., § 338, subd. 1.)

In addition, State, through its agents, acquiesced in the Board's findings [***10] by seeking an appropriation to satisfy the validated claims. (Former Rev. & Tax. Code, § 2255, subd. (a).) On September 30, 1981, S.B. 1261 became law. On February 12, 1982, A.B. 171 was enacted. Appropriations had been stripped from each bill. State did not then seek review of the Board determinations even though time remained before the three-year statutory period expired. This inaction is clearly inconsistent with any intent to contest the validity of the Board's decision and results in a waiver.

B. *Administrative Collateral Estoppel*

CA(3a)[] (3a) We next conclude that State is collaterally estopped from attacking the Board's findings. CA(4)[] (4) Traditionally, HN6[] collateral estoppel has been applied to bar relitigation of an issue decided in a prior court proceeding. In order for the doctrine to apply, the issues in the two proceedings must [*535] be the same, the prior proceeding must have resulted in a final judgment on the merits, and the same parties or their privies must be involved. (People v. Sims (1982) 32 Cal.3d 468, 484 [186 Cal.Rptr. 77, 651 P.2d 321].)

HN7[] The doctrine was extended in *Sims* to apply to a final adjudication of an administrative agency of statutory [***11] creation so as to preclude relitigation of the same issues in a subsequent criminal case. Our Supreme Court held that collateral estoppel applies to such prior adjudications where three requirements are met: (1) the administrative agency acted in a judicial capacity; (2) it resolved disputed issues properly before it; and (3) all parties were provided with the opportunity to fully and fairly litigate their claims. (Id. at p. 479.) All of the elements of administrative collateral estoppel are present here.

CA(3b)[] (3b) HN8[] The Board was created by the state Legislature to exercise quasi-judicial powers in adjudging the validity of claims against the State. (County of Sacramento v. Loeb (1984) 160 Cal.App.3d 446, 452 [206 Cal.Rptr. 626].) At the time of the hearings, the Board proceedings were the sole administrative remedy available to local agencies seeking reimbursement for state-mandated costs. (Former Rev. & [**803] Tax. Code, § 2250.) Board examiners had the power to administer oaths, examine witnesses, issue subpoenas, and receive evidence. (Gov. Code, § 13911.) The hearings were adversarial in nature and allowed for the presentation of evidence by the claimant, the Department [***12] of Finance, and any other affected agency. (Former Rev. & Tax. Code, § 2252.)

The record indicates that the state mandate issues in this case were fully litigated before the Board. A representative of the state Division of Occupational Safety and Health and the Department of Industrial Relations testified as to why County's costs were not state mandated. Representatives of the various claimant fire districts in turn offered testimony contradicting that view. The proceedings culminated in a verbatim transcript and a written statement of the basis for the Board's decision.

State complains, however, that some of the traditional elements of the collateral estoppel doctrine are missing. In particular, State argues that it was not a party to the Board hearings and was not in privity with those state agencies which did participate.

CA(5)[] (5) HN9[] "[The] courts have held that the agents of the same government are in privity with each other, since they represent not their own rights but the right of the government. [Fn. omitted.]" (Lerner v. Los Angeles City Board of Education (1963) 59 Cal.2d 382, 398 [29 Cal.Rptr. 657, 380 P.2d 97].) CA(3c)[] (3c) As we stated in our introduction of the parties [***13] in this case, the party [*536] known as "State" is merely a shorthand reference to the various state agencies and officials named as defendants below. Each of these defendants is an agent of the State of California and had a mutual interest in the Board proceedings. They are thus in privity with those state agencies which did participate below (e.g., Occupational Safety and Health Division).

It is also clear that even though the question of whether a cost is state mandated is one of law (City of Merced v. State of California (1984) 153 Cal.App.3d 777, 781 [200 Cal.Rptr. 642]), subsequent litigation on that issue is foreclosed here. CA(6)[] (6) HN10[] A prior judgment on a question of law decided by a court is conclusive in a subsequent action between the same parties where both causes involved arose out of the same subject matter or transaction, and where holding the judgment to be conclusive will not result in an injustice. (City of Los Angeles v. City of San Fernando (1975) 14 Cal.3d 199, 230 [123 Cal.Rptr. 1, 537 P.2d 1250]; Beverly Hills Nat. Bank v. Glynn (1971) 16 Cal.App.3d 274, 286-287 [93 Cal.Rptr. 907]; Rest.2d Judgments, § 28, p. 273.) [9]

[*14]** CA(3d)[] **(3d)** Here, the basic issues of state mandate and the amount of reimbursement arose out of County's required compliance with the executive orders. In either forum -- Board or court -- the claims and the evidentiary and legal determination of their validity would be considered in similar fashion.

Furthermore, a determination of conclusiveness would not work an injustice. As we have noted, the Board was statutorily created to consider the validity of the various claims now being litigated. Processing of reimbursement claims in this manner was the only administrative remedy available to County. If we were to grant State's request and review the Board's determination de novo, we would, in any event, adhere to the well-settled principle of affording "great weight" to "the contemporaneous administrative construction of the enactment by those charged with its enforcement . . . ." (Coca-Cola Co. v. State Bd. of Equalization (1945) 25 Cal.2d 918, 921 [156 P.2d 1].)

HN11[] There is no policy reason to limit the application of the collateral estoppel doctrine to successive court proceedings. In City and County of San Francisco v. Ang (1979) 97 Cal.App.3d 673, 679 [159 Cal.Rptr. [***15] 56], the doctrine was applied to bar relitigation in a subsequent civil proceeding of a zoning issue previously decided by a city board of permit appeals. We similarly hold **[**804]** that the questions of law decided by the Board are binding in all of the subsequent civil proceedings presented here. State therefore is collaterally **[*537]** estopped to raise the issues of state mandate and amount of reimbursement in this appeal.

C. *Executive Orders -- A "New Program" Under Article XIII B, Section 6*

CA(7)[] **(7)** The recent decision by our Supreme Court in County of Los Angeles v. State of California, supra, 43 Cal.3d at p. 49 presents a new issue not previously considered by the Board or the trial court. That question is whether the executive orders constitute the type of "program" that is subject to the constitutional imperative of subvention under article XIII B, section 6. [10] We conclude that they are.

[*16]** In *State of California*, the Court concluded that the term "program" has two alternative meanings: "programs that carry out the governmental function of providing services to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." (Id. at p. 56, italics added.) Although only one of these findings is necessary to trigger reimbursement, both are present here.

CA(8)[] **(8)** First, HN13[] fire protection is a peculiarly governmental function. (County of Sacramento v. Superior Court (1972) 8 Cal.3d 479, 481 [105 Cal.Rptr. 374, 503 P.2d 1382].) "Police and fire protection are two of the most essential and basic functions of local government." (Verreos v. City and County of San Francisco (1976) 63 Cal.App.3d 86, 107 [133 Cal.Rptr. 649].) This classification is not weakened by State's assertion that there are private sector fire fighters who are also subject to the executive orders. Our record on this point is incomplete because the issue was not presented below. Nonetheless, we have no difficulty in concluding as a matter of judicial notice that the overwhelming **[***17]** number of fire fighters discharge a classical governmental function. [11]

[*538] The second, and alternative, prong of the *State of California* definition is also satisfied. The executive

[9] As it happened, the entire Board determination involved a question of law since the dollar amount of the claimed reimbursement was not disputed.

[10] State is not precluded from raising this new issue on appeal. HN12[] Questions of law decided by an administrative agency invoke the collateral estoppel doctrine only when a determination of conclusiveness will not work an injustice. Likewise, the doctrine of waiver is inapplicable if a litigant has no actual or constructive knowledge of his rights. Since the *State of California* rule had not been announced at the time of the Board or trial court proceedings herein, the doctrines of waiver and collateral estoppel are inapplicable to State on this particular issue. Both parties have been afforded additional time to brief the matter.

[11] County suggests that to the extent private fire brigades exist, they are customarily part-time individuals who perform the function on a part-time basis. As such, they are excluded by the balance of the definitional term in title 8, California Administrative Code section 3402, which provides, in pertinent part: ". . . The term [fire fighter] does not apply to emergency pick-up labor or other persons who may perform first-aid fire extinguishment as collateral to their regular duties."

orders manifest a state policy to provide updated equipment to all fire fighters. Indeed, compliance with the executive orders is compulsory. The requirements imposed on local governments are also unique because fire fighting is overwhelmingly engaged in by local agencies. Finally, the orders do not apply generally to all residents [***18] and entities in the State but only to those involved in fire fighting.

These facts are distinguishable from those presented in *State of California*. There, the court held that a state-mandated increase in workers' compensation benefits did not require state subvention because the costs incurred by local agencies were only an incidental impact of laws that applied generally to all state residents and entities (i.e., to all workers and all governmental and nongovernmental employers). Governmental employers in that setting were indistinguishable from private employers who were obligated through insurance [**805] or direct payment to pay the statutory increases.

State of California only defined the scope of the word "program" as used in California Constitution, article XIII B, section 6. We apply the same interpretation to former Revenue and Taxation Code section 2231 even though the statute was enacted much earlier. The pertinent language in the statute is identical to that found in the constitutional provision and no reason has been advanced to suggest that it should be construed differently. In any event, HN14[] a different interpretation must fall before a constitutional [***19] provision of similar import. (County of Los Angeles v. Payne (1937) 8 Cal.2d 563, 574 [66 P.2d 658].)

II

Issue of Whether Court Orders Exceeded Its Jurisdiction

A. *The Court Has Not Ordered an Appropriation in Violation of the Separation of Powers Doctrine*

CA(9)[] (9) State begins its general attack on the judgment by citing the longstanding principle that a court order which directly compels the Legislature to appropriate funds or to pay funds not yet appropriated violates the separation of powers doctrine. (Cal. Const., art. III, § 3; art. XVI, § 7; Mandel v. Myers (1981) 29 Cal.3d 531, 540 [174 Cal.Rptr. 841, 629 P.2d 935].) [12]

State [*539] observes (and correctly so) that the relevant constitutional HN15[] (art. XIII B, § 6) and statutory (Rev. & Tax. Code, § 2207 & former § 2231) provisions are not appropriations measures. (See City of Sacramento v. California State Legislature (1986) 187 Cal.App.3d 393, 398 [231 Cal.Rptr. 686].) Since State otherwise discerns no manifest legislative intent to appropriate funds to pay County's claims (City & County of S. F. v. Kuchel (1948) 32 Cal.2d 364, 366 [196 P.2d 545]), it concludes that the [***20] judgment unconstitutionally compels performance of a legislative act.

State further argues that the judiciary's ability to reach an existing agency-support appropriation (State Department of Industrial Relations) (fn. 7, [para.] 1, *ante*) has been approved in only two contexts. First, the court can order payment from an existing appropriation, the expenditure of which has been legislatively prohibited by an unconstitutional or unlawful restriction. (Committee to Defend Reproductive Rights v. Cory (1982) 132 Cal.App.3d 852, 856 [183 Cal.Rptr. [***21] 475].) Second, once an adjudication has finally determined the rights of the parties, the court may compel satisfaction of the judgment from a current unexpended, unencumbered appropriation which administrative agencies routinely have used for the purpose in question. (Mandel v. Myers, supra, 29 Cal.3d at p. 544.) State insists that these facts are not present here.

County rejoins that a writ of traditional mandate (Code Civ. Proc., § 1085) is the correct method of compelling State to perform a clear and present ministerial legal obligation. (County of Sacramento v. Loeb, supra, 160 Cal.App.3d at pp. 451-452.) The ministerial obligation here is contained in California Constitution, article XIII B, section 6 and in Revenue and Taxation Code section 2207 and former section 2231. These provisions require State to reimburse local agencies for state-mandated costs.

We reject State's general characterization of the judgment by noting that it only affects an existing appropriation. It declares (fn. 7, para. 1, *ante*) that only

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[12] HN16[] Article III, section 3 of the California Constitution provides: "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution."

HN17[] Article XVI, section 7 of the California Constitution provides: "Money may be drawn from the Treasury only through an appropriation made by law and upon a Controller's duly drawn warrant."

funds already "*appropriated* by the Legislature for the State Department of Industrial Relations for the Prevention of Industrial Injuries **[***22]** and Deaths of California Workers within the Department's General Fund" **[**806]** shall be spent for reimbursement of County's state-mandated costs. (Italics added.) There is absolutely no language purporting to require the Legislature to enact appropriations or perform any other act that might violate separation of powers principles. CA(10)[] **(10)** By simply ordering the State Controller to draw warrants and directing the State Treasurer to pay on already appropriated funds (fn. 7, para. 2, *ante*), the judgment permissibly compels performance of a ministerial duty: HN18[] "[Once] funds have already been appropriated by legislative action, a court transgresses no constitutional principle when it orders the State Controller or other similar official to make appropriate expenditures **[*540]** from such funds. [Citations.]" (Mandel v. Myers, supra, 29 Cal.3d at p. 540.)

As we will discuss in further detail below, the subject funds (fn. 7, para. 1, *ante*) were saddled with an unconstitutional restriction (fn. 7, para. 7, *ante*). However, *Mandel* establishes that such a restriction does not necessarily infect the entire appropriation. There, the Legislature had improperly prohibited **[***23]** the use of budget funds to pay a court-ordered and administratively approved attorney's fees award. The court reasoned that HN19[] as long as appropriated funds were "reasonably available for the expenditures in question, the separation of powers doctrine poses no barrier to a judicial order directing the payment of such funds." (Id. at p. 542.) The court went on to find that money in a general "operating expenses and equipment" fund was, by both the Budget Act's terms and prior administrative practice, reasonably available to pay the attorney's fees award.

Contrary to State's argument, *Mandel* does not require that past administrative practice support a judgment for reimbursement from an otherwise available appropriation. Although there was evidence of a prior administrative practice of paying counsel fees from funds in the "operating expenses and equipment" budget, this fact was not the main predicate of the court's holding. Rather, the decisive factor was that the budget item in question functioned as a "catchall" appropriation in which funds were still reasonably available to satisfy the State's adjudicated debt. (Id. at pp. 543-544.)

Another illustration of this principle **[***24]** is found in Serrano v. Priest (1982) 131 Cal.App.3d 188 [182 Cal.Rptr. 387]. Plaintiffs in that case secured a judgment against the State of California for $ 800,000 in attorney's fees. The judgment was not paid, and subsequent proceedings were brought against State to satisfy the judgment. The trial court directed the State Controller to pay the $ 800,000 award, plus interest, from funds appropriated by the Legislature for "operating expenses and equipment" of the Department of Education, Superintendent of Public Instruction and State Board of Education. (Id. at p. 192.) This court affirmed that order even though there was no evidence that the agencies involved had ever paid court-ordered attorney's fees from that portion of the budget. Relying on *Mandel*, we concluded that funds were reasonably available from appropriations enacted in the Budget Act in effect at the time of the court's order, as well as from similar appropriations in subsequent budget acts.

CA(11)[] **(11)** State also incorrectly asserts that the appropriations affected by the court's order must specifically refer to the particular expenditure in question in order to be available. This notion was summarily **[***25]** dismissed in Mandel v. Myers, supra, 29 Cal.3d at pp. 543-544. Likewise, in Committee to Defend [*541] Reproductive Rights v. Cory, supra, 132 Cal.App.3d at pp. 857-858, the court decreed that payments for Medi-Cal abortions could properly be ordered from monies appropriated for other Medi-Cal services, even though this use had been specifically prohibited by the Legislature.

Applying these various principles here, we note that the judgment (fn. 7, para. 2, *ante*) identified funds in account numbers 8350-001-001, 8350-001-452, 8350-001-453 and **[**807]** 8350-001-890 as being available for reimbursement. Within these 1984-1985 account appropriations for the Department of Industrial Relations were monies for Program 40, the Prevention of Industrial Injuries and Deaths of California Workers. The evidence clearly showed that the remaining balances on hand would cover the cost of reimbursement. Since it is conceded that the fire fighting protective clothing and equipment in this case was purchased to prevent deaths and injuries to fire fighters, these funds, although not specifically appropriated for the reimbursement in question, were generally related to **[***26]** the nature of costs incurred by County and are therefore reasonably available for reimbursement.

B. *Legislative Disclaimers, Findings and Budget Control Language Are No Defense to Reimbursement*

As a general defense against the order to reimburse, State insists that the Legislature has itself concluded that the claimed costs are not reimbursable. This determination took the combined form of disclaimers, findings and budget control language. State interprets this self-serving legislation, as well as the legislative and gubernatorial deletions, as forever sweeping away State's obligation to reimburse the state-mandated costs at issue. Consequently, any order that ignores these restrictions on payment would amount to a court-ordered appropriation. As we shall conclude, these efforts are merely transparent attempts to do indirectly that which cannot lawfully be done directly.

The seminal legislation that gave rise to the 1978 executive orders was enacted by HN20[] Statutes 1973, chapter 993, and is labeled the California Occupational Safety and Health Act (Cal/OSHA). It is modeled after federal law and is designed to assure safe working conditions for all California workers. A [***27] legislative disclaimer appearing in HN21[] section 106 of that bill reads: "No appropriation is made by this act . . . for the reimbursement of any local agency for any costs that may be incurred by it in carrying on any program or performing any service required to be carried on . . . ." The stated reason for this decision not to appropriate was that the cost of implementing the act was "minimal on a statewide basis in relation to the effect on local tax rates." (Stats. 1973, ch. 993, § 106, p. 1954.)

[*542] Again, in 1974, HN22[] the Legislature stated: "Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section, nor shall there be an appropriation made by this act, because the Legislature finds that this act and any executive regulations or safety orders issued pursuant thereto merely implement federal law and regulations." (Stats. 1974, ch. 1284, § 106, p. 2787.) This statute amended section 106 of Statutes 1973, chapter 993, and was a post facto change in the stated legislative rationale for not providing reimbursement.

Presumably because of the large number of reimbursement claims being filed, the Legislature subsequently [***28] used budget control language to confirm that compliance with the executive orders should not trigger reimbursement. Some of this legislation was effective September 30, 1981, as part of a local agency and school district reimbursement bill. The control language provided that HN23[] "[the] Board of Control shall not accept, or submit to the Legislature, any more claims pursuant to . . . Sections 3401 to 3409, inclusive, of Title 8 of the California Administrative Code." (Stats. 1981, ch. 1090, § 3, p. 4193.) [13]

Further control language was inserted in the 1981, 1983 and 1984 Budget Acts. HN24[] (Stats. 1981, ch. 99, § 28.40, p. 606; Stats. 1983, ch. 324, § 26.00, p. 1504; Stats. 1984, ch. 258, § 26.00.) This language prohibits encumbering appropriations to reimburse costs incurred under the executive orders, except under certain limited [***29] circumstances.

CA(12a)[] (12a) State first challenges the trial court's finding that expenditures mandated by the [**808] executive orders were not the result of a federally mandated program (fn. 7, para. 8, *ante*), despite the legislative finding in Statutes 1974, chapter 1284, section 106. We agree with the court's decision that there was no federal mandate.

The significance of this no-federal-mandate finding is revealed by examining past changes in the statutory definition of state-mandated costs. As thoroughly discussed in City of Sacramento v. State of California (1984) 156 Cal.App.3d 182, 196-197 [203 Cal.Rptr. 258] disapproved on other grounds in County of Los Angeles v. State of California, supra, 43 Cal.3d at p. 58, fn. 10, HN25[] the concept of federally mandated costs has provided local agencies with a financial escape valve ever since passage of the "Property Tax Relief Act of 1972." (Stats. 1972, ch. 1406, § 1, p. 2931.) That act limited local governments' power to levy property taxes, while requiring that they be reimbursed by the State for providing compulsory increased levels of service or [*543] new programs. However, under Revenue and Taxation Code section [***30] 2271, "costs mandated by the federal government" were not subject to reimbursement and local governments were permitted to levy taxes in addition to the maximum property tax rate to pay such costs.

On November 6, 1979, HN26[] the limitation on local government's ability to raise property taxes, and the duty of the State to reimburse for state-mandated costs, became a part of the California Constitution through the initiative process. Article XIII B, section 6, enacted at that time, directs state subvention similar in nature to that required by the preexisting provisions of Revenue

[13] When Governor Brown deleted the appropriations from A.B. 171, he stated that he was relying on the pronouncements in Statutes 1974, chapter 1284 and Statutes 1981, chapter 1090.

and Taxation Code section 2207 and former section 2231. As a defense against this duty to reimburse local agencies, the Legislature began to insert disclaimers in bills which mandated costs on local agencies. It also amended HN27[] Revenue and Taxation Code section 2206 to expand the definition of nonreimbursable "costs mandated by the federal government" to include the following: "costs resulting from enactment of a state law or regulation where failure to enact such law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public [***31] or private persons in the state."

In applying this definition here, State offers nothing more than the bare legislative finding contained in Statutes 1974, chapter 1284, section 106. State contends that a federally mandated cost cannot, by definition, be a state-mandated cost. Therefore, if the cost is federally mandated, local agency reimbursement is not required. CA(13)[] (13) (See fn. 14.) Although State's argument is correct in the abstract, neither the facts nor federal law supports the underlying assumption that there is a federal mandate. [14]

[***32] CA(12b)[] (12b) Both the Board and the court had in evidence a letter from a responsible official of the federal Occupational Safety and Health Administration (OSHA). The letter emphasizes the independence of state and federal OSHA standards: "OSHA does not have jurisdiction over the fire departments of any political subdivision of a state whether the state has elected to have its own state plan under the OSHA act or not. . . . [para.] More specifically, in 1978, the State of California promulgated standards applicable to fire departments in California. Therefore, California standards, rather than [*544] federal OSHA standards, are applicable to fire departments in that state. . . ." This theme is also reflected in a section of [**809] OSHA which expressly disclaims jurisdiction over local agencies such as County. (29 U.S.C. § 652(5).) Accordingly, as a matter of law, there are no federal standards for local government structural fire fighting clothing and equipment.

In short, while the Legislature's enactment of Cal/OSHA to comply with federal OSHA standards is commendable, it certainly was not compelled. Consequently, County's obedience to the 1978 executive orders is not [***33] federally mandated.

CA(14a)[] (14a) The trial court also properly invalidated the budget control language in Statutes 1981, chapter 1090, section 3 (fn. 7, [para.] 7, *ante*) because it violated the single subject rule. [15] This legislative restriction purported to make the reimbursement provisions of Revenue and Taxation Code section 2207 and former section 2231 unavailable to County.

CA(15)[] (15) HN30[] The single subject rule essentially requires that a statute have only one subject matter and that the subject be clearly expressed in the statute's title. The rule's primary purpose is to prevent "log-rolling" in the enactment of laws. This disfavored practice [***34] occurs where a provision unrelated to a bill's main subject matter and title is included in it with the hope that the provision will remain unnoticed and unchallenged. By invalidating these unrelated clauses, the single subject rule prevents the passage of laws which otherwise might not have passed had the legislative mind been directed to them. (Planned Parenthood Affiliates v. Swoap (1985) 173 Cal.App.3d 1187, 1196 [219 Cal.Rptr. 664].) However, in order to minimize judicial interference in the Legislature's activities, the single subject rule is to be construed liberally. A provision violates the rule only if it does not promote the main purpose of the act or does not have a necessary and natural connection with that purpose. (Metropolitan Water Dist. v. Marquardt (1963) 59 Cal.2d 159, 172-173 [28 Cal.Rptr. 724, 379 P.2d 28].)

[14] We address this subject only because the trial court found that the costs were not federally mandated. Actually, State cannot raise this issue on appeal because of the waiver and administrative collateral estoppel doctrines. We note, however, where there is a quasi-judicial finding that a cost is state mandated, there is an implied finding that the cost is not federally mandated; the two concepts are mutually exclusive.

Moreover, our task is aided by the fact that HN28[] interpretation of statutory language is purely a judicial function. Legislative declarations are not binding on the courts and are particularly suspect when they are the product of an attempt to avoid financial responsibility. (City of Sacramento v. State of California, supra, 156 Cal.App.3d at pp. 196-197.)

[15] HN29[] Article IV, section 9 of the California Constitution reads: "A statute shall embrace but one subject, which shall be expressed in its title. If a statute embraces a subject not expressed in its title, only the part not expressed is void. A statute may not be amended by reference to its title. A section of a statute may not be amended unless the section is re-enacted as amended."

CA(14b)[] (14b) The stated purpose of chapter 1090 is to increase funds available for reimbursing certain claims. It describes itself as an "act making an appropriation to pay claims of local agencies and school districts for additional reimbursement for specified state-mandated local costs, awarded by the State Board of Control, and declaring the [***35] urgency thereof, to take effect immediately." (Stats. 1981, ch. 1090, p. 4191.) There is nothing in this introduction [*545] alerting the reader to the fact that the bill prohibits the Board from entertaining claims pursuant to the Cal/OSHA executive orders. The control language does not modify or repeal these orders, nor does it abrogate the necessity for County's continuing compliance therewith. It simply places County's claims reimbursement process in limbo.

This special appropriations bill is similar in kind to appropriations in an annual budget act. Observations that have been made in connection with the enactment of a budget bill are appropriate here. "[The] annual budget bill is particularly susceptible to abuse of [the single subject] rule. 'History tells us that the general appropriation bill presents a special temptation for the attachment of riders. It is a necessary and often popular bill which is certain of passage. If a rider can be attached to it, the rider can be adopted on the merits of the general appropriation bill without having to depend on its own merits for adoption.' [Citation.]" (*Planned Parenthood Affiliates v. Swoap, supra, 173 [***36] Cal.App.3d at p. 1198*.) Therefore, the annual budget bill must only concern the subject of appropriations to support the annual budget and may not constitutionally be used to substantively amend or change existing statutory law. (*Association for Retarded Citizens v. Department of Developmental Services (1985) 38 Cal.3d 384, 394 [211 Cal.Rptr. 758, 696 P.2d 150]*.) We see no reason to apply a [**810] less stringent standard to a special appropriations bill. Because the language in chapter 1090 prohibiting the Board from processing claims does not reasonably relate to the bill's stated purpose, it is invalid.

CA(16)[] (16) The budget control language in chapter 1090 is also invalid as a retroactive disclaimer of County's right to reimbursement for debts incurred in prior years. This legislative technique was condemned in *County of Sacramento v. Loeb, supra, 160 Cal.App.3d at p. 446*. There, the Legislature had enacted a Government Code section which prohibited using appropriations for any purpose which had been denied by any formal action of the Legislature. The State attempted to use this code section to uphold a special appropriations bill which had deleted County's Board-approved [***37] claims for costs which were incurred prior to the enactment of the code section. The court held that the code section did not apply retroactively to defeat County's claims: HN31[] "A retroactive statute is one which relates back to a previous transaction and gives that transaction a legal effect different from that which it had under the law when it occurred. . . . 'Absent some clear policy requiring the contrary, statutes modifying liability in civil cases are not to be construed retroactively.'" (*Id. at p. 459*, quoting *Robinson v. Pediatric Affiliates Medical Group, Inc. (1979) 98 Cal.App.3d 907, 912 [159 Cal.Rptr. 791]*.) Similarly, the control language in chapter 1090 does not apply retroactively to County's prior, Board-approved claims.

[*546] CA(17)[] (17) Finally, the control language in section 28.40 of the 1981 Budget Act and section 26.00 [16] of the 1983 and 1984 Budget Acts does not work to defeat County's claims. (Stats. 1981, ch. 99, § 28.40, p. 606; Stats. 1983, ch. 324, § 26.00, p. 1504; Stats. 1984, ch. 258, § 26.00.) This section is comprised of both substantive and procedural provisions. We are concerned primarily with those portions that purport to exonerate [***38] State from its constitutionally and statutorily imposed obligation to reimburse County's state-mandated costs.

[***39] The writ of mandate directed compliance with the procedural provisions of these sections and is not a point of dispute on appeal. Subsection (a) affords the Legislature one last opportunity to appropriate funds which are to be encumbered for the purpose of paying state-mandated costs, an invitation repeatedly rejected.

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[16] HN32[] Each of these sections contains the following language: "No funds appropriated by this act shall be encumbered for the purpose of funding any increased state costs or local governmental costs, or both such costs, arising from the issuance of an executive order as defined in *section 2209 of the Revenue and Taxation Code* or subject to the provisions of *section 2231 of the Revenue and Taxation Code*, unless (a) such funds to be encumbered are appropriated for such purpose, or (b) notification in writing of the necessity of the encumbrance of funds available to the state agency, department, board, bureau, office, or commission is given by the Department of Finance, at least 30 days before such encumbrance is made, to the chairperson of the committee in each house which considers appropriations and the Chairperson of the Joint Legislative Budget Committee, or such lesser time as the chairperson of the committee, or his or her designee, determines."

Subsection (b) directs that the Department of Finance notify the chairpersons of the appropriate committees in each house and chairperson of the Joint Legislative Budget Committee of the need to encumber funds. Presumably, the objective of this procedure is to give the Legislature another opportunity to amend or repeal substantive legislation requiring local agencies to incur state-mandated costs. Again, the Legislature declined to act. Legislative action pursuant to subsection (b) could arguably ameliorate the plight of local agencies prospectively, but would be of no practical assistance to a local agency creditor seeking reimbursement for costs already incurred.

The first portion of each section, however, imposes a budgetary restriction on encumbering appropriated funds to reimburse for state-mandated costs arising out of compliance with the executive orders, **[***40]** absent a specific appropriation pursuant to subparagraph (b). For the reasons stated above, this substantive language is invalid under the single subject rule. It attempts **[**811]** to amend existing statutory law and is unrelated to the Budget Acts' main purpose of appropriating funds to support the annual budget. (Association for Retarded Citizens v. Department of Developmental Services, supra, 38 Cal.3d at p. 394.) Now unfettered by invalid restrictions, the appropriations involved in this case are reasonably available for reimbursement.

[*547] C. *The Legislature's Plenary Power to Regulate Worker Safety Does Not Affect the Right to Reimbursement*

CA(18)[] **(18)** State contends that article XIV, section 4 of the California Constitution vests the Legislature with unlimited plenary power to create and enforce a complete workers' compensation system. It postulates that the Legislature may determine that the interest in worker safety and health is furthered by requiring local agencies to bear the costs of safety devices. This non sequitur is advanced without citation of authority.

HN33[] Article XIV, section 4 concerns the power to enact workers' compensation statutes and regulations. **[***41]** It does not focus on the issue of reimbursement for state-mandated costs, which is covered by Revenue and Taxation Code section 2207 and former section 2231, and article XIII B, section 6. Since these latter provisions do not effect a pro tanto repeal of the Legislature's plenary power over workers' compensation law (see County of Los Angeles v. State of California, supra, 43 Cal.3d 46), they do not conflict with article XIV, section 4.

Moreover, even though the reimbursement issue has come before the Legislature repeatedly since 1972, no law has been enacted to exempt compliance with workers' compensation executive orders from the mandatory reimbursement provisions of Revenue and Taxation Code section 2207 and former section 2231. Likewise, article XIII B, section 6 does not provide an exception to the obligation to reimburse local agencies for compliance with these safety orders.

D. *Pre-1980 Claims Are Reimbursable Under Article XIII B, Section 6, Effective July 1, 1980*

CA(19)[] **(19)** State further argues that to the extent County's claims for fiscal years 1978-1979 and 1979-1980 are predicated on the subvention provisions of article XIII B, section 6, they fall within a **[***42]** "window period" of nonreimbursement. This assertion emanates from section 6, subdivision (c), which states that the Legislature "[may], but need not," provide reimbursement for mandates enacted before January 1, 1975. State reasons that because the constitutional amendment did not become effective until July 1, 1980, claims for costs incurred between January 1, 1975 and June 30, 1980, need not be reimbursed.

This notion was rejected in City of Sacramento v. State of California, supra, 156 Cal.App.3d at p. 182 on behalf of local agencies seeking reimbursement of unemployment insurance costs mandated by a 1978 statute. Basing its decision on well-settled principles of constitutional interpretation **[*548]** and upon a prior published opinion of the Attorney General, the court interpreted HN34[] section 6, subdivision (c) as follows: "[The] Legislature *may* reimburse mandates enacted prior to January 1, 1975, and *must* reimburse mandates passed after that date, but does not have to begin such reimbursement until the effective date of article XIII B (July 1, 1980)." (Id. at p. 191, italics in original.) In other words, the amendment operates on "window period" mandates **[***43]** even though the reimbursement process may not actually commence until later.

We agree with this reasoning and find costs incurred by County under the 1978 executive orders subject to reimbursement under the Constitution.

E. *Claims Under Revenue and Taxation Code Section 2207 and Former Section 2231 Are Not Time-barred*

CA(20)[] **(20)** State collaterally asserts that to the extent County bases its claims on Revenue and Taxation Code section 2207 and former **[**812]** section 2231, they are barred by Code of Civil Procedure sections 335 and 338, subdivision 1. This omnibus challenge to the order directing payment has no merit.

HN35[] Code of Civil Procedure section 335 is a general introductory section to the statute of limitations for all matters except recovery of real property. Code of Civil Procedure section 338, subdivision 1 requires "[an] action upon a liability created by statute" to be commenced within three years.

HN36[] A claimant does not exhaust its administrative remedies and cannot come under the court's jurisdiction until the legislative process is complete. (County of Contra Costa v. State of California (1986) 177 Cal.App.3d 62, 77 [222 Cal.Rptr. 750].) Here, County pursued **[***44]** its remedy before the Board and prevailed. Thereafter, as required by law, appropriate legislation was introduced. Both the Board hearings and the subsequent efforts to secure legislative appropriations were part of the legislative process. (Former Rev. & Tax. Code, § 2255, subd. (a).) It was not until the legislation was enacted sans appropriations on September 30, 1981 (S.B. 1261) and February 12, 1982 (A.B. 171) that it became unmistakably clear that this process had ended and State had breached its duty to reimburse. At these respective moments of breach, County's right of action in traditional mandamus accrued. County's petition was filed on September 21, 1984, within the three-year statutory period. [17] (Lerner v. Los Angeles City Board of Education, supra, 59 Cal.2d at p. 398.)

[*45] [*549]** F. Government Code Section 17612's *Remedy for Unfunded Mandates Does Not Supplant the Court's Order*

State continues its general attack on the order directing payment by arguing that the Legislature has "defined" the remedy available to a local agency if a mandate is unfunded. That remedy is found in HN37[] Government Code section 17612, subdivision (b) and reads: "If the Legislature deletes from a local government claims bill funding for a mandate, the local agency . . . *may* file in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement." (Italics added.) (See also former Rev. & Tax. Code, § 2255, subd. (c), eff. Oct. 1, 1982.)

State hints that this procedure is the only remedy available to a local agency if funding is not provided. At oral argument, State admitted that this declaration of enforceability and injunction against enforcement would be prospective only. This remedy would provide no relief to local agencies which have complied with the executive orders.

We conclude that Government Code section 17612, subdivision (b) is inapplicable here because it did not become **[***46]** operative until January 1, 1985. It was not in place when the Board rendered its decision on November 20, 1979; when funding was deleted from S.B. 1261 (Sept. 30, 1981) and A.B. 171 (Feb. 12, 1982); or when this litigation commenced on September 21, 1984. CA(21)[] **(21)** A party is not required to exhaust a remedy that was not in existence at the time the action was filed. (Ross v. Superior Court (1977) 19 Cal.3d 899, 912, fn. 9 [141 Cal.Rptr. 133, 569 P.2d 727].) To abide by this post facto legislation now would condone legislative interference in a specific controversy already assigned to the judicial branch for resolution. (Serrano v. Priest, supra, 131 Cal.App.3d at p. 201.)

Also, HN38[] this remedy is purely a discretionary course of action. By using the permissive word "may," the Legislature did not intend to override article XIII B, section 6 and Revenue and Taxation Code section 2207 and former section 2231. These constitutional and statutory imprimaturs each impose upon the State an obligation to reimburse for state-mandated **[**813]** costs. Once that determination is finally made, the State is under a clear and present ministerial duty to reimburse. In the absence of **[***47]** compliance, traditional mandamus lies. (Code Civ. Proc., § 1085.) [18]

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[17] Technically, Statute has waived the statute of limitations defense because it was not raised in its answer. (Ventura County Employees' Retirement Association v. Pope (1978) 87 Cal.App.3d 938, 956 [151 Cal.Rptr. 695].)

[18] We leave undecided the question of whether this type of legislation could ever be held to override California Constitution, article XIII B, section 6. HN39[] The Constitution of the State is supreme. Any statute in conflict therewith is invalid. (County of Los Angeles v. Payne, supra, 8 Cal.2d at p. 574.)

Similarly, HN40[] former Revenue and Taxation Code section 2255, subdivision (c) cannot abrogate the constitutional directive to reimburse.

[*550] G. *The Court's Order Properly Allows County the Right of Offset*

CA(22a)[] (22a) As the first in a series of objections to portions of the judgment which assist in the reimbursement process, State argues that the court has improperly authorized County to satisfy its claims by offsetting fines and forfeitures due to State. (Fn. 7, para. 5, *ante*.) The fines and forfeitures are those found in Penal Code sections 1463.02, 1463.03, 1463.5a and 1464; Government Code sections 13967, 26822.3 and [***48] 72056; Fish and Game Code section 13100; Health and Safety Code section 11502; and Vehicle Code sections 1660.7, 42004 and 41103.5. [19]

Broadly speaking, these statutes require County to periodically transfer all or part of the fines and forfeitures collected by it for specified law violations to the State Treasury. They are to be held there "to the credit" of various state agencies, or for payment into specific funds. State contends that since these statutes require mandatory, regular transfers and do not expressly permit diversion for other purposes, the court [***49] had no power to allow County to offset. State cites no authority for this contention.

CA(23)[] (23) HN41[] The right to offset is a long-established principle of equity. Either party to a transaction involving mutual debits and credits can strike a balance, holding himself owing or entitled only to the net difference. (Kruger v. Wells Fargo Bank (1974) 11 Cal.3d 352, 362 [113 Cal.Rptr. 449, 521 P.2d 441, 65 A.L.R.3d 1266].) Although this doctrine exists independent of statute, its governing principle has been partially codified (Code Civ. Proc., § 431.70) (limited to cross-demands for money).

The doctrine has been applied in favor of a local agency against the State. In County of Sacramento v. Lackner (1979) 97 Cal.App.3d 576 [159 Cal.Rptr.1], for example, the court of appeal upheld a trial court's decision to grant a writ of mandate that ordered funds awarded the County under a favorable judgment to be offset against its current liabilities to the State under the Medi-Cal program. The court stated that such an order does not interfere with the "Legislature's control over the 'submission, approval and enforcement of budgets . . . '" (Id. at p. 592, quoting Cal. Const., art. [***50] IV, § 12, subd. (e).)

CA(22b)[] (22b) The order herein likewise does not impinge upon the Legislature's exclusive power to appropriate funds or control budget matters. The identified [*551] fines and forfeitures are collected by the County for statutory law violations. Some of these funds remain with the County, while others are transferred to the State. State's portions are uncertain as to amount and date of transfer. State does not come into actual possession of these funds until they are transferred. State's holding of these funds "to the credit" of a particular agency, or for payment to a specific fund, does not commence until their receipt. Until that time, they are unencumbered, unrestricted and subject to offset.

H. *State's Use of its Statutory Offset Authority Was Properly Enjoined*

CA(24)[] (24) State further contends that the trial court exceeded its jurisdiction by enjoining [**814] the exercise of State's statutory offset authority until County is fully reimbursed. (Fn. 7, para. 11, *ante*.) [20] This order complemented that portion of the order discussed, *infra*, which allowed County to temporarily offset fines and forfeitures as an aid in the reimbursement process. [***51]

State correctly observes that it has not unlawfully used its offset authority during the course of this dispute. However, State has not needed to do so because it has adopted other means of avoiding payment on County's claims. In view of State's manifest reluctance to reimburse, and its otherwise unencumbered statutory right [***52] of offset, the trial court was well within its

[19] At oral argument, County conceded that the order authorizing offset of Fish and Game Code section 13100 fines and forfeitures is inappropriate. These collected funds must be spent exclusively for protection, conservation, propagation or preservation of fish, game, mollusks, or crustaceans, and for administration and enforcement of laws relating thereto, or for any such purpose. (Cal. Const., art. XVI, § 9; 20 Ops. Cal. Atty. Gen. 110 (1952).)

[20] HN42[] Government Code section 12419.5 provides: "The Controller may, in his discretion, offset any amount due a state agency from a person or entity, against any amount owing such person or entity by any state agency. The Controller may deduct from the claim, and draw his warrants for the amounts offset in favor of the respective state agencies to which due, and, for any balance, in favor of the claimant. . . . The amount due any person or entity from the state or any agency thereof is the net amount otherwise owing such person or entity after any offset as in this section provided." (See also Tyler v. State of California (1982) 134 Cal.App.3d 973, 975-976 [185 Cal.Rptr. 49].)

authority to prevent this method of frustrating County's collection efforts from occurring. (See County of Los Angeles v. State of California (1984) 153 Cal.App.3d 568 [200 Cal.Rptr. 394].)

I. *The Injunction Against Reversion or Dissipation of Undisbursed Appropriations Is Proper*

CA(25)[] **(25)** State continues that the order (fn. 7, para. 4, *ante*) enjoining it from directly or indirectly reverting the reimbursement award sum from the general fund line item accounts, and from otherwise dissipating that sum in a manner that would make it unavailable to satisfy this court's judgment, violates *Government Code section 16304.1.* [21] This section reverts undisbursed **[*552]** balances in any appropriation to the fund from which the appropriation was made. No authority is cited for State's proposition. To the contrary, County of Sacramento v. Loeb, supra, 160 Cal.App.3d at pp. 456-457 expressly confirms this type of ancillary remedy as a legitimate exercise of the court's authority to assist in collecting on an adjudicated debt, the payment of which has been delayed all too long.

[*53]** That portion of the order restraining reversion is particularly innocuous because it only affects undisbursed balances in an appropriation. At the time of reversion, it is crystal clear that these remaining funds are unneeded for the primary purpose for which appropriated; otherwise, they would not exist. Moreover, that portion of the order restraining dissipation of the reimbursement award sum in a manner that would make it unavailable to satisfy a court's judgment is similarly a proper exercise of the court's authority. By not reimbursing County for the state-mandated costs, State would be contravening its constitutional and statutory obligations to subvent. To the extent it is not reimbursed, County would be compelled, contrary to law, to bear the cost of complying with a state-imposed obligation.

J. *The Auditor Controller and the Specified Funds Are Not Indispensable Parties*

CA(26)[] **(26)** CA(27)[] **(27)** State next contends that the Auditor Controller of Los Angeles County and the "specified" fines and forfeitures County was allowed to offset are indispensable **[**815]** parties. Failure to join them in the action or to serve them with process purportedly renders the trial court's order void **[***54]** as in excess of its jurisdiction. [22] State cites only the general statutory definition of an indispensable party (Code Civ. Proc., § 389) to support this assertion.

HN45[] The Auditor Controller is an officer **[***55]** of the County and is subject to the **[*553]** direction and control of the County board of supervisors. (Gov. Code, §§ 24000, subds. (d), (e), 26880; L.A. County Code, § 2.10.010.) He is indirectly represented in these proceedings because his principal, the County, is the party litigant. Additionally, he claims no personal interest in the fines and forfeitures and his pro forma absence in no way impedes complete relief.

The funds created by the collected fines and forfeitures also are not indispensable parties. This is not an in rem proceeding, and the ownership of a particular stake is not in dispute. Rather, this is an action to compel a ministerial obligation imposed by law. Complete relief may be afforded without including the specified funds as a party.

K. *County is Entitled to Interest*

CA(28)[] **(28)** State insists that an award of interest to County unfairly penalizes State for not paying claims which it was prohibited by law from paying under

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[21] HN43[] ***Government Code section 16304.1*** provides: "Disbursements in liquidation of encumbrances may be made before or during the two years following the last day an appropriation is available for encumbrance . . . . Whenever, during [such two-year period], the Director of Finance determines that the project for which the appropriation was made is completed and that a portion of the appropriation is not necessary for disbursements, such portion shall, upon order of the Director of Finance, revert to and become a part of the fund from which the appropriation was made. Upon the expiration of two years . . . following the last day of the period of its availability, the undisbursed balance in any appropriation shall revert to and become a part of the fund from which the appropriation was made. . . ."

[22] HN44[] Code of Civil Procedure section 389, subdivision (a) provides: "A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party."

Statutes 1981, chapter 1090, section 3. This argument is unavailing.

HN46[] Civil Code section 3287, subdivision (a) allows interest to any person "entitled to recover damages certain, or capable of being made certain by calculation . . **[***56]** . ." Interest begins on the day that the right to recover vests in the claimant. By its own terms, this section applies to any judgment debtor, "including the state . . . or any political subdivision of the state."

The judgment orders interest at the legal rate from September 30, 1981, for reimbursement funds originally contained in S.B. 1261, and from February 12, 1982, for the funds originally contained in A.B. 171. These are the respective dates that the bills were enacted without appropriations. As we concluded earlier, County's cause of action did not arise and its right to recover did not vest until this legislative process was complete. County offers no authority to suggest that any other vesting date is appropriate.

Furthermore, State cannot avoid its obligation to pay interest by relying on the invalid budget control language in Statutes 1981, chapter 1090, section 3. HN47[] "An invalid statute voluntarily enacted and promulgated by the state is not a defense to its obligation to pay interest under Civil Code section 3287, subdivision (a)." (Olson v. Cory (1983) 35 Cal.3d 390, 404 [197 Cal.Rptr. 843, 673 P.2d 720].)

Appeal in Case No. 2 Civil B011941

(Rincon et **[***57]** al. Case)

The procedural history and legal issues raised in the *Rincon et al.* appeal are essentially similar to those discussed in the County of Los Angeles matter.

[*554] County, although not a party to this underlying trial court proceeding, filed a test claim with the Board. All parties agree that County represented the interests of the named respondents here.

The Board action resulted in a finding of state-mandated costs. It further found that Rincon et al. were entitled to reimbursement **[**816]** in the amount of $ 39,432. After the Legislature and the Governor, respectively, deleted the funding from the two appropriations bills, S.B. 1261 and A.B. 171, Rincon et al. filed a petition for writ of mandate and declaratory relief. This action was consolidated for hearing in the trial court with the action in B011942 (County of Los Angeles matter). The within judgment was also signed, filed and entered on February 6, 1985. The reimbursement order was directed against the 1984-1985 budget appropriations. State appeals from that judgment.

The court here included a judicial determination that the Board, or its successors, hear and approve the claims of certain other **[***58]** respondents for costs incurred in connection with the state-mandated program. (Fn. 7, para. 9, *ante*.) This special directive was necessary because the claims of these respondents (petitioners below) have not yet been determined. [23] Since we have ruled that State is barred by the doctrines of waiver and administrative collateral estoppel from raising the state mandate issue, the validity of these claims becomes a question of law susceptible to but one conclusion, and mandamus properly lies. (County of Sacramento v. Loeb, supra, 160 Cal.App.3d at p. 453.) This portion of the order also underscores, for the Board's edification, the determination that the statutory restriction on the Board authority to proceed is invalid. [24]

[*59]** Once again, our determinations and conclusions in the County of Los Angeles matter are equally applicable here.

Appeal in Case No. 2 Civil B006078

(Carmel Valley et al.)

Again, the procedural history and legal issues raised in this appeal are essentially similar to those discussed in the County of Los Angeles matter.

County filed a test claim with the Board. All parties agree that the County represented the interests of the named respondents here.

[*555] On December 17, 1980, the Board found that a state mandate existed and that specific amounts of reimbursement were due several respondents totalling $ 159,663.80. Following the refusal of the Legislature to appropriate funds for reimbursement, Carmel Valley et al. filed a petition for writ of mandate and declaratory relief on January 3, 1983. Judgment was entered on May 23, 1984. The reimbursement order was directed

[23] Responding to the budget control language directing it to refuse to process these claims, the Board declined to hear these matters.

[24] Because certain claims have not yet been processed, we assume that the issue of the amount of reimbursement may still be at large. Our record is not clear on this point.

against 1983-1984 budget appropriations.

The judgment differs from the other two because it does not decree a specific reimbursement amount. The trial court determined that even though the Board had approved the claims, the State was not precluded from contesting that determination. The court's reasons [***60] were that the State, in its answer, had denied that the money claimed was actually spent, and that Board approval had not been implemented by subsequent legislation. The court concluded that the reimbursement process, of which the Board action was an intrinsic part, was "aborted."

We disagree with this portion of the court's analysis. The moment S.B. 1261 and A.B. 171 were enacted into law without appropriations, Carmel Valley et al. had exhausted their administrative remedies and were entitled to seek a writ of mandate. At the time of trial, State was barred by the doctrines of waiver and administrative collateral estoppel from contesting the state mandate issue or the amount of reimbursement. The trial court therefore should have rendered a judgment for the amount of reimbursement. Having failed to do so, this fact-finding responsibility falls upon this court. Although we [**817] ordinarily are not equipped to handle this function, the writ of mandate in this case identifies the amount of the approved claims as $ 159,663.80. We accordingly will amend the judgment to reflect that amount.

The trial court also predicated its judgment for Carmel Valley et al. solely on the [***61] basis of Revenue and Taxation Code section 2207 and former section 2231. In doing so, the court did not have the benefit of the decision in City of Sacramento v. State of California, supra, 156 Cal.App.3d at p. 182. [25] That case held that mandates passed after January 1, 1975, must be reimbursed pursuant to article XIII B, section 6 of the California Constitution, but that reimbursement need not commence until July 1, 1980. In light of this rule, we conclude that the trial court's decision ordering reimbursement is also supported by article XIII B, section 6.

[*556] State raises another point specific to this particular appeal. In its answer to the writ petition, State admitted that the local agency expenditures were state mandated. [***62] Consequently, the issue was not contested at the trial court level. However, State vigorously contends here that it is not bound by its trial court admissions because the state mandate issue is purely a question of law.

CA(29)[] (29) State is correct in contending that HN48[] an appellate court is not limited by the interpretation of statutes given by the trial court. (City of Merced v. State of California, supra, 153 Cal.App.3d at p. 781.) However, State's victory on this point is Pyrrhic. Regardless of how the issue is characterized, State is precluded from contesting the Board findings on appeal because of the independent application of the doctrines of waiver and administrative collateral estoppel. These doctrines would also have applied at the trial court level if State's answer had raised the issue of state mandate in the first instance.

We also reject State's argument, advanced for the first time on appeal, that the executive orders of 1978 initially implement legislation enacted prior to January 1, 1975, and that state reimbursement is therefore discretionary. (Cal. Const., art. XIII B, § 6, subd. (c).) Again, State is barred by the doctrines of waiver and administrative collateral [***63] estoppel from arguing that costs incurred under the executive orders are not subject to reimbursement.

State continues that the *Carmel Valley* judgment against the Department of Industrial Relations is erroneous. Since the department was never made a party in the suit, nor served with process, the resulting judgment reflects a denial of due process and is in excess of the court's jurisdiction. (See Code Civ. Proc., § 389; fn. 22, *ante*.)

This assertion is but a variant of the same argument advanced in the County of Los Angeles case, *supra*, which we rejected as meritless. The department is part of the State of California. (Lab. Code, § 50.) State extensively argued the department's position and even offered into evidence a declaration from the chief of fiscal accounting of the department. As stated earlier, agents of the same government are in privity with each other. (People v. Sims, supra, 32 Cal.3d at p. 487.)

Ross v. Superior Court, supra, 19 Cal.3d at p. 899 demonstrates how, HN49[] through the notion of privity, a government agent can be held in contempt for knowingly violating a court order issued against another agent of the same government. There, [***64] a court

[25] The decision in City of Sacramento, supra, was filed just one day before the trial court signed the written order in this case. The Revenue and Taxation Code sections on which the court relied were operational before the costs claimed in this case were incurred.

in an earlier proceeding had decided that defendant Department of Health and Welfare must pay unlawfully withheld welfare benefits to qualified recipients. The County Board of Supervisors, **[*557]** who were not parties to this action, knew about the court's order but refused to comply. The Supreme Court affirmed a trial court decision holding the Board in contempt for violating the **[**818]** order directing payment. The court reasoned that, as an agent of the Department of Health and Welfare, the Board did not collectively or individually need to be named as a party in order to be bound by a court order of which they had actual knowledge.

The determinations and conclusions in the County of Los Angeles case are likewise applicable here.

Modification of Judgments in All Three Appeals

The trial court judgments ordering reimbursement from specific account appropriations were entered many months ago. We will affirm these judgments and thereby validate the trial courts' determination that funds already appropriated for the State Department of Industrial Relations were reasonably available for payment at the time of the courts' orders.

Due to the passage of time, we requested **[***65]** State at oral argument to confirm whether the appropriations designated in the respective judgments are still available for encumbrance. State's counsel responded by rearguing that the weight of the evidence did not support the trial courts' findings that specific funds were reasonably available for reimbursement. Counsel further hinted that the funds may not actually be available.

We hope that counsel for the State is mistaken. But in order to emphasize our strong and unequivocal determination that the local agency petitioners be promptly reimbursed, we will take judicial notice of the enactment of the 1985-1986 Budget Act (Stats. 1985, ch. 111) and the 1986-1987 Budget Act (Stats. 1986, ch. 186). (Serrano v. Priest, supra, 131 Cal.App.3d at p. 197.) Both acts appropriate money for the State Department of Industrial Relations and fund the identical account numbers referred to in the trial courts' judgments. They are:

Go to table1

CA(30)[] **(30)** HN50[] An appellate court is **[***66]** empowered to add a directive that the trial court order be modified to include charging orders against funds appropriated by subsequent budget acts. (Serrano v. Priest, supra, 131 Cal.App.3d at pp. 198, 201.) We do so here with respect to all three judgments.

[*558] *2d Civ. B011942* (*County of Los Angeles Case*)

The judgment is modified as follows:

(1) The following sentence is added to paragraph 2: "If the hereinabove described funds are not available for reimbursement, the warrants shall be drawn against funds in the same account numbers enacted in the 1985-86 and 1986-87 Budget Acts."

(2) The words "Fish and Game Code Section 13100" are deleted from paragraph 5.

(3) The peremptory writ of mandate is modified to command the Controller to draw warrants, if necessary, against the same account numbers identified in the judgment as appropriated by the 1985-1986 and 1986-1987 Budget Acts.

As modified, the judgment is affirmed. Respondents to recover costs on appeal.

2d Civ. B011941 (*Rincon et al. Case*)

The judgment is modified as follows:

(1) The following sentence is added to paragraph 2: "If the hereinabove described funds are not available **[***67]** for reimbursement, the warrants shall be drawn against funds in the same account numbers enacted in the 1985-86 and 1986-87 Budget Acts."

[819]** (2) The peremptory writ of mandate is modified to command the Controller to draw warrants, if necessary, against the same account numbers identified in the judgment as appropriated by the 1985-1986 and 1986-1987 Budget Acts.

As modified, the judgment is affirmed. Respondents to recover costs on appeal.

2d Civ. B006078 (*Carmel Valley et al. Case*)

The judgment is modified as follows:

[*559] (1) The following sentences are added to paragraph 2: "The reimbursement amounts total $ 159,663.80. If the hereinabove described funds are not available for reimbursement, the warrants shall be drawn against funds in the same account numbers enacted in the 1985-86 and 1986-87 Budget Acts."

(2) The peremptory writ of mandate is modified to command the Controller to draw warrants, if necessary, against the same account numbers identified in the judgment as appropriated by the 1985-1986 and 1986-1987 Budget Acts.

As modified, the judgment is affirmed. Respondents to recover costs on appeal.

County of Los Angeles v. State of California

Supreme Court of California

January 2, 1987

L.A. No. 32106

Reporter

43 Cal. 3d 46 *; 729 P.2d 202 **; 233 Cal. Rptr. 38 ***; 1987 Cal. LEXIS 273 ****

COUNTY OF LOS ANGELES et al., Plaintiffs and Appellants, v. THE STATE OF CALIFORNIA et al., Defendants and Respondents. CITY OF SONOMA et al., Plaintiffs and Appellants, v. THE STATE OF CALIFORNIA et al., Defendants and Respondents

Subsequent History: [****1] Appellants' petition for a rehearing was denied February 26, 1987.

Prior History: Superior Court of Los Angeles County, Nos. C 424301 and C 464829, Leon Savitch and John L. Cole, Judges. The Court of Appeal, Second Dist., Div. Five, affirmed the first action; the second action was reversed and remanded to the State Board of Control for further and adequate findings (B001713 and B003561).

Disposition: The judgment of the Court of Appeal is reversed. Each side shall bear its own costs.

Core Terms

workers' compensation, reimbursement, local agency, increased level of service, local government, costs, Taxation, employees, mandated, programs, appropriation, benefits, subvention, changes, plenary power, subdivision, electorate, increases, repeal, constitutional provision, higher level of service, pro tanto repeal, increased cost, new program, Statutes, workers' compensation benefits, cost of living, state-mandated, requirements, discipline

Case Summary

Procedural Posture

Appellant county and city sought review of a decision of the Court of Appeals, Third Appellate District, Second Division (California), which held that state-mandated increases in workers' compensation benefits, that do not exceed the rise in the cost of living, were not costs which must be borne by respondent state under Cal. Const. art. XIII B, and its legislative implementing statutes.

Overview

Proceedings were initiated to determine whether legislation, which increased certain workers' compensation benefit payments, was subject to the command of Cal. Const. art. XIII B that local government costs mandated by respondent state must be funded by respondent. Appellant county and city sought review of the appellate court decision which held that state-mandated increases in workers' compensation benefits, that did not exceed the rise in the cost of living, were not costs which must be borne by respondent under Cal. Const. art. XIII B. On appeal, the court agreed that the State Board of Control properly denied appellants' claims but the court's conclusion rested on entirely new grounds. Thus, the judgment was reversed on a finding that appellants' petitions for writs of mandate to compel approval of appellants' claims lacked merit and should have been denied outright. The court concluded that Cal. Const. art. XIII B, § 6 had no application to, and respondent need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers' compensation benefits that employees of private individuals or organizations received.

Outcome

The judgment of the court of appeal was reversed in favor of respondent state. The court concluded that appellant county and city's reimbursement claims were both properly denied by the California State Board of Control. Their petitions for writs of mandate seeking to compel the board to approve the claims lacked merit and should have been denied by the superior court without the necessity of further proceedings before the board.

LexisNexis® Headnotes

Workers' Compensation & SSDI > Administrative Proceedings > Awards > Enforcement

Governments > Local Governments > Finance

Governments > Public Improvements > General Overview

Governments > Legislation > Interpretation

Workers' Compensation & SSDI > Coverage > Employment Status > Governmental Employees

HN1[] **Enforcement**

The legislative intent of the Cal. Const. art. XIII B was subvention for the expense or increased cost of programs administered locally and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities. In using the word "programs" the commonly understood meaning of the term was meant, as in programs which carry out the governmental function of providing services to the public.

Governments > Legislation > Expiration, Repeal & Suspension

HN2[] **Expiration, Repeal & Suspension**

It is ordinarily to be presumed that the legislature by deleting an express provision of a statute intended a substantial change in the law.

Governments > Legislation > Interpretation

HN3[] **Interpretation**

In construing the meaning of the constitutional provision, the court's inquiry is not focussed on what the legislature intended in adopting the former statutory reimbursement scheme, but rather on what the voters meant when they adopted Cal. Const. art. XIII B. To determine this intent, the court must look to the language of the provision itself.

Governments > Local Governments > Elections

Governments > Legislation > Enactment

Governments > Legislation > Types of Statutes

HN4[] **Elections**

Although a bill for state subvention for the incidental cost to local governments of general laws may be passed by simple majority vote of each house of the legislature pursuant to Cal. Const. art. IV, § 8(b), the revenue measures necessary to make them effective may not. A bill which will impose costs subject to subvention of local agencies must be accompanied by a revenue measure providing the subvention required by Cal. Const. art. XIII B. Cal. Rev. & Tax. Code § 2255(c). Revenue bills must be passed by two-thirds vote of each house of the legislature. Cal. Const. art. IV, § 12(d).

Workers' Compensation & SSDI > Benefit Determinations > General Overview

Governments > State & Territorial Governments > Relations With Governments

Governments > Local Governments > Duties & Powers

Governments > Public Improvements > General Overview

Business & Corporate Compliance > ... > Disability & Unemployment Insurance > Unemployment Compensation > Scope & Definitions

Workers' Compensation & SSDI > General Overview

Workers' Compensation & SSDI > Administrative Proceedings > Awards > Enforcement

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > General Overview

Workers' Compensation & SSDI > ... > Course of Employment > Activities Related to

Employment > Emergencies

HN5[] In no sense can employers, public or private, be considered to be administrators of a program of workers' compensation or to be providing services incidental to administration of the workers' compensation program. Workers' compensation is administered by the state through the Division of Industrial Accidents and the Workers' Compensation Appeals Board. Cal. Lab. Code § 3201 et seq. Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of Cal. Const. art. XIII B, § 6.

Governments > Legislation > Interpretation

HN6[] **Interpretation**

In the absence of irreconcilable conflict among their various parts, constitutional provisions must be harmonized and construed to give effect to all parts.

Workers' Compensation & SSDI > Coverage > General Overview

Governments > Legislation > Effect & Operation > General Overview

HN7[] Cal. Const. art. XIV, § 4 gives the legislature plenary power, unlimited by any provision of the California Constitution, over workers' compensation.

Workers' Compensation & SSDI > Coverage > General Overview

Governments > Legislation > Effect & Operation > General Overview

HN8[] See Cal. Const. art. XIV, § 4.

Governments > Legislation > Expiration, Repeal & Suspension

HN9[] **Expiration, Repeal & Suspension**

A pro tanto repeal of conflicting state constitutional provisions removes "insofar as necessary" any restrictions which would prohibit the realization of the objectives of the new article.

Headnotes/Summary

Summary
CALIFORNIA OFFICIAL REPORTS SUMMARY

The trial court denied a petition for writ of mandate to compel the State Board of Control to approve reimbursement claims of local government entities, for costs incurred in providing an increased level of service mandated by the state for workers' compensation benefits. The trial court found that Cal. Cosnt., art. XIII B, § 6, requiring reimbursement when the state mandates a new program or a higher level of service, is subject to an implied exception for the rate of inflation. In another action, the trial court, on similar claims, granted partial relief and ordered the board to set aside its ruling denying the claims. The trial court, in this second action, found that reimbursement was not required if the increases in benefits were only cost of living increases not imposing a higher or increased level of service on an existing program. Thus, the second matter was remanded due to insubstantial evidence and legally inadequate findings. (Superior Court of Los Angeles County, Nos. C 424301 and C 464829, Leon Savitch and John L. Cole, Judges.) The Court of Appeal, Second Dist., Div. Five, Nos. B001713 and B003561 affirmed the first action; the second action was reversed and remanded to the State Board of Control for further and adequate findings.

The Supreme Court reversed the judgment of the Court of Appeal, holding that the petitions lacked merit and should have been denied by the trial court without the necessity of further proceedings before the board. The court held that when the voters adopted art. XIII B, § 6, their intent was not to require that state to provide subvention whenever a newly enacted statute results incidentally in some cost to local agencies, but only to require subvention for the expense or increased cost of programs administered locally, and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities. Thus, the court held, reimbursement was not required by art. XIII B, § 6. Finally, the court held that no pro tanto repeal of Cal.

Const., art. XIV, § 4 (workers' compensation), was intended or made necessary by the adoption of art. XIII B, § 6. (Opinion by Grodin, J., with Bird, C. J., Broussard, Reynoso, Lucas and Panelli, JJ., concurring. Separate concurring opinion by Mosk, J.)

Headnotes
CALIFORNIA OFFICIAL REPORTS HEADNOTES

Classified to California Digest of Official Reports, 3d Series

CA(1)[] (1)

State of California § 12—Fiscal Matters—Appropriations—Reimbursement to Local Governments—Costs to Be Reimbursed.

--When the voters adopted Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for new programs and services), their intent was not to require the state to provide subvention whenever a newly enacted statute resulted incidentally in some cost to local agencies. Rather, the drafters and the electorate had in mind subvention for the expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities.

CA(2)[] (2)

Statutes § 18—Repeal—Effect—"Increased Level of Service."

--The statutory definition of the phrase "increased level of service," within the meaning of Rev. Tax. Code, § 2207, subd. (a) (programs resulting in increased costs which local agency is required to incur), did not continue after it was specifically repealed, even though the Legislature, in enacting the statute, explained that the definition was declaratory of existing law. It is ordinarily presumed that the Legislature, by deleting an express provision of a statute, intended a substantial change in the law.

[See Am.Jur.2d, Statutes, § 384.]

CA(3)[] (3)

Constitutional Law § 13—Construction of Constitutions—Language of Enactment.

--In construing the meaning of an initiative constitutional provision, a reviewing court's inquiry is focused on what the voters meant when they adopted the provision. To determine this intent, courts must look to the language of the provision itself.

CA(4)[] (4)

Constitutional Law § 13—Construction of Constitutions—Language of Enactment—"Program"

--The word "program," as used in Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for new programs and services), refers to programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.

CA(5)[] (5)

State of California § 12—Fiscal Matters—Appropriations—Reimbursement to Local Governments—Increases in Workers' Compensation Benefits.

--The provisions of Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for nw programs and services), have no application to, and the state need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers' compensation benefits that employees of private individuals or organizations receive. Although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of art. XIII B, § 6. Accordingly, the State Board of Control properly denied reimbursement to local governmental entities for costs incurred in providing state-mandated increases in workers' compensation benefits. (Disapproving City of Sacramento v. State of California (1984) 156 Cal. App. 3d 182 [203 Cal. Rptr. 258], to the extent it reached a different conclusion with respect to expenses incurred by local entities as the result of a newly enacted law requiring that all public employees by covered by unemployment insurance.)

[See **Cal.Jur.3d,** State of California, § 78.]

CA(6)[] (6)

Constitutional Law § 14—Construction of Constitutions—Reconcilable and Irreconcilable Conflicts.

--Controlling principles of construction require that in the absence of irreconcilable conflict among their various parts, constitutional provisions must be harmonized and construed to give effect to all parts.

CA(7)[] (7)

Constitutional Law § 14—Construction of Constitutions—Reconcilable and Irreconcilable Conflicts—Pro Tanto Repeal of Constitutional Provision.

--The goals of Cal. Const., art XIII B, § 6 (reimbursement to local agencies for new programs and services), were to protect residents from excessive taxation and government spending, and to preclude a shift of financial responsibility for governmental functions from the state to local agencies. Since these goals can be achieved in the absence of state subvention for the expense of increases in workers' compensation benefit levels for local agency employees, the adoption of art. XIII B, § 6, did not effect a pro tanto repeal of Cal. Const., art. XIV, § 4, which gives the Legislature plenary power over workers' compensation.

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Judges: Opinion by Grodin, J., with Bird, C. J., Broussard, Reynoso, Lucas and Panelli, JJ., concurring. Separate concurring opinion by Mosk, J.

Opinion by: GRODIN

Opinion

[*49] [203] [***38]** We are asked in this proceeding to determine whether legislation enacted in 1980 and 1982 increasing certain workers' compensation benefit payments is subject to the command of article XIII B of the California Constitution that local government costs mandated by the state must be funded by the state. The County of Los Angeles and the City of Sonoma sought review by this court of a decision of the Court of Appeal which held that state-mandated increases **[***39]** in workers' compensation benefits that do not exceed the rise in the cost of living are not costs which must be borne by the state under article XIII B, an initiative constitutional provision, and legislative implementing **[****3]** statutes.

Although we agree that the State Board of Control properly denied plaintiffs' claims, our conclusion rests on grounds other than those relied upon by the Court of Appeal, and requires that its judgment be reversed. CA(1)[] **(1)** We conclude that when the voters adopted article XIII B, section 6, their intent was not to require the state to provide subvention whenever a newly enacted statute resulted incidentally in some cost to local agencies. HN1[] Rather, the drafters and the electorate had in mind subvention for the expense or **[*50]** increased cost of programs administered locally and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities. In using the word "programs" they had in mind the commonly understood meaning of the term, programs which carry out the governmental function of providing services to the public. Reimbursement for the cost or increased cost of providing workers' compensation benefits to employees of local agencies is not, therefore, required by section 6.

We recognize also the potential conflict between article

XIII B and the grant of plenary power over workers' [****4] compensation bestowed upon the Legislature by section 4 of article XIV, but in accord with established rules of construction our construction of article XIII B, section 6, harmonizes these constitutional provisions.

I

On November 6, 1979, the voters approved an initiative measure which added article XIII B to the California Constitution. That article imposed spending limits on the state and local governments and provided in section 6 (hereafter section 6): "Whenever the Legislature or any state agency mandates a new program or higher level of [**204] service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [para.] (a) Legislative mandates requested by the local agency affected; [para.] (b) Legislation defining a new crime or changing an existing definition of a crime; or [para.] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." No [****5] definition of the phrase "higher level of service" was included in article XIII B, and the ballot materials did not explain its meaning. [1]

The genesis of this action was the enactment in 1980 and 1982, after article XIII B had been adopted, of laws increasing the amounts which [*51] employers, [****6] including local governments, must pay in workers' compensation benefits to injured employees and families of deceased employees.

The first of these statutes, Assembly, Bill No. 2750 (Stats. 1980, ch. 1042, p. 3328), amended several sections of the Labor Code related to workers' compensation. The amendments of Labor Code sections 4453, 4453.1 and 4460 increased the maximum weekly wage upon which temporary and permanent disability indemnity is computed from $ 231 per week to $ 262.50 per week. The amendment of section 4702 of the Labor Code increased certain death benefits from $ 55,000 to $ 75,000. No appropriation [***40] for increased state-mandated costs was made in this legislation. [2]

[****7] Test claims seeking reimbursement for the increased expenditure mandated by these changes were filed with the State Board of Control in 1981 by the County of San Bernardino and the City of Los Angeles. The board rejected the claims, after hearing, stating that the increased maximum workers' compensation benefit levels did not change the terms or conditions under which benefits were to be awarded, and therefore did not, by increasing the dollar amount of the benefits, create an increased level of service. The first of these consolidated actions was then filed by the County of Los Angeles, the County of San Bernardino, and the City of San Diego, seeking a writ of mandate to compel the board to approve the reimbursement claims for costs incurred in providing an increased level of service mandated by the state pursuant to Revenue and Taxation Code section 2207. [3] They also sought a declaration that because the State of California and the

[1] The analysis by the Legislative Analyst advised that the state would be required to "reimburse local governments for the cost of complying with 'state mandates.' 'State mandates' are requirements imposed on local governments by legislation or executive orders." Elsewhere the analysis repeats: "[The] initiative would establish a requirement that the state provide funds to reimburse local agencies for the cost of complying with state mandates . . . .

The one ballot argument which made reference to section 6, referred only to the "new program" provision, stating, "Additionally, this measure [para.] (1) will not allow the state government to force programs on local governments without the state paying for them."

[2] The bill was approved by the Governor and filed with the Secretary of State on September 22, 1980. Prior to this, the Assembly gave unanimous consent to a request by the bill's author that his letter to the Speaker stating the intent of the Legislation be printed in the Assembly Journal. The letter stated: (1) that the Assembly Ways and Means Committee had recommended approval without appropriation on grounds that the increases were a result of changes in the cost of living that were not reimbursable under either Revenue and Taxation Code section 2231, or article XIII B; (2) the Senate Finance Committee had rejected a motion to add an appropriation and had approved a motion to concur in amendments of the Conference Committee deleting any appropriation.

Legislative history confirms only that the final version of Assembly Bill No. 2750, as amended in the Assembly on April 16, 1986, contained no appropriation. As introduced on March 4, 1980, with a higher minimum salary of $ 510 on which to base benefits, an unspecified appropriation was included.

[3] The superior court consolidated another action by the County of Butte, Novato Fire Protection District, and the Galt Unified School District with that action. Neither those plaintiffs nor the County of San Bernardino are parties to the appeal.

board were obliged by article XIII B to reimburse them, they were not obligated to [**205] pay the increased benefits until the state provided reimbursement.

[****8] The superior court denied relief in that action. The court recognized that although increased benefits reflecting cost of living raises were not expressly [*52] excepted from the requirement of state reimbursement in section 6 the intent of article XIII B to limit governmental expenditures to the prior year's level allowed local governments to make adjustment for changes in the cost of living, by increasing their own appropriations. Because the Assembly Bill No. 2750 changes did not exceed cost of living changes, they did not, in the view of the trial court, create an "increased level of service" in the existing workers' compensation program.

The second piece of legislation (Assem. Bill No. 684), enacted in 1982 (Stats. 1982, ch. 922, p. 3363), again changed the benefit levels for workers' compensation by increasing the maximum weekly wage upon which benefits were to be computed, and made other changes among which were: The bill increased minimum weekly earnings for temporary and permanent total disability from $ 73.50 to $ 168, and the maximum from $ 262.50 to $ 336. For permanent partial disability the weekly wage was raised from a minimum of $ 45 to $ 105, and from a maximum [****9] of $ 105 to $ 210, in each case for injuries occurring on or after January 1, 1984. (Lab. Code, § 4453.) A $ 10,000 limit on additional compensation for injuries resulting from serious and willful employer misconduct was removed (Lab. Code, § 4553), and the maximum death benefit was raised from $ 75,000 to $ 85,000 for deaths in 1983, and to $ 95,000 for deaths on or after January 1, 1984. (Lab. Code, § 4702.)

Again the statute included no appropriation and this time the statute expressly acknowledged that the omission was made "[notwithstanding] section 6 of Article XIIIB of the California Constitution and section 2231 . . . of the Revenue and Taxation [***41] Code." (Stats. 1982, ch. 922, § 17, p. 3372.) [4]

[****10] Once again test claims were presented to the State Board of Control, this time by the City of Sonoma, the County of Los Angeles, and the City of San Diego. Again the claims were denied on grounds that the statute made no change in the terms and conditions under which workers' compensation benefits were to be awarded, and the increased costs incurred as a result of higher benefit levels did not create an increased level of service as defined in Revenue and Taxation Code section 2207, subdivision (a).

The three claimants then filed the second action asking that the board be compelled by writ of mandate to approve the claims and the state to pay them, and that chapter 922 be declared unconstitutional because it was not adopted in conformity with requirements of the Revenue and Taxation Code or [*53] section 6. The trial court granted partial relief and ordered the board to set aside its ruling. The court held that the board's decision was not supported by substantial evidence and legally adequate findings on the presence of a state-mandated cost. The basis for this ruling was the failure of the board to make adequate findings on the possible impact [****11] of changes in the burden of proof in some workers' compensation proceedings (Lab. Code, § 3202.5); a limitation on an injured worker's right to sue his employer under the "dual capacity" exception to the exclusive remedy doctrine (Lab. Code, §§ 3601- 3602); and changes in death and disability benefits and in liability in serious and wilful misconduct cases. (Lab. Code, § 4551.)

The court also held: "[The] changes made by chapter 922, Statutes of 1982 may be excluded from state-mandated costs if that change effects a cost of living increase which does not impose a higher or increased level of service on an existing program." The City of Sonoma, the County of Los Angeles, and the City of San Diego [**206] appeal from this latter portion of the judgment only.

II

The Court of Appeal consolidated the appeals. The court identified the dispositive issue as whether legislatively mandated increases in workers' compensation benefits constitute a "higher level of service" within the meaning of section 6, or are an "increased level of service" [5] described in subdivision (a) of Revenue and Taxation Code section 2207 [****12] . The parties did not question the

[4] The same section "recognized," however, that a local agency "may pursue any remedies to obtain reimbursement available to it" under the statutes governing reimbursement for state-mandated costs in chapter 3 of the Revenue and Taxation Code, commencing with section 2201.

[5] The court concluded that there was no legal or semantic difference in the meaning of the terms and considered the intent or purpose of the two provisions to be identical.

proposition that higher benefit payments might constitute a higher level of "service." The dispute centered on whether higher benefit payments which do not exceed increases in the cost of living constitute a higher level of service. Appellants maintained that the reimbursement requirement of section 6 is absolute and permits no implied or judicially created exception for increased costs that do not exceed the inflation rate. The Court of Appeal addressed the problem as one of defining "increased level of service."

The court rejected appellants' argument that a definition of "increased level of service" that once had been included in section 2231, subdivision (e) of the Revenue and Taxation Code should be applied. That definition brought any law that imposed "additional costs" within the scope of "increased [****13] level of service." The court concluded that the repeal of section 2231 in 1975 (Stats. 1975, ch. 486, § 7, pp. 999-1000) and the failure of the Legislature by statute or the electorate in article XIII B to readopt the [*54] definition must be treated as reflecting an intent to change the law. (Eu v. Chacon (1976) 16 Cal.3d 465, 470 [128 Cal. Rptr. 1, 546 P.2d 289].) [6] On that basis the court [***42] concluded that increased costs were no longer tantamount to an increased level of service.

[****14] The court nonetheless assumed that an increase in costs mandated by the Legislature did constitute an increased level of service if the increase exceeds that in the cost of living. The judgment in the second, or "Sonoma" case was affirmed. The judgment in the first, or "Los Angeles" case, however, was reversed and the matter "remanded" to the board for more adequate findings, with directions. [7]

III

The Court of Appeal did not articulate the basis for its conclusion that costs in excess of the increased cost of living do constitute a reimbursable increased level of service within the meaning of section 6. Our task in ascertaining [****15] the meaning of the phrase is aided somewhat by one explanatory reference to this part of section 6 in the ballot materials.

A statutory requirement of state reimbursement was in effect when section 6 [**207] was adopted. That provision used the same "increased level of service" phraseology but it also failed to include a definition of "increased level of service," providing only: "Costs mandated by the state' means any increased costs which a local agency is required to incur as a result of the following: [para.] (a) Any law . . . which mandates a new program or an increased level of service of an existing program." (Rev. & Tax. Code § 2207.) As noted, however, the definition of that term which had been [*55] included in Revenue and Taxation Code section 2164.3 as part of the Property Tax Relief Act of 1972 (Stats. 1972, ch. 1406, § 14.7, p. 2961), had been repealed in 1975 when Revenue and Taxation Code section 2231, which had replaced section 2164.3 in 1973, was repealed and a new section 2231 enacted. (Stats. 1975. ch. 486, §§ 6 & 7, p. 999.) [8] Prior to

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[6] The Court of Appeal also considered the expression of legislative intent reflected in the letter by the author of Assembly Bill No. 2750 (see fn. 2, *ante*). While consideration of that expression of intent may have been proper in construing Assembly Bill No. 2750, we question its relevance to the proper construction of either section 6, adopted by the electorate in the prior year, or of Revenue and Taxation Code section 2207, subdivision (a) enacted in 1975. (Cf. California Employment Stabilization Co. v. Payne (1947) 31 Cal.2d 210, 213-214 [187 P.2d 702].) There is no assurance that the Assembly understood that its approval of printing a statement of intent as to the later bill was also to be read as a statement of intent regarding the earlier statute, and it was not relevant to the intent of the electorate in adopting section 6.

The Court of Appeal also recognized that the history of Assembly Bill No. 2750 and Statutes 1982, chapter 922, which demonstrated the clear intent of the Legislature to omit any appropriation for reimbursement of local government expenditures to pay the higher benefits precluded reliance on reimbursement provisions included in benefit-increase bills passed in earlier years. (See e.g., Stats. 1973, chs. 1021 and 1023.)

[7] We infer that the intent of the Court of Appeal was to reverse the order denying the petition for writ of mandate and to order the superior court to grant the petition and remand the matter to the board with directions to set aside its order and reconsider the claim after making the additional findings. (See Code Civ. Proc. § 1094.5, subd. (f).)

[8] Pursuant to the 1972 and successor 1973 property tax relief statutes the Legislature had included appropriations in measures which, in the opinion of the Legislature, mandated new programs or increased levels of service in existing programs (see, e.g., Stats. 1973, ch. 1021, § 4, p. 2026; ch. 1022, § 2, p. 2027; Stats. 1976, ch. 1017, § 9, p. 4597) and reimbursement claims filed with the State Board of Control pursuant to Revenue and Taxation Code sections 2218-2218.54 had been honored. When the Legislature fails to include such appropriations there is no judicially enforceable remedy for the statutory violation notwithstanding the

repeal, Revenue and Taxation Code section 2164.3 [****16] , and later section 2231, after providing in subdivision (a) for state reimbursement, explained in subdivision (e) that ""Increased level of service' means any requirement mandated by state law or executive regulation . . . which makes necessary expanded or additional costs to a county, city and county, city, or special district." (Stats. 1972, ch. 1406, § 14.7, p. 2963.)

[****17] [***43] CA(2)[] (2) Appellants contend that despite its repeal, the definition is still valid, relying on the fact that the Legislature, in enacting section 2207, explained that the provision was "declaratory of existing law." (Stats. 1975, ch. 486, § 18.6, p. 1006.) We concur with the Court of Appeal in rejecting this argument. HN2[] "[I]t is ordinarily to be presumed that the Legislature by deleting an express provision of a statute intended a substantial change in the law." (Lake Forest Community Assn. v. County of Orange (1978) 86 Cal. App. 3d 394, 402 [150 Cal. Rptr. 286]; see also Eu v. Chacon, supra, 16 Cal.3d 465, 470.) Here, the revision was not minor: a whole subdivision was deleted. As the Court of Appeal noted, "A change must have been intended; otherwise deletion of the preexisting definition makes no sense."

Acceptance of appellants' argument leads to an unreasonable interpretation of section 2207. If the Legislature had intended to continue to equate "increased level of service" with "additional costs," then the provision would be circular: "costs mandated by the state" are defined as "increased costs" due to an "increased [****18] level of service," which, in turn, would be defined as "additional costs." We decline to accept such an interpretation. Under the repealed provision, "additional costs" may have been deemed tantamount to an "increased level of service," but not under the post-1975 statutory scheme. Since that definition has been repealed, an act of which the drafters of section 6 and the electorate are presumed to have been [*56] aware, we may not conclude that an intent existed to incorporate the repealed definition into section 6.

CA(3)[] (3) HN3[] In construing the meaning of the constitutional provision, our inquiry is not focussed on what the Legislature intended in adopting the former statutory reimbursement scheme, but rather on what the voters meant when they adopted article XIII B in 1979. To determine this intent, we must look to the language of the provision itself. (ITT World Communications, Inc. v. City and County of San Francisco (1985) 37 Cal.3d 859, 866 [210 Cal. Rptr. 226, 693 P.2d 811].) In section 6, the electorate commands [**208] that the state reimburse local agencies for the cost of any "new program or higher level of service." Because workers' [****19] compensation is not a new program, the parties have focussed on whether providing higher benefit payments constitutes provision of a higher level of service. As we have observed, however, the former statutory definition of that term has been incorporated into neither section 6 nor the current statutory reimbursement scheme.

CA(4)[] (4) Looking at the language of section 6 then, it seems clear that by itself the term "higher level of service" is meaningless. It must be read in conjunction with the predecessor phrase "new program" to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing "programs." But the term "program" itself is not defined in article XIII B. What programs then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term -- programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and [****20] do not apply generally to all residents and entities in the state.

The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public. In their ballot arguments, the proponents of article XIII B explained section 6 to the voters: "Additionally, this measure: (1) Will not allow the state government to *force programs* on local governments without the state paying for them." (Ballot Pamp., Proposed Amend. to Cal. Const. with arguments [***44] to voters, Spec. Statewide Elec. (Nov. 6, 1979) p. 18. Italics added.) In this context the phrase "to force programs on local governments" confirms that the intent underlying section 6 was to require reimbursement to

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command of Revenue and Taxation Code section 2231, subdivision (a) that "[the] state shall reimburse each local agency for all 'costs mandated by the state,' as defined in Section 2207" and the additional command of subdivision (b) that any statute imposing such costs "provide an appropriation therefor." (County of Orange v. Flournoy (1974) 42 Cal. App. 3d 908, 913 [117 Cal. Rptr. 224].)

local agencies for the costs involved in carrying out functions peculiar to government, not [*57] for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities. [****21] Laws of general application are not passed by the Legislature to "force" programs on localities.

The language of section 6 is far too vague to support an inference that it was intended that each time the Legislature passes a law of general application it must discern the likely effect on local governments and provide an appropriation to pay for any incidental increase in local costs. We believe that if the electorate had intended such a far-reaching construction of section 6, the language would have explicitly indicated that the word "program" was being used in such a unique fashion. (Cf. *Fuentes v. Workers' Comp. Appeals Bd. (1976) 16 Cal.3d 1, 7 [128 Cal. Rptr. 673, 547 P.2d 449]*; *Big Sur Properties v. Mott (1976) 63 Cal. App. 3d 99, 105 [132 Cal. Rptr. 835]*.) Nothing in the history of article XIII B that we have discovered, or that has been called to our attention by the parties, suggests that the electorate had in mind either this construction or the additional indirect, but substantial impact it would have on the legislative process.

HN4[] Were section 6 construed to require state subvention for the incidental cost to local governments [****22] of general laws, the result would be far-reaching indeed. Although such laws may be passed by simple majority vote of each house of the Legislature (art. IV, § 8, subd. (b)), the revenue measures necessary to make them effective may not. A bill which will impose costs subject to subvention of local agencies must be accompanied by a revenue measure providing the subvention required by article XIII B. (*Rev. & Tax. Code, §§ 2255, subd. (c)*.) Revenue bills must be passed by two-thirds vote of each house of the Legislature. (Art. IV, § 12, subd. (d).) Thus, were we to construe section 6 as [**209] applicable to general legislation whenever it might have an incidental effect on local agency costs, such legislation could become effective only if passed by a supermajority vote. [9] Certainly no such intent is reflected in the language or history of article XIII B or section 6.

[****23] CA(5)[] (5) We conclude therefore that section 6 has no application to, and the state need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers' compensation [*58] benefits that employees of private individuals or organizations receive. [10] Workers' compensation is not a program administered by local agencies to provide service to the public. Although local agencies must provide benefits to their employees either through insurance or direct payment, they are indistinguishable in this respect from private employers. HN5[] In no sense can employers, public or private, be considered to be administrators of a program of workers' compensation or to be providing services incidental to administration of the program. Workers' compensation is administered by the state through the Division of Industrial Accidents and the Workers' Compensation Appeals Board. (See [***45] *Lab. Code, § 3201 et seq.*) Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject [****24] to reimbursement as state-mandated programs or higher levels of service within the meaning of section 6.

IV

CA(6)[] (6) HN6[] Our construction of section 6 is further supported by the fact that it comports with controlling principles of construction which "require that in the absence of irreconcilable conflict among their various parts, [constitutional provisions] must be harmonized and construed [****25] to give effect to all parts. (*Clean Air Constituency v. California State Air Resources Bd. (1974) 1 Cal.3d 801, 813-814 [114 Cal. Rptr. 577, 523 P.2d 617]*; *Serrano v. Priest (1971) 5 Cal.3d 584, 596 [96 Cal. Rptr. 601, 487 P.2d 1241, 41*

[9] Whether a constitutional provision which requires a supermajority vote to enact substantive legislation, as opposed to funding the program, may be validly enacted as a Constitutional amendment rather than through revision of the Constitution is an open question. (See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization (1978) 22 Cal.3d 208, 228 [149 Cal. Rptr. 239, 583 P.2d 1281]*.)

[10] The Court of Appeal reached a different conclusion in *City of Sacramento v. State of California (1984) 156 Cal. App. 3d 182 [203 Cal. Rptr. 258]*, with respect to a newly enacted law requiring that all public employees be covered by unemployment insurance. Approaching the question as to whether the expense was a "state mandated cost," rather than as whether the provision of an employee benefit was a "program or service" within the meaning of the Constitution, the court concluded that reimbursement was required. To the extent that this decision is inconsistent with our conclusion here, it is disapproved.

A.L.R.3d 1187]; *Select Base Materials* v. *Board of Equal.* (1959) 51 Cal.2d 640, 645 [335 P.2d 672].)" (*Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 676 [194 Cal. Rptr. 781, 669 P.2d 17].)

HN7[] Our concern over potential conflict arises because article XIV, section 4, [11] gives the [**210] Legislature "plenary power, unlimited by any provision of [*59] this Constitution" over workers' compensation. Although seemingly unrelated to workers' compensation, section 6, as we have shown, would have an indirect, but substantial impact on the ability of the Legislature to make future changes in the existing workers' compensation scheme. Any changes in the system which would increase benefit levels, provide new services, or extend current service might also increase local agencies' costs. Therefore, even though workers' compensation is a program which is [****26] intended [***46] to provide benefits to all injured or deceased employees and their families, because the change might have some incidental impact on local government costs, the change could be made only if it commanded a supermajority vote of two-thirds of the members of each house of the Legislature. The potential conflict between section 6 and the plenary power over workers' compensation granted to the Legislature by article XIV, section 4 is apparent.

[****27] The County of Los Angeles, while recognizing the impact of section 6 on the Legislature's power over workers' compensation, argues that the "plenary power" granted by article XIV, section 4, is power over the substance of workers' compensation legislation, and that this power would be unaffected by article XIII B if the latter is construed to compel reimbursement. The subvention requirement, it is argued, is analogous to other procedural [*60] limitations on the Legislature, such as the "single subject rule" (art. IV, § 9), as to which article XIV, section 4, has no application. We do not agree. A constitutional requirement that legislation either exclude employees of local governmental agencies or be adopted by a supermajority vote would do more than simply establish a format or procedure by which legislation is to be enacted. It would place workers' compensation legislation in a special classification of substantive legislation and thereby curtail the power of a majority to enact substantive changes by any procedural means. If section 6 were applicable, therefore, article XIII B would restrict the

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[11] HN8[] Section 4: "The Legislature is hereby *expressly vested with plenary power, unlimited by any provision of this Constitution*, to create, and enforce a complete system of workers' compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any or all persons to compensate any or all of their workers for injury or disability, and their dependents for death incurred or sustained by the said workers in the course of their employment, irrespective of the fault of any party. A complete system of workers' compensation includes adequate provisions for the comfort, health and safety and general welfare of any and all workers and those dependent upon them for support to the extent of relieving from the consequences of any injury or death incurred or sustained by workers in the course of their employment, irrespective of the fault of any party; also full provision for securing safety in places of employment; full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury; full provision for adequate insurance coverage against liability to pay or furnish compensation; full provision for regulating such insurance coverage in all its aspects, including the establishment and management of a State compensation insurance fund; full provision for otherwise securing the payment of compensation and full provision for vesting power, authority and jurisdiction in an administrative body with all the requisite governmental functions to determine any dispute or matter arising under such legislation, to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character; all of which matters are expressly declared to be the social public policy of this State, binding upon all departments of the State government.

"The Legislature is vested with plenary powers, to provide for the settlement of any disputes arising under such legislation by arbitration, or by an industrial accident commission, by the courts, or by either, any, or all of these agencies, either separately or in combination, and may fix and control the method and manner of trial of any such dispute, the rules of evidence and the manner of review of decisions rendered by the tribunal or tribunals designated by it; provided, that all decisions of any such tribunal shall be subject to review by the appellate courts of this State. The Legislature may combine in one statute all the provisions for a complete system of workers' compensation, as herein defined.

"The Legislature shall have power to provide for the payment of an award to the state in the case of the death, arising out of and in the course of the employment, of an employee without dependents, and such awards may be used for the payment of extra compensation for subsequent injuries beyond the liability of a single employer for awards to employees of the employer.

"Nothing contained herein shall be taken or construed to impair or render ineffectual in any measure the creation and existence of the industrial accident commission of this State or the State compensation insurance fund, the creation and existence of which, with all the functions vested in them, are hereby ratified and confirmed." (Italics added.)

power of the Legislature over workers' compensation.

The City of Sonoma [****28] concedes that so construed article XIII B *would* restrict the plenary power of the Legislature, and reasons that the provision therefore either effected a pro tanto repeal of article XIV, section 4, or must be accepted as a limitation on the power of the Legislature. We need not accept that conclusion, however, because our construction of section 6 permits the constitutional provisions to be reconciled.

Construing a recently enacted constitutional provision such as section 6 to avoid conflict with, and thus pro tanto repeal of, an earlier provision is also consistent with [**211] and reflects the principle applied by this court in Hustedt v. Workers' Comp. Appeals Bd. (1981) 30 Cal.3d 329 [178 Cal. Rptr. 801, 636 P.2d 1139]. There, by coincidence, article XIV, section 4, was the later provision. A statute, enacted pursuant to the plenary power of the Legislature over workers' compensation, gave the Workers' Compensation Appeals Board authority to discipline attorneys who appeared before it. If construed to include a transfer of the authority to discipline attorneys from the Supreme Court to the Legislature, or to delegate that power to the board, article [****29] XIV, section 4, would have conflicted with the constitutional power of this court over attorney discipline and might have violated the separation of powers doctrine. (Art. III, § 3.) The court was thus called upon to determine whether the adoption of article XIV, section 4, granting the Legislature plenary power over workers' compensation effected a pro tanto repeal of the preexisting, exclusive jurisdiction of the Supreme Court over attorneys.

We concluded that there had been no pro tanto repeal because article XIV, section 4, did not give the Legislature the authority to enact the statute. Article XIV, section 4, did not expressly give the Legislature power over attorney discipline, and that power was not integral to or necessary to the establishment of a complete system of workers' compensation. In those circumstances the presumption against implied repeal controlled. "It is well established that the adoption of article XIV, section 4 'effected a repeal *pro tanto*' of any state constitutional provisions which conflicted with that [*61] amendment. (*Subsequent Etc. Fund. v. Ind. Acc. Com. (1952) 39 Cal.2d 83, 88 [244 P.2d 889]*; *Western Indemnity Co. v. Pillsbury (1915) 170 Cal. 686, 695, [151 P. 398].*) [****30] HN9[] A *pro tanto* repeal of conflicting state constitutional provisions removes 'insofar as necessary' any restrictions which would prohibit the realization [***47] of the objectives of the new article. (Methodist Hosp. of Sacramento v. Saylor (1971) 5 Cal.3d 685, 691-692 [97 Cal. Rptr. 1, 488 P.2d 161]; cf. City and County of San Francisco v. Workers' Comp. Appeals Bd. (1978) 22 Cal.3d 103, 115-117 [148 Cal. Rptr. 626, 583 P.2d 151].) Thus the question becomes whether the board must have the power to discipline attorneys if the objectives of article XIV, section 4 are to be effectuated. In other words, does the achievement of those objectives compel the modification of a power -- the disciplining of attorneys -- that otherwise rests exclusively with this court?" (Hustedt v. Workers' Comp. Appeals Bd., supra, 30 Cal.3d 329, 343.) We concluded that the ability to discipline attorneys appearing before it was not necessary to the expeditious resolution of workers' claims or the efficient administration of the agency. Thus, the absence of disciplinary power over attorneys would not preclude the board from achieving [****31] the objectives of article XIV, section 4, and no pro tanto repeal need be found.

CA(7)[] **(7)** A similar analysis leads to the conclusion here that no pro tanto repeal of article XIV, section 4, was intended or made necessary here by the adoption of section 6. The goals of article XIII B, of which section 6 is a part, were to protect residents from excessive taxation and government spending. (Huntington Park Redevelopment Agency v. Martin (1985) 38 Cal.3d 100, 109-110 [211 Cal. Rptr. 133, 695 P.2d 220].) Section 6 had the additional purpose of precluding a shift of financial responsibility for carrying out governmental functions from the state to local agencies which had had their taxing powers restricted by the enactment of article XIII A in the preceding year and were ill equipped to take responsibility for any new programs. Neither of these goals is frustrated by requiring local agencies to provide the same protections to their employees as do private employers. Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage -- costs which all employers must bear -- neither threatens excessive taxation or governmental spending, [****32] nor shifts from the state to a local agency the expense of providing governmental services.

[**212] Therefore, since the objectives of article XIII B and section 6 can be achieved in the absence of state subvention for the expense of increases in workers' compensation benefit levels for local agency employees, section 6 did not effect a pro tanto repeal of the Legislature's otherwise plenary power over workers' compensation, a power that does not contemplate that the Legislature rather than the employer must fund the

cost or increases in [*62] benefits paid to employees of local agencies, or that a statute affecting those benefits must garner a supermajority vote.

Because we conclude that section 6 has no application to legislation that is applicable to employees generally, whether public or private, and affects local agencies only incidentally as employers, we need not reach the question that was the focus of the decision of the Court of Appeal -- whether the state must reimburse localities for state-mandated cost increases which merely reflect adjustments for cost-of-living in existing programs.

V

It follows from our conclusions above, that in each of these cases the [****33] plaintiffs' reimbursement claims were properly denied by the State Board of Control. Their petitions for writs of mandate seeking to compel the board to approve the claims lacked merit and should have been denied by the superior court without the necessity of further proceedings before the board.

In B001713, the Los Angeles case, the Court of Appeal reversed the judgment of the superior court denying the petition. In the B003561, the Sonoma case, the superior court granted partial relief, ordering further proceedings before the board, and the Court of Appeal affirmed that judgment.

The judgment of the Court of Appeal is reversed. Each side shall bear its own costs.

Concur by: MOSK

Concur

MOSK, J. I concur in the result reached by the majority, but I prefer the rationale of the Court of Appeal, i.e., that neither article XIII B, section 6, of the Constitution nor Revenue and Taxation Code sections 2207 and 2231 require state subvention for increased workers' compensation benefits provided by chapter 1042, Statutes of 1980, and chapter 922, Statutes of 1982, but only if the increases do not exceed applicable cost-of-living adjustments [****34] because such payments do not result in an increased level of service.

Under the majority theory, the state can order unlimited financial burdens on local units of government without providing the funds to meet those burdens. This may have serious implications in the future, and does violence to the requirement of section 2231, subdivision (a), that the state reimburse local government for "all costs mandated by the state."

In this instance it is clear from legislative history that the Legislature did not intend to mandate additional burdens, but merely to provide a cost-of-living [*63] adjustment. I agree with the Court of Appeal that this was permissible.

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County of San Diego v. State of California

Supreme Court of California

March 3, 1997, Decided

No. S046843.

Reporter
15 Cal. 4th 68 *; 931 P.2d 312 **; 61 Cal. Rptr. 2d 134 ***; 1997 Cal. LEXIS 630 ****; 97 Daily Journal DAR 2296; 97 Cal. Daily Op. Service 1555

COUNTY OF SAN DIEGO, Cross-complainant and Respondent, v. THE STATE OF CALIFORNIA et al., Cross-defendants and Appellants.

Prior History: [****1] Superior Court of San Diego County, Super. Ct. No. 634931. Michael I. Greer, * Harrison R. Hollywood and Judith McConnell, Judges.

Disposition: The judgment of the Court of Appeal is affirmed insofar as it holds that the exclusion of adult MIP's from Medi-Cal imposed a mandate on San Diego within the meaning of section 6. The judgment is reversed insofar as it holds that the state required San Diego to spend at least $ 41 million on the CMS program in fiscal years 1989-1990 and 1990-1991. The matter is remanded to the Commission to determine whether, and by what amount, the statutory standards of care (e.g., Health & Saf. Code, § 1442.5, former subd. (c); Welf. & Inst. Code, § 10000, 17000) forced San Diego to incur costs in excess of the funds provided by the state, and to determine the statutory remedies to which San Diego is entitled.

Core Terms

counties, Medi-Cal, reimbursement, funds, medical care, adult, eligible, costs, services, indigent, fiscal year, subdivision, superior court, medically indigent, court of appeals, mandates, programs, new program, requires, provide medical care, indigent person, financial responsibility, healthcare, higher level of service, trial court, mandamus, state mandate, spending, board of supervisors, local government

Case Summary

Procedural Posture

Appellant state sought review of the judgment from the Court of Appeal (California), which affirmed the trial court that reversed a decision of the state mandates commission. The state mandates commission had held that respondent county was not entitled to reimbursement under Cal. Const. art. XIII B, § 6, for its treatment of medically indigent adults after the legislature excluded such persons from the California Medical Assistance Program.

Overview

The legislature excluded medically indigent adults from receiving medical care pursuant to the California Medical Assistance Program (Medi-Cal). Subsequently, respondent county provided medical care to these persons and sought reimbursement from appellant state pursuant to Cal. Const. art. XIII B, § 6. The state mandates commission held for appellant, but the trial court reversed the commission's decision, and the court of appeals affirmed the trial court. The court affirmed the court of appeal's decision in part and reversed in part. The court found that the legislature's exclusion of medically indigent adults from Medi-Cal mandated a new program within the meaning of art. XIII B, § 6. Former statutes, however, did not establish a $ 41 million spending floor for respondent's county medical services program. The court remanded the action to the state mandates commission to determine whether, and by what amount, respondent was forced to incur costs in excess of state-provided funds to comply with the standards of care provided by the former Cal. Health & Safety Code § 1442.5(c) and Cal. Welf. & Inst. Code §§ 10000, 17000.

Outcome

The court affirmed the court of appeal's judgment that

* Retired judge of the San Diego Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

respondent county could recover costs incurred to treat medically indigent adults because the legislature mandated a new program by excluding medically indigent adults from the California Medical Assistance Program. The court reversed the court of appeal's judgment that respondent was entitled to at least $ 41 million and remanded to the state mandates commission for a cost determination.

LexisNexis® Headnotes

Public Health & Welfare Law > ... > Medicaid > Coverage > General Overview

Governments > State & Territorial Governments > General Overview

Public Health & Welfare Law > Healthcare > General Overview

Public Health & Welfare Law > Social Security > Medicaid > General Overview

HN1[] The California Medical Assistance Program, Cal. Welf. & Inst. Code § 14063, which began operating March 1, 1966, establishes a program of basic and extended health care services for recipients of public assistance and for medically indigent persons. It represents California's implementation of the federal medicaid program, 42 U.S.C.S. §§ 1396-1396v, through which the federal government provides financial assistance to states so that they may furnish medical care to qualified indigent persons.

Governments > Local Governments > Finance

Healthcare Law > ... > Health Insurance > Reimbursement > General Overview

Public Health & Welfare Law > ... > Providers > Payments & Reimbursements > Hospitals

Public Health & Welfare Law > Healthcare > General Overview

Public Health & Welfare Law > Social Security > Medicaid > General Overview

HN2[] Finance

Former Cal. Welf. & Inst. Code § 14150.1 provides in part that a county may elect to pay as its share of costs under the California Medical Assistance Program, Cal. Welf. & Inst. Code § 14063, 100 percent of the county cost of health care uncompensated from any source in 1964-65 for all categorical aid recipients, and all other persons in the county hospital or in a contract hospital, increases for such county for each fiscal year subsequent to 1964-65 by an amount proportionate to the increase in population for such county. If the county so elects, the county costs of health care in any fiscal year shall not exceed the total county costs of health care uncompensated from any source in 1964-65 for all categorical aid recipients, and all other persons in the county hospital or in a contract hospital, increases for such county for each fiscal year subsequent to 1964-65 by an amount proportionate to the increase in population for such county.

Governments > Local Governments > Finance

Public Health & Welfare Law > Social Security > Medicaid > General Overview

Healthcare Law > ... > Health Insurance > Reimbursement > General Overview

Public Health & Welfare Law > Healthcare > General Overview

HN3[] Finance

Former Cal. Welf. & Inst. Code § 14150 provides the standard method for determining the counties' share of costs under the California Medical Assistance Program, Cal. Welf. & Inst. Code § 14063. Under it, a county is required to pay the state a specific sum, in return for which the state will pay for the medical care of all categorically linked individuals. Financial responsibility for nonlinked individuals remains with the counties.

Governments > Local Governments > Finance

Governments > State & Territorial Governments > Finance

HN4[] **Finance**

Cal. Const. art. XIII A imposes a limit on the power of state and local governments to adopt and levy taxes. Cal. Const. art. XIII B imposes a complementary limit on the rate of growth in governmental spending. These two constitutional articles work in tandem, together restricting California governments' power both to levy and to spend for public purposes.

Governments > State & Territorial Governments > Finance

Governments > Local Governments > Finance

HN5[] **Finance**

Cal. Const. art. XIII B, § 6, provides in part that 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 program or increased level of service, except that the legislature may, but need not, provide such subvention of funds for legislative mandates that are enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

Governments > State & Territorial Governments > Finance

HN6[] **Finance**

Cal. Const. art. XIII B § 6, essentially requires the state to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies.

Governments > State & Territorial Governments > Finance

HN7[] **Finance**

To determine whether a statute imposes state-mandated costs on a local agency within the meaning of Cal. Const. art. XIII B, § 6, the local agency must file a test claim with the Commission on State Mandates, which, after a public hearing, decides whether the statute mandates a new program or increased level of service. Cal. Gov't Code §§ 17521, 17551, 17555. If the commission finds a claim to be reimbursable, it determines the amount of reimbursement. Cal. Gov't Code § 17557. The local agency then follows certain statutory procedures to obtain reimbursement. Cal. Gov't Code § 17558 et seq.

Governments > State & Territorial Governments > Finance

Civil Procedure > ... > Declaratory Judgments > State Declaratory Judgments > General Overview

HN8[] **Finance**

If the legislature refuses to appropriate money for a reimbursable mandate, the local agency may file an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement. Cal. Gov't Code § 17612(c). If the Commission on State Mandates finds no reimbursable mandate, the local agency may challenge this finding by administrative mandate proceedings under Cal. Civ. Proc. Code § 1094.5. Cal. Gov't Code § 17559. Cal. Gov't Code § 17552 declares that these provisions provide the sole and exclusive procedure by which a local agency may claim reimbursement for costs mandated by the state as required by Cal. Const. art. XIII B, § 6.

Constitutional Law > ... > Case or Controversy > Standing > General Overview

HN9[] Individual taxpayers and recipients of government benefits lack standing to enforce Cal. Const. art. XIII B, § 6, because the applicable administrative procedures, which are the exclusive means for determining and enforcing the state's § 6 obligations, are available only to local agencies and school districts directly affected by a state mandate.

Civil Procedure > ... > Jurisdiction > Subject Matter Jurisdiction > General Overview

Administrative Law > Judicial Review > Remedies > Mandamus

Administrative Law > Judicial

Review > Reviewability > Jurisdiction & Venue

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview

Civil Procedure > Remedies > Writs > General Overview

Civil Procedure > Appeals > Appellate Jurisdiction > State Court Review

Constitutional Law > The Judiciary > Jurisdiction > General Overview

HN10[] The power of superior courts to perform mandamus review of administrative decisions derives in part from Cal. Const. art. VI, § 10. Section 10 gives the Supreme Court, courts of appeal, and superior courts original jurisdiction in proceedings for extraordinary relief in the nature of mandamus. Cal. Const. art. VI, § 10. The jurisdiction may not lightly be deemed to be destroyed. While the courts are subject to reasonable statutory regulation of procedure and other matters, they maintain their constitutional powers in order effectively to function as a separate department of government. Consequently an intent to defeat the exercise of the court's jurisdiction is not supplied by implication.

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview

Administrative Law > Judicial Review > Reviewability > Jurisdiction & Venue

HN11[] Under Cal. Gov't Code § 17500 et seq., the statutes governing determination of unfunded mandate claims, the court hearing the test claim has primary jurisdiction.

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview

HN12[] A court that refuses to defer to another court's primary jurisdiction is not without jurisdiction.

Administrative Law > Judicial Review > Administrative Record > General Overview

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > General Overview

HN13[] The threshold determination of whether a statute imposes a state mandate is an issue of law.

Civil Procedure > ... > Justiciability > Exhaustion of Remedies > Administrative Remedies

Administrative Law > Judicial Review > Reviewability > Exhaustion of Remedies

Governments > Local Governments > Claims By & Against

Civil Procedure > ... > Justiciability > Exhaustion of Remedies > General Overview

Civil Procedure > ... > Justiciability > Exhaustion of Remedies > Exceptions

HN14[] **Administrative Remedies**

Counties seeking to pursue an unfunded mandate claim under Cal. Const. art. XIII B, § 6, must exhaust their administrative remedies. However, counties may pursue § 6 claims in superior court without first resorting to administrative remedies if they can establish an exception to the exhaustion requirement. The futility exception to the exhaustion requirement applies if a county can state with assurance that the Commission on State Mandates will rule adversely in its own particular case.

Public Health & Welfare Law > Healthcare > General Overview

HN15[] Cal. Welf. & Inst. Code § 17000 creates the residual fund to sustain indigents who cannot qualify under any specialized aid programs. By its express terms, § 17000 requires a county to relieve and support indigent persons only when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions. Cal. Welf. & Inst. Code § 17000.

Public Health & Welfare
Law > Healthcare > General Overview

Governments > State & Territorial
Governments > Legislatures

HN16[] In adopting the California Medical Assistance Program (Medi-Cal), *Cal. Welf. & Inst. Code § 14063*, the state legislature, for the most part, shifted indigent medical care from being a county responsibility to a state responsibility under the Medi-Cal program.

Governments > Legislation > Effect &
Operation > General Overview

HN17[] *Cal. Const. art. XIII B, § 6*, prohibits the state from shifting to counties the costs of state programs for which the state assumed complete financial responsibility before adoption of § 6.

Governments > Local Governments > Finance

Public Health & Welfare
Law > Healthcare > General Overview

HN18[] Finance

As amended in 1982, *Cal. Welf. & Inst. Code § 16704(c)(1)*, provides in part that the county board of supervisors shall assure that it will expend Medically Indigent Services Account funds only for the health services specified in *Cal. Welf. & Inst. Code §§ 14132* and *14021* provided to persons certified as eligible for such services pursuant to *Cal. Welf. & Inst. Code § 17000* and shall assure that it will incur no less in net costs of county funds for county health services in any fiscal year than the amount that is required to obtain the maximum allocation under *Cal. Welf. & Inst. Code § 16702*.

Governments > Local Governments > Finance

Labor & Employment Law > ... > Disability
Benefits > Scope & Definitions > General Overview

Public Health & Welfare
Law > Healthcare > General Overview

Public Health & Welfare
Law > Healthcare > Services for Disabled & Elderly
Persons > General Overview

HN19[] Finance

Cal. Welf. & Inst. Code § 16704(c)(3) provides in part that any person whose income and resources meet the income and resource criteria for certification for services pursuant to *Cal. Welf. & Inst. Code § 14005.7* other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided. Such persons may be held financially liable for these services based upon the person's ability to pay. A county may not establish a payment requirement which will deny medically necessary services. This section shall not be construed to mandate that a county provide any specific level or type of health care service.

Public Health & Welfare
Law > Healthcare > General Overview

HN20[] The provisions of *Cal. Welf. & Inst. Code § 16704(c)(3)* shall become inoperative if a court ruling is issued which decrees that the provisions of this paragraph mandate that additional state funds be provided and which requires that additional state reimbursement be made to counties for costs incurred under this paragraph. This paragraph shall be operative only until June 30, 1983, unless a later enacted statute extends or deletes that date.

Governments > Local Governments > Charters

Public Health & Welfare
Law > Healthcare > General Overview

HN21[] Charters

See *Cal. Welf. & Inst. Code § 17000*.

Governments > Local Governments > Duties &
Powers

HN22[] Duties & Powers

Cal. Welf. & Inst. Code § 17001 confers broad discretion upon the counties in performing their statutory duty to provide general assistance benefits to needy residents.

Governments > Local Governments > Duties & Powers

Administrative Law > Agency Rulemaking > General Overview

HN23[] Duties & Powers

When a statute confers upon a state agency the authority to adopt regulations to implement, interpret, make specific or otherwise carry out its provisions, the agency's regulations must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose. Cal. Gov't Code § 11374.

Administrative Law > Judicial Review > Reviewability > Questions of Law

HN24[] Questions of Law

Courts have the final responsibility for the interpretation of the law.

Governments > Local Governments > Duties & Powers

Public Health & Welfare Law > Healthcare > General Overview

HN25[] Duties & Powers

Cal. Welf. & Inst. Code § 17000 requires counties to relieve and support all indigent persons lawfully resident therein, when such persons are not supported and relieved by their relatives or by some other means.

Governments > Local Governments > Duties & Powers

Public Health & Welfare Law > Healthcare > General Overview

HN26[] Duties & Powers

Counties have no discretion to refuse to provide medical care to "indigent persons" within the meaning of Cal. Welf. & Inst. Code § 17000 who do not receive it from other sources.

Public Health & Welfare Law > Healthcare > General Overview

HN27[] Adult medically indigent persons are "indigent persons" within the meaning of Cal. Welf. & Inst. Code § 17000 for medical care purposes. Section 17000 requires counties to relieve and support all indigent persons.

Pensions & Benefits Law > Governmental Employees > County Pensions

Public Health & Welfare Law > ... > Medicaid > Coverage > General Overview

Evidence > Inferences & Presumptions > General Overview

HN28[] County Pensions

An attorney general's opinion, although not binding, is entitled to considerable weight. Absent controlling authority, it is persuasive because the court presumes that the legislature is cognizant of the attorney general's construction of Cal. Welf. & Inst. Code § 17000 and would have taken corrective action if it disagreed with that construction.

Governments > Local Governments > Duties & Powers

Public Health & Welfare Law > Healthcare > General Overview

HN29[] Duties & Powers

Cal. Welf. & Inst. Code § 17000 mandates that medical care is provided to indigents and Cal. Welf. & Inst. Code § 10000 requires that such care be provided promptly and humanely. The duty is mandated by statute. There is no discretion concerning whether to provide such care.

Governments > Local Governments > Duties & Powers

Public Health & Welfare Law > Healthcare > General Overview

HN30[] Duties & Powers

Cal. Welf. & Inst. Code § 17000 imposes a mandatory duty upon all counties to provide medically necessary care, not just emergency care. It further imposes a minimum standard of care below which the provision of medical services may not fall.

Governments > Local Governments > Duties & Powers

Healthcare Law > ... > Health Insurance > Reimbursement > General Overview

Public Health & Welfare Law > Healthcare > General Overview

HN31[] Duties & Powers

The former Cal. Health & Safety Code § 1442.5(c) provides that, whether a county's duty to provide care to all indigent people is fulfilled directly by the county or through alternative means, the availability of services, and the quality of the treatment that is received by people who cannot afford to pay for their health care, shall be the same as that available to nonindigent people receiving health care services in private facilities in that county.

Governments > Local Governments > Duties & Powers

Public Health & Welfare Law > Healthcare > General Overview

HN32[] Duties & Powers

The Supreme Court of California disapproves Cooke v. Superior Court, 261 Cal. Rptr. 706, 213 Cal. App. 3d 401 (1989), to the extent it held that the former Cal. Health & Safety Code § 1442.5(c) was merely a limitation on a county's ability to close facilities or reduce services provided in those facilities, and was irrelevant absent a claim that a county facility was closed or that any services in the county were reduced.

Governments > Local Governments > Duties & Powers

Governments > Local Governments > Finance

Public Health & Welfare Law > Healthcare > General Overview

HN33[] Duties & Powers

Former Cal. Welf. & Inst. Code § 16990(a) requires counties receiving California Healthcare for the Indigent Program funds, at a minimum, to maintain a level of financial support of county funds for health services at least equal to its county match and any overmatch of county funds in the 1988-89 fiscal year, adjusted annually as provided.

Public Health & Welfare Law > Healthcare > General Overview

HN34[] See former Cal. Welf. & Inst. Code § 16991(a)(5).

Civil Procedure > Remedies > Writs > General Overview

Administrative Law > Judicial Review > Remedies > Mandamus

HN35[] Mandamus pursuant to Cal. Civ. Proc. Code § 1094.5, commonly denominated "administrative" mandamus, is mandamus still. It is not possessed of a separate and distinctive legal personality. It is not a remedy removed from the general law of mandamus or exempted from the latter's established principles, requirements and limitations. The full panoply of rules applicable to "ordinary" mandamus applies to "administrative" mandamus proceedings, except where modified by statute. Where the entitlement to mandamus relief is adequately alleged, a trial court may treat a proceeding brought under Cal. Civ. Proc. Code § 1085 as one brought under Cal. Civ. Proc. Code § 1094.5 and deny a demurrer asserting that the wrong mandamus statute is invoked.

Civil Procedure > Appeals > Standards of Review

HN36[] Standards of Review

The determination whether statutes establish a mandate under *Cal. Const. art. XIII B, § 6*, is a question of law. Where a purely legal question is at issue, the courts exercise independent judgment, no matter whether the issue arises by traditional or administrative mandate.

Civil Procedure > ... > Writs > Common Law Writs > Mandamus

Civil Procedure > Remedies > Writs > General Overview

HN37[] Mandamus

The denial of a peremptory disqualification motion pursuant to *Cal. Civ. Proc. Code § 170.6* is reviewable only by writ of mandate under *Cal. Civ. Proc. Code § 170.3(d)*.

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > General Overview

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN38[] A preliminary injunction is immediately and separately appealable under *Cal. Civ. Proc. Code § 904.1(a)(6)*.

Headnotes/Summary

Summary
CALIFORNIA OFFICIAL REPORTS SUMMARY

After a county's unsuccessful administrative attempts to obtain reimbursement from the state for expenses incurred through its County Medical Services (CMS) program, and after a class action was filed on behalf of CMS program beneficiaries seeking to enjoin termination of the program, the county filed a cross-complaint and petition for a writ of mandate (*Code Civ. Proc., § 1085*) against the state, the Commission on State Mandates, and various state officers, to determine the county's rights under *Cal. Const., art. XIII B, § 6* (reimbursement to local government for state-mandated new program or higher level of service). The county alleged that the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program. The trial court found that the state had an obligation to fund the county's CMS program. (Superior Court of San Diego County, No. 634931, Michael I. Greer, * Harrison R. Hollywood, and Judith McConnell, Judges.) The Court of Appeal, Fourth Dist., Div. One, No. D018634, affirmed the judgment of the trial court insofar as it provided that *Cal. Const., art. XIII B, § 6*, required the state to fund the CMS program. The Court of Appeal also affirmed the trial court's finding that the state had required the county to spend at least $ 41 million on the CMS program in fiscal years 1989-1990 and 1990-1991. However, the Court of Appeal reversed those portions of the judgment determining the final reimbursement amount and specifying the state funds from which the state was to satisfy the judgment. The Court of Appeal remanded to the commission to determine the reimbursement amount and appropriate statutory remedies.

The Supreme Court affirmed the judgment of the Court of Appeal insofar as it held that the exclusion of medically indigent adults from Medi-Cal imposed a mandate on the county within the meaning of *Cal. Const., art. XIII B, § 6*. The Supreme Court reversed the judgment insofar as it held that the state required the county to spend at least $ 41 million on the CMS program in fiscal years 1989-1990 and 1990-1991, and remanded the matter to the commission to determine whether, and by what amount, the statutory standards of care (e.g., *Health & Saf. Code, § 1442.5*, former subd. (c), *Welf. & Inst. Code, §§ 10000*, *17000*) forced the county to incur costs in excess of the funds provided by the state, and to determine the statutory remedies to which the county was entitled. The court held that the trial court had jurisdiction to adjudicate the county's mandate claim, notwithstanding that a test claim was pending in an action by a different county. The trial court should not have proceeded while the other action was pending, since one purpose of the test claim procedure is to avoid multiple proceedings addressing the same claim. However, the error was not jurisdictional; the governing statutes simply vest primary jurisdiction in the court hearing the test claim. The court also held that the

* Retired judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to *article VI, section 6 of the California Constitution*.

Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program. The state asserted the source of the county's obligation to provide such care was Welf. & Inst. Code, § 17000, enacted in 1965, rather than the 1982 legislation, and since Cal. Const., art. XIII B, § 6, did not apply to "mandates enacted prior to January 1, 1975," there was no reimbursable mandate. However, Welf. & Inst. Code, § 17000, requires a county to support indigent persons only in the event they are not assisted by other sources. The court further held that there was a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide the medical care. While Welf. & Inst. Code, § 17001, confers discretion on counties to provide general assistance, there are limits to this discretion. The standards must meet the objectives of Welf. & Inst. Code, § 17000, or be struck down as void by the courts. The court also held that the Court of Appeal, in reversing the damages portion of the trial court's judgment and remanding to the commission to determine the amount of any reimbursement due, erred in finding the county had a minimum required expenditure on its CMS program. (Opinion by Chin, J., with George, C. J., Mosk, and Baxter, JJ., Anderson, J., ** and Aldrich, J., + concurring. Dissenting opinion by Kennard, J.)

Headnotes

CALIFORNIA OFFICIAL REPORTS HEADNOTES

Classified to California Digest of Official Reports

CA(1)[] (1)

State of California § 12—Fiscal Matters—Appropriations—Reimbursement to Local Government for State-mandated Program.

--Cal. Const., art. XIII A, and art. XIII B, work in tandem, together restricting California governments' power both to levy and to spend for public purposes. Their goals are to protect residents from excessive taxation and government spending. The purpose of Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), 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 Cal. Const., arts. XIII A and XIII B, impose. With certain exceptions, Cal. Const., art. XIII B, § 6, essentially requires the state to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies.

CA(2a)[] (2a) CA(2b)[] (2b)

State of California § 12—Fiscal Matters—Appropriations—Reimbursement to Local Government for State-mandated Program—County's Reimbursement for Cost of Health Care to Indigent Adults—Jurisdiction—With Pending Test Claim.

--The trial court had jurisdiction to adjudicate a county's mandate claim asserting the Legislature's transfer to counties of the responsibility for providing health care for medically indigent adults constituted a new program or higher level of service that required state funding under Cal. Const., art. XIII B, § 6 (reimbursement to local government for costs of new state-mandated program), notwithstanding that a test claim was pending in an action by a different county. The trial court should not have proceeded while the other action was pending, since one purpose of the test claim procedure is to avoid multiple proceedings addressing the same claim. However, the error was not jurisdictional; the governing statutes simply vest primary jurisdiction in the court hearing the test claim. The trial court's failure to defer to the primary jurisdiction of the other court did not prejudice the state. The trial court did not usurp the Commission on State Mandates' authority, since the commission had exercised its authority in the pending action. Since the pending action was settled, no multiple decisions resulted. Nor did lack of an administrative record prejudice the state, since determining whether a statute imposes a state mandate is an issue of law. Also, attempts to seek relief from the commission would have been futile, thus triggering the futility exception to the exhaustion requirement, given that the commission rejected the other county's claim.

CA(3)[] (3)

** Presiding Justice, Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

+ Associate Justice, Court of Appeal, Second Appellate District, Division Three, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Administrative Law § 99—Judicial Review and Relief—Administrative Mandamus—Jurisdiction—As Derived From Constitution.

--The power of superior courts to perform mandamus review of administrative decisions derives in part from *Cal. Const., art. VI, § 10*. That section gives the Supreme Court, Courts of Appeal, and superior courts "original jurisdiction in proceedings for extraordinary relief in the nature of mandamus." The jurisdiction thus vested may not lightly be deemed to have been destroyed. While the courts are subject to reasonable statutory regulation of procedure and other matters, they will maintain their constitutional powers in order effectively to function as a separate department of government. Consequently an intent to defeat the exercise of the court's jurisdiction will not be supplied by implication.

CA(4)[] (4)

State of California § 12—Fiscal Matters—Appropriations—Reimbursement to Local Government for State-mandated Program—County's Reimbursement for Cost of Health Care to Indigent Adults—Existence of Mandate.

--In a county's action against the state to determine the county's rights under *Cal. Const., art. XIII B, § 6* (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program. The state asserted the source of the county's obligation to provide such care was *Welf. & Inst. Code, § 17000*, enacted in 1965, rather than the 1982 legislation, and since *Cal. Const., art. XIII B, § 6*, did not apply to "mandates enacted prior to January 1, 1975," there was no reimbursable mandate. However, *Welf. & Inst. Code, § 17000*, requires a county to support indigent persons only in the event they are not assisted by other sources. To the extent care was provided prior to the 1982 legislation, the county's obligation had been reduced. Also, the state's assumption of full funding responsibility prior to the 1982 legislation was not intended to be temporary. The 1978 legislation that assumed funding responsibility was limited to one year, but similar legislation in 1979 contained no such limiting language. Although the state asserted the health care program was never operated by the state, the Legislature, in adopting Medi-Cal, shifted responsibility for indigent medical care from counties to the state. Medi-Cal permitted county boards of supervisors to prescribe rules (*Welf. & Inst. Code, § 14000.2*), and Medi-Cal was administered by state departments and agencies.

[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, § 123.]

CA(5a)[] (5a) *CA(5b)*[] (5b)

State of California § 12—Fiscal Matters—Appropriations—Reimbursement to Local Government for State-mandated Program—County's Reimbursement for Cost of Health Care to Indigent Adults—Existence of Mandate—Discretion to Set Standards—Eligibility.

--In a county's action against the state to determine the county's rights under *Cal. Const., art. XIII B, § 6* (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide such care. While *Welf. & Inst. Code, § 17001*, confers discretion on counties to provide general assistance, there are limits to this discretion. The standards must meet the objectives of *Welf. & Inst. Code, § 17000* (counties shall relieve and support "indigent persons"), or be struck down as void by the courts. As to eligibility standards, counties must provide care to all adult medically indigent persons (MIP's). Although *Welf. & Inst. Code, § 17000*, does not define "indigent persons," the 1982 legislation made clear that adult MIP's were within this category. The coverage history of Medi-Cal demonstrates the Legislature has always viewed all adult MIP's as "indigent persons" under *Welf. & Inst. Code, § 17000*. The Attorney General also opined that the 1971 inclusion of MIP's in Medi-Cal did not alter the duty of counties to provide care to indigents not eligible for Medi-Cal, and this opinion was entitled to considerable weight. Absent controlling authority, the opinion was persuasive since it was presumed the Legislature was cognizant of the Attorney General's construction and would have taken corrective action if it disagreed. (Disapproving *Bay General Community Hospital v. County of San Diego (1984) 156 Cal.App.3d 944 [203 Cal.Rptr. 184]* insofar as it holds that a county's responsibility under *Welf. & Inst. Code, § 17000*, extends only to indigents as defined by the county's board of supervisors, and suggests that a county may refuse to provide medical care to persons who are "indigent" within the meaning of Welf. & Inst. Code, § 17000, but do not qualify for Medi-Cal.)

CA(6)[] (6)

Public Aid and Welfare § 4—County Assistance—Counties' Discretion.

--Counties may exercise their discretion under Welf. & Inst. Code, § 17001 (county board of supervisors or authorized agency shall adopt standards of aid and care for indigent and dependent poor), only within fixed boundaries. In administering General Assistance relief the county acts as an agent of the state. When a statute confers upon a state agency the authority to adopt regulations to implement, interpret, make specific or otherwise carry out its provisions, the agency's regulations must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose (Gov. Code, § 11374). Despite the counties' statutory discretion, courts have consistently invalidated county welfare regulations that fail to meet statutory requirements.

CA(7)[] (7)

State of California § 12—Fiscal Matters—Appropriations—Reimbursement to Local Government for State-mandated Program—County's Reimbursement for Cost of Health Care to Indigent Adults—Existence of Mandate—Discretion to Set Standards—Service.

--In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide such care by setting its own service standards. Welf. & Inst. Code, § 17000, mandates that medical care be provided to indigents, and Welf. & Inst. Code, § 10000, requires that such care be provided promptly and humanely. There is no discretion concerning whether to provide such care. Courts construing Welf. & Inst. Code, § 17000, have held it imposes a mandatory duty upon counties to provide medically necessary care, not just emergency care, and it has been interpreted to impose a minimum standard of care. Until its repeal in 1992, Health & Saf. Code, § 1442.5, former subd. (c), also spoke to the level of services that counties had to provide under Welf. & Inst. Code, § 17000, requiring that the availability and quality of services provided to indigents directly by the county or alternatively be the same as that available to nonindigents in private facilities in that county. (Disapproving Cooke v. Superior Court (1989) 213 Cal.App.3d 401 [261 Cal.Rptr. 706] to the extent it held that Health & Saf. Code, § 1442.5, former subd. (c), was merely a limitation on a county's ability to close facilities or reduce services provided in those facilities, and was irrelevant absent a claim that a county facility was closed or that services in the county were reduced.)

CA(8)[] (8)

State of California § 12—Fiscal Matters—Appropriations—Reimbursement to Local Government for State-mandated Program—County's Reimbursement for Cost of Health Care to Indigent Adults—Minimum Required Expenditure.

--In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), in which the trial court found that the Legislature's 1982 transfer to counties of the responsibility for providing health care for medically indigent adults mandated a reimbursable new program entitling the county to reimbursement, the Court of Appeal, in reversing the damages portion of the trial court's judgment and remanding to the Commission on State Mandates to determine the amount of any reimbursement due, erred in finding the county had a minimum required expenditure on its County Medical Services (CMS) program. The Court of Appeal relied on Welf. & Inst. Code, former § 16990, subd. (a), which set forth the financial maintenance-of-effort requirement for counties that received California Healthcare for the Indigent Program (CHIP) funding. However, counties that chose to seek CHIP funds did so voluntarily. Thus, Welf. & Inst. Code, former § 16990, subd. (a), did not mandate a minimum funding requirement. Nor did Welf. & Inst. Code, former § 16991, subd. (a)(5), establish a minimum financial obligation. That statute required the state, for fiscal years 1989-1990 and 1990-1991, to reimburse a county if its allocation from various sources was less than the funding it received under Welf. & Inst. Code, § 16703, for 1988-1989. Nothing about this requirement imposed on the county a minimum funding requirement.

CA(9)[] (9)

State of California § 12—Fiscal Matters—Appropriations—Reimbursement to Local Government for State-mandated Program—County's Reimbursement for Cost of Health Care to Indigent Adults—Proper Mandamus Proceeding: Mandamus and Prohibition § 23—Claim Against Commission on State Mandates.

--In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), after the Commission on State Mandates indicated the Legislature's 1982 transfer to counties of the responsibility for providing health care for medically indigent adults did not mandate a reimbursable new program, a mandamus proceeding under Code Civ. Proc., § 1085, was not an improper vehicle for challenging the commission's position. Mandamus under Code Civ. Proc., § 1094.5, commonly denominated "administrative" mandamus, is mandamus still. The full panoply of rules applicable to ordinary mandamus applies to administrative mandamus proceedings, except where they are modified by statute. Where entitlement to mandamus relief is adequately alleged, a trial court may treat a proceeding under Code Civ. Proc., § 1085, as one brought under Code Civ. Proc., § 1094.5, and should overrule a demurrer asserting that the wrong mandamus statute has been invoked. In any event, the determination whether the statutes at issue established a mandate under Cal. Const., art. XIII B, § 6, was a question of law. Where a purely legal question is at issue, courts exercise independent judgment, no matter whether the issue arises by traditional or administrative mandate.

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[**2]** Lloyd M. Harmon, Jr., County Counsel, John J. Sansone, Acting County Counsel, Diane Bardsley, Chief Deputy County Counsel, Valerie Tehan and Ian Fan, Deputy County Counsel, for Cross-complainant and Respondent.

Judges: Opinion by Chin, J., with George, C. J., Mosk, and Baxter, JJ., Anderson, J., * and Aldrich, J., ** concurring. Dissenting opinion by Kennard, J.

Opinion by: CHIN

Opinion

[*75] [314] [***136] CHIN, J.**

Section 6 of article XIII B of the California Constitution (section 6) requires the State of California (state), subject to certain exceptions, to "provide a subvention of funds to reimburse" local governments "[w]henever the Legislature or any state agency mandates a new program or higher level of service . . . ." In this action, the County of San Diego (San Diego or the County) **[****3]** seeks reimbursement under section 6 from the state for the costs of providing health care services to certain adults who formerly received medical care under the California Medical Assistance Program (Medi-Cal) (see Welf. & Inst. Code, [**315] [***137] § 14063) [1] because they were medically indigent, i.e., they had insufficient financial resources to pay for their own medical care. In 1979, when the electorate adopted section 6, the state provided Medi-Cal coverage to these medically indigent adults without requiring financial contributions from counties. Effective January 1, 1983, the Legislature excluded this population from Medi-Cal. (Stats. 1982, ch. 328, § 6, 8.3, 8.5, pp. 1574-1576; Stats. 1982, ch. 1594, § 19, 86, pp. 6315, 6357.) Since that date, San Diego has provided medical care to these individuals with varying levels of state financial assistance.

To resolve San Diego's claim, **[****4]** we must determine whether the Legislature's exclusion of medically indigent adults from Medi-Cal "mandate[d] a new program or higher level of service" on San Diego within the meaning of section 6. The Commission on State Mandates (Commission), which the Legislature created to determine claims under section 6, has ruled

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* Presiding Justice, Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

** Associate Justice, Court of Appeal, Second Appellate District, Division Three, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

[1] Except as otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

that section 6 does not apply to the Legislature's action and has rejected reimbursement claims like San Diego's. (See Kinlaw v. State of California (1991) 54 Cal. 3d 326, 330, fn. 2 [285 Cal. Rptr. 66, 814 P.2d 1308] (*Kinlaw*).) The trial court and Court of Appeal in this case disagreed with the Commission, finding that San Diego was entitled to reimbursement. The state seeks **[*76]** reversal of this finding. It also argues that San Diego's failure to follow statutory procedures deprived the courts of jurisdiction to hear its claim. We reject the state's jurisdictional argument and affirm the finding that the Legislature's exclusion of medically indigent adults from Medi-Cal "mandate[d] a new program or higher level of service" within the meaning of section 6. Accordingly, we remand the matter to the Commission to determine the amount of reimbursement, **[****5]** if any, due San Diego under the governing statutes.

I. FUNDING OF INDIGENT MEDICAL CARE

Before the start of Medi-Cal, "the indigent in California were provided health care services through a variety of different programs and institutions." (Assem. Com. on Public Health, Preliminary Rep. on Medi-Cal (Feb. 29, 1968) p. 3 (Preliminary Report).) County hospitals "provided a wide range of inpatient and outpatient hospital services to all persons who met county indigency requirements whether or not they were public assistance recipients. The major responsibility for supporting county hospitals rested upon the counties, financed primarily through property taxes, with minor contributions from" other sources. (*Id.* at p. 4.)

HN1[] Medi-Cal, which began operating March 1, 1966, established "a program of basic and extended health care services for recipients of public assistance and for medically indigent persons." (Morris v. Williams (1967) 67 Cal. 2d 733, 738 [63 Cal. Rptr. 689, 433 P.2d 697] (*Morris*); Id. at p. 740; see also Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 103.) It "represent[ed] California's implementation of the federal Medicaid program (42 U.S.C. § **[****6]** 1396-1396v), through which the federal government provide[d] financial assistance to states so that they [might] furnish medical care to qualified indigent persons. [Citation.]" (Robert F. Kennedy Medical Center v. Belsh (1996) 13 Cal. 4th 748, 751 [55 Cal. Rptr. 2d 107, 919 P.2d 721] (*Belsh*).) "[B]y meeting the requirements of federal law," Medi-Cal "qualif[ied] California for the receipt of federal funds made available under title XIX of the Social Security Act." (Morris, supra, 67 Cal. 2d at p. 738.) "Title [XIX] permitted the combination of the major governmental health care systems which provided care for the indigent into a single system financed by the state and federal governments. By 1975, this system, at least as originally proposed, would provide a wide range of health care services for all those who [were] indigent regardless of whether they [were] public assistance recipients . . . ." (Preliminary Rep., *supra*, at p. 4; see also Act of July 30, 1965, Pub.L. No. 89-97, § 121(a), 79 Stat. 286, reprinted in 1965 U.S. Code **[*77]** Cong. & Admin. News, p. 378 [states must make effort to **[**316]** **[***138]** liberalize eligibility **[****7]** requirements "with a view toward furnishing by July 1, 1975, comprehensive care and services to substantially all individuals who meet the plan's eligibility standards with respect to income and resources"].) [2]

However, eligibility for Medi-Cal was initially limited only to persons linked to a federal categorical aid program by age (at least 65), blindness, disability, or membership in a family with dependent children within the meaning of the Aid to Families with Dependent Children program (AFDC). (See Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of 1971-1972 Budget Bill, Sen. Bill No. 207 (1971 Reg. Sess.) pp. 548, 550 (1971 Legislative Analyst's Report).) Individuals possessing one of these characteristics (categorically linked persons) received full benefits if **[****8]** they actually received public assistance payments. (*Id.* at p. 550.) Lesser benefits were available to categorically linked persons who were only medically indigent, i.e., their income and resources, although rendering them ineligible for cash aid, were "not sufficient to meet the cost of health care." (Morris, supra, 67 Cal. 2d at p. 750; see also 1971 Legis. Analyst's Rep., *supra*, at pp. 548, 550; Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, pp. 105-106.)

Individuals not linked to a federal categorical aid program (non-categorically linked persons) were ineligible for Medi-Cal, regardless of their means. Thus, "a group of citizens, not covered by Medi-Cal and yet unable to afford medical care, remained the responsibility of" the counties. (County of Santa Clara v. Hall (1972) 23 Cal. App. 3d 1059, 1061 [100 Cal. Rptr. 629] (*Hall*).) In establishing Medi-Cal, the Legislature expressly recognized this fact by enacting former section 14108.5, which provided: "The Legislature hereby declares its concern with the problems which will be facing the counties with respect to the medical care

[2] Congress later repealed the requirement that states work towards expanding eligibility. (See Cal. Health and Welfare Agency, The Medi-Cal Program: A Brief Summary of Major Events (Mar. 1990) p. 1 (Summary of Major Events).)

of indigent persons who are not covered [by Medi-Cal] . . . and . [****9] . . whose medical care must be financed entirely by the counties in a time of heavily increasing medical costs." (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 116.) The Legislature directed the Health Review and Program Council "to study this problem and report its findings to the Legislature no later than March 1, 1967." (*Ibid.*)

Moreover, although it required counties to contribute to the costs of Medi-Cal, the Legislature established a method for determining the amount of their contributions that would "leave them with []sufficient funds to provide hospital care for those persons not eligible for Medi-Cal." (*Hall, supra, 23 Cal. App. 3d at p. 1061*, fn. omitted.) Former section 14150.1, [*78] which was known as the "county option" or the "option plan," required a county "to pay the state a sum equal to 100 percent of the county's health care costs (which included both linked and nonlinked individuals) provided in the 1964-1965 fiscal year, with an adjustment for population increase; in return the state would pay the county's entire cost of medical care." [3] [****11] (*County of Sacramento v. Lackner (1979) 97 Cal. App. 3d 576, 581 [159 Cal. Rptr. 1]* (*Lackner* [****10]).) Under the county option, "the state agreed to assume all county health care costs . . . in excess of" the county's payment. (*Id. at p. 586*.) It "made no distinction between 'linked' and 'nonlinked' persons," and "simply guaranteed a medical cost ceiling to counties electing to come within the option plan." (*Ibid.*) "Any difference [**317] [***139] in actual operating costs and the limit set by the option provision [was] assumed entirely by the state." (Preliminary Rep., *supra*, at p. 10, fn. 2.) Thus, the county option "guarantee[d] state participation in the cost of care for medically indigent persons who [were] not otherwise covered by the basic Medi-Cal program or other repayment programs." [4] (1971 Legis. Analyst's Rep., *supra*, at p. 549.)

Primarily through the county option, Medi-Cal caused a "significant shift in financing of health care from the counties to the state and federal government. . . . During the first 28 months of the program the state . . . paid approximately $ 76 million for care of non-Medi-Cal indigents in county hospitals." (Preliminary Rep., *supra*, at p. 31.) These state funds paid "costs that would otherwise have been borne by counties through increases in property taxes." (Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of 1974-1975 Budget Bill, Sen. Bill No. 1525 (1973-1974 Reg. Sess.) p. 626 (1974 Legislative Analyst's Report).) "[F]aced with escalating Medi-Cal costs, [****12] the Legislature in 1967 imposed strict guidelines on reimbursing counties electing to come under the 'option' plan. ([Former] § 14150.2.) Pursuant to subdivision (c) of [former] section 14150.2, the state imposed a limit on its obligation to pay for medical services to nonlinked persons [*79] served by a county within the 'option' plan." (*Lackner, supra, 97 Cal. App. 3d at p. 589*; see also Stats. 1967, ch. 104, § 3, p. 1019; Stats. 1969, ch. 21, § 57, pp. 106-107; 1974 Legis. Analyst's Rep., *supra*, at p. 626.)

In 1971, the Legislature substantially revised Medi-Cal. It extended coverage to certain noncategorically linked minors and adults "who [were] financially unable to pay for their medical care." (Legis. Counsel's Dig., Assem. Bill No. 949, 3 Stats. 1971 (Reg. Sess.) Summary Dig., p. 83; see Stats. 1971, ch. 577, § 12, 23, pp. 1110-1111, 1115.) These medically indigent individuals met "the income and resource requirements for aid under [AFDC] but [did] not otherwise qualify[] as a public assistance recipient." (*56 Ops.Cal.Atty.Gen. 568, 569 (1973)*.) The Legislature anticipated that this eligibility expansion would bring "approximately 800,000 [****13] additional medically needy Californians" into Medi-Cal. (Stats. 1971, ch. 577, § 56, p. 1136.) The 1971 legislation referred to these individuals as " '[n]oncategorically related needy person[s].' " (Stats.

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[3] *HN2*[] Former section 14150.1 provided in relevant part: "[A] county may elect to pay as its share [of Medi-Cal costs] one hundred percent . . . of the county cost of health care uncompensated from any source in 1964-65 for all categorical aid recipients, and all other persons in the county hospital or in a contract hospital, increased for such county for each fiscal year subsequent to 1964-65 by an amount proportionate to the increase in population for such county . . . . If the county so elects, the county costs of health care in any fiscal year shall not exceed the total county costs of health care uncompensated from any source in 1964-65 for all categorical aid recipients, and all other persons in the county hospital or in a contract hospital, increased for such county for each fiscal year subsequent to 1964-65 by an amount proportionate to the increase in population for such county . . . ." (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 121.)

[4] *HN3*[] Former *section 14150* provided the standard method for determining the counties' share of Medi-Cal costs. Under it, "a county was required to pay the state a specific sum, in return for which the state would pay for the medical care of all [categorically linked] individuals . . . . Financial responsibility for nonlinked individuals . . . remained with the counties." (*Lackner, supra, 97 Cal. App. 3d at p. 581*.)

1971, ch. 577, § 23, p. 1115.) Subsequent legislation designated them as "medically indigent person[s]" (MIP's) and provided them coverage under former section 14005.4. (Stats. 1976, ch. 126, § 7, p. 200; *Id.* at § 20, p. 204.)

The 1971 legislation also established a new method for determining each county's financial contribution to Medi-Cal. The Legislature eliminated the county option by repealing former section 14150.1 and enacting former section 14150. That section specified (by amount) each county's share of Medi-Cal costs for the 1972-1973 fiscal year and set forth a formula for increasing the share in subsequent years based on the taxable assessed value of certain property. (Stats. 1971, ch. 577, § 41, 42, pp. 1131-1133.)

For the 1978-1979 fiscal year, the state assumed each county's share of Medi-Cal costs under former section 14150. (Stats. 1978, ch. 292, § 33, p. 610.) In July 1979, the Legislature repealed former section 14150 altogether, thereby eliminating [****14] the counties' responsibility to share in Medi-Cal costs. (Stats. 1979, ch. 282, § 74, p. 1043.) Thus, in November 1979, when the electorate adopted section 6, "the state was funding Medi-Cal coverage for [MIP's] without requiring any county financial contribution." (Kinlaw, supra, 54 Cal. 3d at p. 329.) The state continued to provide full funding for MIP medical care through 1982.

In 1982, the Legislature passed two Medi-Cal reform bills that, as of January 1, 1983, excluded from Medi-Cal most adults who had been eligible [*80] under the MIP category [***140] (adult [**318] MIP's or Medically Indigent Adults). [5] (Stats. 1982, ch. 328, § 6, 8.3, 8.5, pp. 1574-1576; Stats. 1982, ch. 1594, § 19, 86, pp. 6315, 6357; Cooke v. Superior Court (1989) 213 Cal. App. 3d 401, 411 [261 Cal. Rptr. 706] (*Cooke*).) As part of excluding this population from Medi-Cal, the Legislature created the Medically Indigent Services Account (MISA) as a mechanism for "transfer[ing] [state] funds to the counties for the provision of health care services." (Stats. 1982, ch. 1594, § 86, p. 6357.) Through MISA, the state annually allocated funds to counties based on "the [****15] average amount expended" during the previous three fiscal years on Medi-Cal services for county residents who had been eligible as MIP's. (Stats. 1982, ch. 1594, § 69, p. 6345.) The Legislature directed that MISA funds "be consolidated with existing county health services funds in order to provide health services to low-income persons and other persons not eligible for the Medi-Cal program." (Stats. 1982, ch. 1594, § 86, p. 6357.) It further provided: "Any person whose income and resources meet the income and resource criteria for certification for [Medi-Cal] services pursuant to Section 14005.7 other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided." (Stats. 1982, ch. 1594, § 70, p. 6346.)

After passage of the 1982 legislation, San Diego established [****16] a county medical services (CMS) program to provide medical care to adult MIP's. According to San Diego, between 1983 and June 1989, the state fully funded San Diego's CMS program through MISA. However, for fiscal years 1989-1990 and 1990-1991, the state only partially funded San Diego's CMS program. For example, San Diego asserts that, in fiscal year 1990-1991, it exhausted state-provided MISA funds by December 24, 1990. Faced with this shortfall, San Diego's board of supervisors voted in February 1991 to terminate the CMS program unless the state agreed by March 8 to provide full funding for the 1990-1991 fiscal year. After the state refused to provide additional funding, San Diego notified affected individuals and medical service providers that it would terminate the CMS program at midnight on March 19, 1991. The response to the County's notification ultimately resulted in the unfunded mandate claim now before us.

II. UNFUNDED MANDATES

Through adoption of Proposition 13 in 1978, the voters HN4[] added article XIII A to the California Constitution, which "imposes a limit on the power of state and local governments to adopt and levy taxes. [Citation.]" (County of Fresno v. State [****17] of California (1991) 53 Cal. 3d 482, 486 [280 Cal. Rptr. 92, [*81] 808 P.2d 235] (*County of Fresno*).) The next year, the voters added article XIII B to the Constitution, which "impose[s] a complementary limit on the rate of growth in governmental spending." (San Francisco Taxpayers Assn. v. Board of Supervisors (1992) 2 Cal. 4th 571, 574 [7 Cal. Rptr. 2d 245, 828 P.2d 147].) CA(1)[] **(1)** These two constitutional articles "work in tandem, together restricting California governments' power both to levy and to spend for public purposes." (City of Sacramento v. State of California (1990) 50 Cal. 3d 51, 59, fn. 1 [266 Cal. Rptr. 139, 785 P.2d 522].) Their goals are "to protect residents from excessive

[5] In this opinion, the terms "adult MIP's" and "Medically Indigent Adults" refer only to those persons who were excluded from the Medi-Cal program by the 1982 legislation.

taxation and government spending. [Citation.]" (County of Los Angeles v. State of California (1987) 43 Cal. 3d 46, 61 [233 Cal. Rptr. 38, 729 P.2d 202] (County of Los Angeles).)

HN5[] Article XIII B of the California Constitution includes section 6, which is the constitutional provision at issue here. It provides in relevant part: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide [****18] a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [P] . . . [P] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." Section 6 [**319] [***141] recognizes that articles XIII A and XIII B severely restrict the taxing and spending powers of local governments. (County of Fresno, supra, 53 Cal. 3d at p. 487.) Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are "ill equipped" to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose. (County of Fresno, supra, 53 Cal. 3d at p. 487; County of Los Angeles, supra, 43 Cal. 3d at p. 61.) With certain exceptions, HN6[] section 6 "[e]ssentially" requires the state "to pay for any new governmental programs, or for higher levels of service under existing programs, that [****19] it imposes upon local governmental agencies. [Citation.]" (Hayes v. Commission on State Mandates (1992) 11 Cal. App. 4th 1564, 1577 [15 Cal. Rptr. 2d 547].)

In 1984, the Legislature created a statutory procedure for HN7[] determining whether a statute imposes state-mandated costs on a local agency within the meaning of section 6. (Gov. Code, § 17500 et seq.). The local agency must file a test claim with the Commission, which, after a public hearing, decides whether the statute mandates a new program or increased level of service. (Gov. Code, § 17521, 17551, 17555.) If the Commission finds a claim to be reimbursable, it must determine the amount of reimbursement. (Gov. Code, § 17557.) The local agency must then follow certain statutory procedures to [*82] obtain reimbursement. (Gov. Code, § 17558 et seq.) HN8[] If the Legislature refuses to appropriate money for a reimbursable mandate, the local agency may file "an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement." (Gov. Code, § 17612, subd. (c).) If the Commission finds no reimbursable mandate, the local agency may challenge this finding by administrative mandate proceedings under [****20] section 1094.5 of the Code of Civil Procedure. (Gov. Code, § 17559.) Government Code section 17552 declares that these provisions "provide the sole and exclusive procedure by which a local agency . . . may claim reimbursement for costs mandated by the state as required by Section 6 . . . ."

III. ADMINISTRATIVE AND JUDICIAL PROCEEDINGS

A. *The Los Angeles Action*

On November 23, 1987, the County of Los Angeles (Los Angeles) filed a claim (the Los Angeles action) with the Commission asserting that the exclusion of adult MIP's from Medi-Cal constituted a reimbursable mandate under section 6. (Kinlaw, supra, 54 Cal. 3d at p. 330, fn. 2.) Alameda County subsequently filed a claim on November 30, 1987, but the Commission rejected it because of the pending Los Angeles claim. (*Id. at p. 331, fn. 4*.) Los Angeles refused to permit Alameda County to join as a claimant, but permitted San Bernardino County to join. (*Ibid.*)

In April 1989, the Commission rejected the Los Angeles claim, finding no reimbursable mandate. [6] (Kinlaw, supra, 54 Cal. 3d at p. 330, fn. 2.) It found that the 1982 legislation did not impose on counties a new program or a higher level of [****21] service for an existing program because counties had a "pre-existing duty" to provide medical care to the medically indigent under section 17000. That section provides in relevant part: "Every county . . . shall relieve and support all incompetent, poor, indigent persons . . . lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." Section 17000 did not impose a reimbursable mandate under section 6, the Commission further reasoned, because it "was enacted prior to January 1, 1975 . . . ." Finally, the Commission found no mandate because the 1982 legislation "neither establish[ed] the level of care to be provided nor . . . define[d] the class of persons determined to be eligible for medical care since these criteria were established by boards of supervisors" pursuant to section 17001.

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[6] San Diego lodged with the trial court a copy of the Commission's decision in the Los Angeles action.

[****22] [**320] [***142] On March 20, 1990, the Los Angeles Superior Court filed a judgment reversing the Commission's decision and directing issuance of a peremptory [*83] writ of mandate. On April 16, 1990, the Commission and the state filed an appeal in the Second District Court of Appeal. (*County of Los Angeles v. State of California*, No. B049625.) [7] In early 1992, the parties to the Los Angeles action agreed to settle their dispute and to seek dismissal. In April 1992, after learning of this agreement, San Diego sought to intervene. Explaining that it had been waiting for resolution of the action, San Diego requested that the Court of Appeal deny the dismissal request and add (or substitute in) the County as a party. The Court of Appeal did not respond. On December 15, 1992, the parties to the Los Angeles action entered into a settlement agreement that provided for vacation of the superior court judgment and dismissal of the appeal and superior court action. Consistent with the settlement agreement, on December 29, 1992, the Court of Appeal filed an order vacating the superior court judgment, dismissing the appeal, and instructing the superior court to dismiss the action [****23] without prejudice on remand. [8]

[****24] B. *The San Diego Action*

1. *Administrative Attempts to Obtain Reimbursement*

On March 13, 1991, San Diego submitted an invoice to the State Controller seeking reimbursement of its uncompensated expenditures on the CMS program for fiscal year 1989-1990. The Controller is a member of the Commission. (Gov. Code, § 17525.) On April 12, the Controller returned the invoice "without action," stating that "[n]o appropriation has been given to this office to allow for reimbursement" of medical costs for adult MIP's, and noting that litigation was pending regarding the state's reimbursement obligation. On December 18, 1991, San Diego submitted a similar invoice for the 1990-1991 fiscal year. The state has not acted regarding this second invoice.

[*84] 2. *Court Proceedings*

Responding to San Diego's notice of intent to terminate the CMS program, on March 11, 1991, the Legal Aid Society of San Diego filed a class action on behalf of CMS program beneficiaries seeking to enjoin termination of the program. The trial court later issued a preliminary injunction prohibiting San Diego "from taking any action to reduce or terminate" the CMS program.

On March 15, 1991, San Diego [****25] filed a cross-complaint and petition for writ of mandate under Code of Civil Procedure section 1085 against the state, the Commission, and various state officers. [9] The cross-complaint alleged that, by excluding adult MIP's from Medi-Cal and transferring responsibility for [**321] [***143] their medical care to counties, the state had mandated a new program and higher level of service within the meaning of section 6. The cross-complaint further alleged that the state therefore had a duty under section 6 to reimburse San Diego for the entire cost of its CMS program, and that the state had failed to perform its duty.

[****26] Proceeding from these initial allegations, the cross-complaint alleged causes of action for indemnification, declaratory and injunctive relief, reimbursement and damages, and writ of mandate. In its first declaratory relief claim, San Diego alleged (on

[7] In setting forth the facts relating to the Los Angeles action, we rely in part on the appellate record from that action, of which we take judicial notice. (Evid. Code, § 452, subd. (d), 459.)

[8] The settlement resulted from 1991 legislation that changed the system of health care funding as of June 30, 1991. (See § 17600 et seq.; Stats. 1991, chs. 87, 89, pp. 231-235, 243-341.) That legislation provided counties with new revenue sources, including a portion of state vehicle license fees, to fund health care programs. However, the legislation declared that the statutes providing counties with vehicle license fees would "cease to be operative on the first day of the month following the month in which the Department of Motor Vehicles is notified by the Department of Finance of a final judicial determination by the California Supreme Court or any California court of appeal" that "[t]he state is obligated to reimburse counties for costs of providing medical services to medically indigent adults pursuant to Chapters 328 and 1594 of the Statutes of 1982." (Rev. & Tax. Code, § 10753.8, subd. (b)(2), 11001.5, subd. (d)(2); see also Stats. 1991, ch. 89, § 210, p. 340.) Los Angeles and San Bernardino Counties settled their action to avoid triggering these provisions. Unlike the dissent, we do not believe that consideration of these recently enacted provisions is appropriate in analyzing the 1982 legislation. Nor do we assume, as the dissent does, that our decision necessarily triggers these provisions. That issue is not before us.

[9] The cross-complaint named the following state officers: (1) Kenneth W. Kizer, Director of the Department of Health Services; (2) Kim Belsh, Acting Secretary of the Health and Welfare Agency; (3) Gray Davis, the State Controller; (4) Kathleen Brown, the State Treasurer; and (5) Thomas Hayes, the Director of the Department of Finance. Where the context suggests, subsequent references in this opinion to "the state" include these officers.

information and belief) that the state contended the CMS program was a nonreimbursable, county obligation. In its claim for reimbursement, San Diego alleged (again on information and belief) that the Commission had "previously denied the claims of other counties, ruling that county medical care programs for [adult MIP's] are not state-mandated and, therefore, counties are not entitled to reimbursement from the State for the costs of such programs." "Under these circumstances," San Diego asserted, "denial of the County's claim by the Commission . . . is virtually certain and further administrative pursuit of this claim would be a futile act."

For relief, San Diego requested a judgment declaring the following: (1) that the state must fully reimburse San Diego if it "is compelled to provide any CMS Program services to plaintiffs . . . after March 19, 1991"; (2) that section 6 requires the state "to fully fund the CMS Program" (or, **[****27]** alternatively, that the CMS program is discretionary); (3) that the state must pay San Diego for all of its unreimbursed costs for the CMS program during **[*85]** the 1989-1990 and 1990-1991 fiscal years; and (4) that the state shall assume responsibility for operating any court-ordered continuation of the CMS program. San Diego also requested that the court issue a writ of mandamus requiring the state to fulfill its reimbursement obligation. Finally, San Diego requested issuance of preliminary and permanent injunctions to ensure that the state fulfilled its obligations to the County.

In April 1991, San Diego determined that it could continue operating the CMS program using previously unavailable general fund revenues. Accordingly, San Diego and plaintiffs settled their dispute, and plaintiffs dismissed their complaint.

The matter proceeded solely on San Diego's cross-complaint. The court issued a preliminary injunction and alternative writ in May 1991. At a hearing on June 25, 1991, the court found that the state had an obligation to fund San Diego's CMS program, granted San Diego's request for a writ of mandate, and scheduled an evidentiary hearing to determine damages and **[****28]** remedies. On July 1, 1991, it issued an order reflecting this ruling and granting a peremptory writ of mandate. The writ did not issue, however, because of the pending hearing to determine damages. In December 1992, after an extensive evidentiary hearing and posthearing proceedings on the claim for a peremptory writ of mandate, the court issued a judgment confirming its jurisdiction to determine San Diego's claim, finding that section 6 required the state to fund the entire cost of San Diego's CMS program, determining the amount that the state owed San Diego for fiscal years 1989-1990 and 1990-1991, identifying funds available to the state to satisfy the judgment, and ordering issuance of a peremptory writ of mandate. [10] The court also issued a peremptory writ of mandate directing the state and various state officers to comply with the judgment.

The Court of Appeal affirmed the judgment insofar as it provided that section 6 requires the state **[****29]** to fund the CMS program. The Court of Appeal also affirmed the trial court's finding that the state had required San Diego to spend at least $ 41 million on the CMS program in fiscal years 1989-1990 and 1990-1991. However, the Court of Appeal reversed those portions of the judgment determining the final reimbursement amount and specifying the state funds from which the state was to satisfy the judgment. It remanded the matter to the Commission to determine the reimbursement amount and appropriate statutory remedies. We then granted the state's petition for review.

[322] [***144]** IV. SUPERIOR COURT JURISDICTION

CA(2a)[] **(2a)** Before reaching the merits of the appeal, we must address the state's assertion that the superior court lacked jurisdiction to hear San **[*86]** Diego's mandate claim. According to the state, in *Kinlaw, supra, 54 Cal. 3d 326*, we "unequivocally held that the orderly determination of [unfunded] mandate questions demands that only one claim on any particular alleged mandate be entertained by the courts at any given time." Thus, if a test claim is pending, "other potential claims must be held in abeyance . . . ." Applying this principle, the state asserts **[****30]** that, since "the test claim litigation was pending" in the Los Angeles action when San Diego filed its cross-complaint seeking mandamus relief, "the superior court lacked jurisdiction from the outset, and the resulting judgment is a nullity. That defect cannot be cured by the settlement of the test claim, which occurred after judgment was entered herein."

In *Kinlaw*, we held that *HN9*[] individual taxpayers and recipients of government benefits lack standing to enforce section 6 because the applicable administrative procedures, which "are the exclusive means" for determining and enforcing the state's section 6

[10] The judgment dismissed all of San Diego's other claims.

obligations, "are available only to local agencies and school districts directly affected by a state mandate . . . ." (Kinlaw, supra, 54 Cal. 3d at p. 328.) In reaching this conclusion, we explained that the reimbursement right under section 6 "is a right given by the Constitution to local agencies, not individuals either as taxpayers or recipients of government benefits and services." (Id. at p. 334.) We concluded that "[n]either public policy nor practical necessity compels creation of a judicial remedy by which individuals may enforce the right of the county to [****31] such revenues." (Id. at p. 335.)

In finding that individuals do not have standing to enforce the section 6 rights of local agencies, we made several observations in *Kinlaw* pertinent to operation of the statutory process as it applies to entities that do have standing. Citing Government Code section 17500, we explained that "the Legislature enacted comprehensive administrative procedures for resolution of claims arising out of section 6 . . . because the absence of a uniform procedure had resulted in inconsistent rulings on the existence of state mandates, unnecessary litigation, reimbursement delays, and, apparently, resultant uncertainties in accommodating reimbursement requirements in the budgetary process." (Kinlaw, supra, 54 Cal. 3d at p. 331.) Thus, the governing statutes "establish[] procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created." (Id. at p. 333.) Specifically, "[t]he legislation establishes a test-claim procedure to expeditiously resolve disputes affecting multiple agencies . . . ." (Id. at p. 331.) Describing [****32] the Commission's application of the test-claim procedure to claims regarding exclusion of adult MIP's from Medi-Cal, we observed: "The test claim by the County of Los Angeles was filed prior to that [*87] proposed by Alameda County. The Alameda County claim was rejected for that reason. (See [Gov. Code,] § 17521.) Los Angeles County permitted San Bernardino County to join in its claim which the Commission accepted as a test claim intended to resolve the [adult MIP exclusion] issues . . . . Los Angeles County declined a request from Alameda County that it be included in the test claim . . . ." (Id. at p. 331, fn. 4.)

Consistent with our observations in *Kinlaw*, we here agree with the state that the trial court should not have proceeded to resolve San Diego's claim for reimbursement under section 6 while the Los Angeles action was pending. A contrary conclusion would undermine one of "the express purpose[s]" OF THE STATUTORY PROCEDURE: to "avoid[] multiple proceedings . . . addressing the same claim that a reimbursable state mandate has been created." (Kinlaw, supra, 54 Cal. 3d at p. 333.)

CA(3)[] **(3)** However, we reject the state's assertion that the error was jurisdictional. HN10[] **[****33]** The power of superior courts to perform mandamus review **[**323]** **[***145]** of administrative decisions derives in part from article VI, section 10 of the California Constitution. (Bixby v. Pierno (1971) 4 Cal. 3d 130, 138 [93 Cal. Rptr. 234, 481 P.2d 242]; Lipari v. Department of Motor Vehicles (1993) 16 Cal. App. 4th 667, 672 [20 Cal. Rptr. 2d 246].) That section gives "[t]he Supreme Court, courts of appeal, [and] superior courts . . . original jurisdiction in proceedings for extraordinary relief in the nature of mandamus . . . ." (Cal. Const., art. VI, § 10.) "The jurisdiction thus vested may not lightly be deemed to have been destroyed." (Garrison v. Rourke (1948) 32 Cal. 2d 430, 435 [196 P.2d 884], overruled on another ground in Keane v. Smith (1971) 4 Cal. 3d 932, 939 [95 Cal. Rptr. 197, 485 P.2d 261].) "While the courts are subject to reasonable statutory regulation of procedure and other matters, they will maintain their constitutional powers in order effectively to function as a separate department of government. [Citations.] Consequently an intent to defeat the exercise of the court's jurisdiction will not be supplied by implication." (**[****34]** Garrison, supra, at p. 436.) CA(2b)[] **(2b)** Here, we find no statutory provision that either "expressly provide[s]" (id. at p. 435) or otherwise "clearly indicate[s]" (Id. at p. 436) that the Legislature intended to divest all courts other than the court hearing the test claim of their mandamus jurisdiction.

Rather, following *Dowdall v. Superior Court (1920) 183 Cal. 348 [191 P. 685]* (*Dowdall*), we interpret the governing statutes as simply vesting primary jurisdiction in the court hearing the test claim. In *Dowdall*, we determined the jurisdictional effect of Code of Civil Procedure former section 1699 on actions to settle the account of trustees of a testamentary trust. Code of Civil Procedure former section 1699 provided in part: "Where any trust **[*88]** has been created by or under any will to continue after distribution, the Superior Court shall not lose jurisdiction of the estate by final distribution, but shall retain jurisdiction thereof for the purpose of the settlement of accounts under the trust." (Stats. 1889, ch. 228, § 1, p. 337.) We explained that, under this section, "the superior court, sitting in probate upon the distribution of an estate wherein **[****35]** the will creates a trust, retain[ed] jurisdiction of the estate for the purpose of the settlement of the accounts under the trust." (*Dowdall, supra, 183 Cal. at p. 353.*) However, we further observed that "the superior court of each county in the state has general jurisdiction in equity to settle trustees' accounts and to entertain actions for injunctions. This jurisdiction is, in a sense, concurrent with that of the superior court, which, by virtue of the decree of distribution, has jurisdiction of a trust created by will. The latter, however, is the primary jurisdiction, and if a bill in equity is filed in any other superior court for the purpose of settling the account of such trustee, that court, upon being informed of the jurisdiction of the court in probate and that an account is to be or has been filed therein for settlement, should postpone the proceeding in its own case and allow the account to be settled by the court having primary jurisdiction thereof." (*Ibid.*)

Similarly, we conclude that, ***HN11***[] under the statutes governing determination of unfunded mandate claims, the court hearing the test claim has primary jurisdiction. Thus, if an action asserting the same unfunded **[****36]** mandate claim is filed in any other superior court, that court, upon being informed of the pending test claim, should postpone the proceeding before it and allow the court having primary jurisdiction to determine the test claim.

However, a court's erroneous refusal to stay further proceedings does not render those further proceedings void for lack of jurisdiction. As we explained in *Dowdall*, ***HN12***[] a court that refuses to defer to another court's primary jurisdiction "is not without jurisdiction." (*Dowdall, supra, 183 Cal. at p. 353.*) Accordingly, notwithstanding pendency of the Los Angeles action, the trial court here did not lack jurisdiction to determine San Diego's mandamus petition. (See *Collins v. Ramish (1920) 182 Cal. 360, 366-369 [188 P. 550]* [although trial court erred in refusing to abate action because of former action pending, new trial was not warranted on issues that the trial court correctly decided]; *People* ex rel. *Garamendi v. American Autoplan, Inc. (1993) 20 Cal. App. 4th 760, 772* **[***146]** *[25 Cal. Rptr. 2d 192]* **[**324]** (*Garamendi*) ["rule of exclusive concurrent jurisdiction is not 'jurisdictional' in the sense that failure to **[****37]** comply renders subsequent proceedings void"]; *Stearns v. Los Angeles City School Dist. (1966) 244 Cal. App. 2d 696, 718 [53 Cal. Rptr. 482, 21 A.L.R.3d 164]* [where trial court errs in failing to stay proceedings in **[*89]** deference to jurisdiction of another court, reversal would be frivolous absent errors regarding the merits].) [11]

The trial court's failure to defer to the primary jurisdiction of the court hearing the Los Angeles action did not prejudice the state. Contrary to the state's assertion, the trial court did not "usurp" the Commission's "authority to determine, in the first **[****38]** place, whether or not legislation creates a mandate." The Commission had already exercised that authority in the Los Angeles action. Moreover, given the settlement of the Los Angeles action, which included vacating the judgment in that action, the trial court's exercise of jurisdiction here did not result in one of the principal harms that the statutory procedure seeks to prevent: multiple decisions regarding an unfunded mandate question. Finally, the lack of an administrative record specifically relating to San Diego's claim did not prejudice the state ***HN13***[] because the threshold determination of whether a statute imposes a state mandate is an issue of law. (*County of Fresno v. Lehman (1991) 229 Cal. App. 3d 340, 347 [280 Cal. Rptr. 310]*.) To the extent that an administrative record was necessary, the record developed in the Los Angeles action could have been submitted to the trial court. [12] (See *Los Angeles Unified School Dist. v. State of California (1988) 199 Cal. App. 3d 686, 689 [245 Cal. Rptr. 140]*.)

[**39]** We also find that, on the facts of this case, San Diego's failure to submit a test claim to the Commission before seeking judicial relief did not affect the superior court's jurisdiction. ***HN14***[] Ordinarily, counties seeking to pursue an unfunded mandate claim under section 6 must exhaust their administrative remedies. (*Central Delta Water Agency v. State Water Resources Control Bd. (1993) 17 Cal. App. 4th 621, 641 [21 Cal. Rptr. 2d 453]*; *County of Contra Costa v. State of California (1986) 177 Cal. App. 3d 62, 73-77 [222 Cal. Rptr. 750]* (*County of Contra Costa*).) However, counties may pursue section 6 claims in superior court without first resorting to administrative remedies if they

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[11] In *Garamendi, supra, 20 Cal. App. 4th at pages 771-775*, the court discussed procedural requirements for raising a claim that another court has already exercised its concurrent jurisdiction. Given our conclusion that the trial court's error here was not jurisdictional, we express no opinion about this discussion in *Garamendi* or the sufficiency of the state's efforts to raise the issue in this case.

[12] Notably, in discussing the options still available to San Diego, the state asserts that San Diego "might have been able to go to superior court and file a [mandamus] petition based on the record of the prior test claim."

"can establish an exception to" the exhaustion requirement. (County of Contra Costa, supra, 177 Cal. App. 3d at p. 77.) The futility exception to the exhaustion requirement applies if a county can "state with assurance that the [Commission] would rule adversely in its own particular case. [Citations.]" (Lindeleaf v. Agricultural Labor Relations Bd. (1986) 41 Cal. 3d 861, 870 [226 Cal. Rptr. 119, 718 P.2d 106]; see also County of Contra Costa, supra, 177 Cal. App. 3d [****40] at pp. 77-78.)

[*90] We agree with the trial court and the Court of Appeal that the futility exception applied in this case. As we have previously noted, San Diego invoked this exception by alleging in its cross-complaint that the Commission's denial of its claim was "virtually certain" because the Commission had "previously denied the claims of other counties, ruling that county medical care programs for [adult MIP's] are not state-mandated and, therefore, counties are not entitled to reimbursement . . . ." Given that the Commission rejected the Los Angeles claim (which alleged the same unfunded mandate claim that San Diego alleged) and appealed the judicial reversal of its decision, the trial court correctly determined that further attempts to seek relief from the Commission would have been futile. Therefore, we reject the state's jurisdictional argument and proceed to the merits of the appeal.

[325] [***147]** V. EXISTENCE OF A MANDATE UNDER SECTION 6

CA(4)[] **(4)** In determining whether there is a mandate under section 6, we turn to our decision in Lucia Mar Unified School Dist. v. Honig (1988) 44 Cal. 3d 830 [244 Cal. Rptr. 677, 750 P.2d 318] (*Lucia Mar*). There, **[****41]** we discussed section 6's application to Education Code section 59300, which "requires a school district to contribute part of the cost of educating pupils from the district at state schools for the severely handicapped." (Lucia Mar, supra, at p. 832.) Before 1979, the Legislature had statutorily required school districts "to contribute to the education of pupils from the districts at the state schools [citations] . . . ." (Id. at pp. 832-833.) The Legislature repealed the statutory requirements in 1979 and, on July 12, 1979, the state assumed full-funding responsibility. (Id. at p. 833.) On July 1, 1980, when section 6 became effective, the state still had full-funding responsibility. On June 28, 1981, Education Code section 59300 took effect. (Lucia Mar, supra, at p. 833.)

Various school districts filed a claim seeking reimbursement under section 6 for the payments that Education Code section 59300 requires. The Commission denied the claim, finding that the statute did not impose on the districts a new program or higher level of service. The trial court and Court of Appeal agreed, the latter "reasoning that a shift in the funding of an existing program **[****42]** is not a new program or a higher level of service" under section 6. (Lucia Mar, supra, 44 Cal. 3d at p. 834.)

We reversed, finding that a contrary result would "violate the intent underlying section 6 . . . ." (Lucia Mar, supra, 44 Cal. 3d at p. 835.) That section "was intended to preclude the state from shifting to local agencies the financial responsibility for providing public services in view of the[] **[*91]** restrictions on the taxing and spending power of the local entities" that articles XIII A and XIII B of the California Constitution imposed. (Lucia Mar, supra, at pp. 835-836.) "The intent of the section would plainly be violated if the state could, while retaining administrative control of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate section 6 . . . because the programs are not 'new.' Whether the shifting of costs is accomplished by compelling local governments to pay the cost of entirely new programs created by the state, *or by compelling them to accept financial responsibility in whole or in part for a program which was funded entirely* **[****43]** *by the state before the advent of article XIII B*, the result seems equally violative of the fundamental purpose underlying section 6 . . . ." (Id. at p. 836, italics added, fn. omitted.) We thus concluded in *Lucia Mar* "that because [Education Code] section 59300 shifts partial financial responsibility for the support of students in the state-operated schools from the state to school districts--an obligation the school districts did not have at the time article XIII B was adopted--it calls for [the school districts] to support a 'new program' within the meaning of section 6." (*Ibid.*, fn. omitted.)

The similarities between *Lucia Mar* and the case before us "are striking. In *Lucia Mar*, prior to 1979 the state and county shared the cost of educating handicapped children in state schools; in the present case from 1971-197[8] the state and county shared the cost of caring for [adult MIP's] under the Medi-Cal program. . . . [F]ollowing enactment of [article XIII A], the state took full responsibility for both programs." (Kinlaw, supra, 54 Cal. 3d at p. 353 (dis. opn. of Broussard, J.).) As to both programs, the Legislature cited adoption of article **[****44]** XIII A of the California Constitution, and specifically its effect on tax revenues, as the basis for the state's assumption of full funding responsibility. (Stats. 1979, ch. 237, § 10, p. 493; Stats. 1979, ch. 282, § 106, p. 1059.) "Then in 1981 (for handicapped children) and 1982 (for [adult MIP's]), the state sought to shift some of the burden back to the counties." (Kinlaw, supra, [**326] [***148] 54 Cal. 3d at p. 353 (dis. opn. of Broussard, J.).)

Adopting the Commission's analysis in the Los Angeles action, the state nevertheless argues that *Lucia Mar* "is inapposite." The school program at issue in *Lucia Mar* "had been wholly operated, administered and financed by the state" and "was unquestionably a 'state program.' " " 'In contrast,' " the state argues, " 'the program here has never been operated or administered by the State of California. The counties have always borne legal and financial responsibility for' " it under section 17000 and its predecessors. [13] The courts have interpreted section 17000 as "impos[ing] upon counties a duty to [*92] provide hospital and medical services to indigent residents. [Citations.]" (Board of Supervisors [****45] v. Superior Court (1989) 207 Cal. App. 3d 552, 557 [254 Cal. Rptr. 905].) Thus, the state argues, the source of San Diego's obligation to provide medical care to adult MIP's is section 17000, not the 1982 legislation. Moreover, because the Legislature enacted section 17000 in 1965, and section 6 does not apply to "mandates enacted prior to January 1, 1975," there is no reimbursable mandate. Finally, the state argues that, because section 17001 give counties "complete discretion" in setting eligibility and service standards under section 17000, there is no mandate. A contrary conclusion, the state asserts, "would erroneously expand the definition of what constitutes a 'new program' under" section 6. As we explain, we reject these arguments.

[****46] A. *The Source and Existence of San Diego's Obligation*

1. *The Residual Nature of the Counties' Duty Under Section 17000*

The state's argument that San Diego's obligation to provide medical care to adult MIP's predates the 1982 legislation contains numerous errors. First, the state misunderstands San Diego's obligation under section 17000. That HN15[] section creates "the *residual* fund" to sustain indigents "who cannot qualify . . . under any specialized aid programs." (Mooney, supra, 4 Cal. 3d at p. 681, italics added; see also Board of Supervisors v. Superior Court, supra, 207 Cal. App. 3d at p. 562; Boehm v. Superior Court (1986) 178 Cal. App. 3d 494, 499 [223 Cal. Rptr. 716] [general assistance "is a program of last resort"].) By its express terms, the statute requires a county to relieve and support indigent persons *only* "when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." (§ 17000.) [14] "Consequently, to the extent that the state or federal governments provide[d] care for [adult MIP's], the [C]ounty's obligation to do so [was] [****47] reduced . . . ." (Kinlaw, supra, 54 Cal. 3d at p. 354, fn. 14 (dis. opn. of Broussard, J.).) [15]

[13] "County General Assistance in California dates from 1855, and for many years afforded the only form of relief to indigents." (Mooney v. Pickett (1971) 4 Cal. 3d 669, 677 [94 Cal. Rptr. 279, 483 P.2d 1231] (Mooney).) Section 17000 is substantively identical to former section 2500, which was enacted in 1937. (Stats. 1937, chs. 369, 464, pp. 1097, 1406.)

[14] See also County of Los Angeles v. Frisbie (1942) 19 Cal. 2d 634, 639 [122 P.2d 526] (construing former section 2500); Jennings v. Jones (1985) 165 Cal. App. 3d 1083, 1091 [212 Cal. Rptr. 134] (counties must support all indigent persons "having no other means of support"); Union of American Physicians & Dentists v. County of Santa Clara (1983) 149 Cal. App. 3d 45, 51, fn. 10 [196 Cal. Rptr. 602]; Rogers v. Detrich (1976) 58 Cal. App. 3d 90, 95 [128 Cal. Rptr. 261] (counties have duty of support "where such support is not otherwise furnished").

[15] In asserting that Medi-Cal coverage did not supplant San Diego's obligation under section 17000, the dissent incorrectly relies on Madera Community Hospital v. County of Madera (1984) 155 Cal. App. 3d 136 [201 Cal. Rptr. 768] (*Madera*) and Cooke, supra, 213 Cal. App. 3d 401. (Dis. opn. of Kennard, J., *post*, at p. 115.) In *Madera*, the court voided a county ordinance that extended county benefits under section 17000 only to persons " 'meeting all eligibility standards for the Medi-Cal program.' " (Madera, supra, 155 Cal. App. 3d at p. 150.) The court explained: "Because all funding for the Medi-Cal program comes from either the federal or the state government . . ., [c]ounty has denied any financial obligation whatsoever from county funds for the medical care of its indigent and poor residents." (*Ibid.*) Thus, properly understood, *Madera* held only that Medi-Cal does not relieve counties of their obligation to provide medical care to persons who are "indigent" within the meaning of section 17000 but who are ineligible for Medi-Cal. The limit of *Madera*'s holding is apparent from the court's reliance on a 1979 opinion of the Attorney General discussing the scope of a county's authority under section 17000. (Madera, supra, 155 Cal. App. 3d at pp. 151-152.) The Attorney General explained that "[t]he county

[****48] [**327] [***149] As we have explained, the state began providing adult MIP's with medical care under Medi-Cal in 1971. Although it initially required counties to [*93] contribute generally to the costs of Medi-Cal, it did not set forth a specific amount for coverage of MIP's. The state was primarily responsible for the costs of the program, and the counties were simply required to contribute funds to defray the state's costs. Beginning with the 1978-1979 fiscal year, the state paid all costs of the Medi-Cal program, including the cost of medical care for adult MIP's. Thus, when section 6 was adopted in November 1979, to the extent that Medi-Cal provided medical care to adult MIP's, San Diego bore no financial responsibility for these health care costs. [16]

The California Attorney General has expressed a similar understanding [****49] of Medi-Cal's effect on the counties' medical care responsibility under section 17000. After the 1971 extension of Medi-Cal coverage to MIP's, Fresno County sought an opinion regarding the scope of its duty to provide medical care under section 17000. It asserted that the 1971 repeal of former section 14108.5, which declared the Legislature's concern with the counties' problems in caring for indigents not eligible for Medi-Cal, evidenced a legislative intent to preempt the field of providing health services. (56 Ops.Cal.Atty.Gen., *supra*, at p. 571.) The Attorney General disagreed, concluding that the 1971 change "did not alter the duty of the counties to provide medical care to those indigents not eligible for Medi-Cal." (Id. at p. 569.) The Attorney General explained: "The statement of concern acknowledged the obligation of counties to continue to provide medical assistance under section 17000; the removal of the statement of concern was not accompanied by elimination of such duty on the part of the counties, *except as the addition of [MIP's] to the Medi-Cal program would remove the burden on the counties to provide medical care for such persons.*" (Id. at [****50] p. 571, italics added.)

[*94] Indeed, the Legislature's statement of intent in an uncodified section of the 1982 legislation excluding adult MIP's from Medi-Cal suggests that it also shared our understanding of section 17000. Section 8.3 of the 1982 Medi-Cal revisions expressly declared the Legislature's intent "[i]n eliminating [M]edically [I]ndigent [A]dults from the Medi-Cal program . . . ." (Stats. 1982, ch. 328, § 8.3, p. 1575; Stats. 1982, ch. 1594, § 86, p. 6357.) It stated in part: "It is further the intent of the Legislature to provide counties with as much flexibility as possible in organizing county health services to serve *the population being transferred.*" (Stats. 1982, ch. 328, § 8.3, p. 1576; Stats. 1982, ch. 1594, § 86, p. 6357, italics added.) If, as the state contends, counties had always been responsible under section 17000 for the medical care of adult MIP's, the description of adult MIP's as "the population being transferred" would have been inaccurate. By so describing adult MIP's, the Legislature indicated its understanding that counties did not have this responsibility while adult MIP's were eligible for Medi-Cal. These sources fully support [****51] our rejection of the state's argument that the 1982 legislation did not impose a mandate because, under section 17000, counties had always borne the responsibility for providing medical care to adult MIP's.

2. *The State's Assumption of Full Funding Responsibility for Providing Medical Care to Adult MIP's Under Medi-Cal*

To support its argument that it never relieved counties of their obligation under section [**328] [***150] 17000 to provide medical care to adult MIP's, the state characterizes as "temporary" the Legislature's assumption of full-funding responsibility for adult MIP's. According to the state, "any ongoing responsibility of the county was, at best, only temporarily, partially, alleviated (and never supplanted)." The state asserts that the Court of Appeal thus "erred by focusing on one phase in th[e] shifting pattern of arrangements" for funding indigent health care, "a focus which led to a myopic conclusion that the state alone is forever responsible for funding the health care for" adult MIP's.

A comparison of the 1978 and 1979 statutes that eliminated the counties' share of Medi-Cal costs refutes the state's claim. The Legislature expressly limited [****52] the effect of the 1978 legislation to one

obligation [under section 17000] to provide general relief extends to those indigents who do not qualify under specialized aid programs, . . . including Medi-Cal." (62 Ops.Cal.Atty.Gen. 70, 71, fn. 1 (1979).) Moreover, the *Madera* court expressly recognized that state and federal programs "alleviate, to a greater or lesser extent, [a] [c]ounty's burden." (Madera, supra, 155 Cal. App. 3d at p. 151.) In *Cooke*, the court simply made a passing reference to *Madera* in dictum describing the coverage history of Medi-Cal. (Cooke, supra, 213 Cal. App. 3d at p. 411.) It neither analyzed the issue before us nor explained the meaning of the dictum that the dissent cites.

[16] As we have previously explained, even before 1971 the state, through the county option, assumed much of the financial responsibility for providing medical care to adult MIP's.

fiscal year, providing that the state "shall pay" each county's Medi-Cal cost share "for the period from July 1, 1978, to June 30, 1979." (Stats. 1978, ch. 292, § 33, p. 610.) The Legislative Counsel's Digest explained that this section would require the state to pay "[a]ll county costs for Medi-Cal" for "the 1978-79 fiscal year only." (Legis. Counsel's Dig., Sen. Bill No. 154, 4 Stats. 1978 (Reg. Sess.), Summary Dig., p. 71.) The digest further explained that the purpose of the bill containing this section was "the *partial* relief of local government from the *temporary* difficulties brought about by the approval of Proposition 13." **[*95]** (*Id. at p. 70*, italics added.) Clearly, the Legislature knew how to include words of limitation when it intended the effects of its provisions to be temporary.

By contrast, the 1979 legislation contains no such limiting language. It simply provided: " Section 14150 of the Welfare and Institutions Code is repealed." (Stats. 1979, ch. 282, § 74, p. 1043.) In setting forth the need to enact the legislation as an urgency statute, the Legislature explained: "The adoption of Article XIII A . **[****53]** . . may cause the curtailment or elimination of programs and services which are vital to the state's public health, safety, education, and welfare. In order that such services not be interrupted, it is necessary that this act take effect immediately." (Stats. 1979, ch. 282, § 106, p. 1059.) In describing the effect of this legislation, the Legislative Counsel first explained that, "[u]nder existing law, the counties pay a specified annual share of the cost of" Medi-Cal. (Legis. Counsel's Dig., Assem. Bill No. 8, 4 Stats. 1979 (Reg. Sess.), Summary Dig., p. 79.) Referring to the 1978 legislation, it further explained that "[f]or the 1978-79 fiscal year only, the state pays . . . [P] . . . [a]ll county costs for Medi-Cal . . . ." (*Ibid.*) The 1979 legislation, the digest continued, "provid[ed] for state assumption of all county costs of Medi-Cal." (*Ibid.*) We find nothing in the 1979 legislation or the Legislative Counsel's summary indicating a legislative intent to eliminate the counties' cost share of Medi-Cal only temporarily.

The state budget process for the 1980-1981 fiscal year confirms that the Legislature's assumption of all Medi-Cal costs was not viewed as **[****54]** "temporary." In the summary of his proposed budget, then Governor Brown described Assembly Bill No. 8, 1981-1982 Regular Session, generally as "a long-term local financing measure" (Governor's Budget for 1980-1981 as submitted to Legislature (1979-1980 Reg. Sess.) Summary of Local Government Fiscal Relief, p. A-30) through which "[t]he total cost of [the Medi-Cal] program was *permanently* assumed by the State . . . ." (*Id.* at p. A-32, italics added.) Similarly, in describing to the Joint Legislative Budget Committee the Medi-Cal funding item in the proposed budget, the Legislative Analyst explained: "Item 287 includes the state cost of 'buying out' the county share of Medi-Cal expenditures. Following passage of Proposition 13, [Senate Bill No.] 154 appropriated $ 418 million to relieve counties of all fiscal responsibility for Medi-Cal program costs. Subsequently, [Assembly Bill No.] 8 was enacted, *which made permanent state assumption of county Medi-Cal costs*." (Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of 1980-1981 Budget Bill, Assem. Bill No. 2020 (1979-1980 Reg. Sess.) at p. 721, italics added.) Thus, the state errs in asserting that the 1979 **[****55]** legislation eliminated the counties' financial support of Medi-Cal "only temporarily."

[*96] [329] [***151]** 3. *State Administration of Medical Care for Adult MIP's Under Medi-Cal*

The state argues that, unlike the school program before us in *Lucia Mar, supra, 44 Cal. 3d 830*, which "had been wholly operated, administered and financed by the state," the program for providing medical care to adult MIP's " 'has never been operated or administered by' " the state. According to the state, Medi-Cal was simply a state "reimbursement program" for care that section 17000 required counties to provide. The state is incorrect.

One of the legislative goals of Medi-Cal was "to allow eligible persons to secure basic health care in the same manner employed by the public generally, and without discrimination or segregation based purely on their economic disability." (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 104.) "In effect, this meant that poorer people could have access to a private practitioner of their choice, and not be relegated to a county hospital program." (*California Medical Assn. v. Brian (1973) 30 Cal. App. 3d 637, 642 [106 Cal. Rptr. 555]*.) **[****56]** Medi-Cal "provided for reimbursement to both public and private health care providers for medical services rendered." (*Lackner, supra, 97 Cal. App. 3d at p. 581*.) It further directed that, "[i]nsofar as practical," public assistance recipients be afforded "free choice of arrangements under which they shall receive basic health care." (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 115.) Finally, since its inception, Medi-Cal has permitted county boards of supervisors to "prescribe rules which authorize the county hospital to integrate its services with those of other hospitals into a system of community service which offers free choice of hospitals to those requiring hospital care. The intent of this section is to eliminate discrimination or segregation based on economic disability so that the county hospital and other hospitals in the community share in providing services to paying patients and to those who qualify for care in public medical care programs." (§ 14000.2.) Thus, "Medi-Cal eligibles were to be able to secure health care in the same manner employed by the general public (i.e., in the private sector or at a county facility)." (1974 Legis. Analyst's Rep., [****57] *supra*, at p. 625; see also Preliminary Rep., *supra*, at p. 17.) By allowing eligible persons "a choice of medical facilities for treatment," Medi-Cal placed county health care providers "in competition with private hospitals." (*Hall, supra, 23 Cal. App. 3d at p. 1061*.)

Moreover, administration of Medi-Cal over the years has been the responsibility of various state departments and agencies. (§ 10720-10721, 14061-14062, 14105, 14203; *Belsh, supra, 13 Cal. 4th at p. 751*; *Morris, supra, 67 Cal. 2d at p. 741*; Summary of Major Events, *supra*, at pp. 2-3, 15.) Thus, *HN16*[] "[i]n adopting the Medi-Cal program the state Legislature, for the most part, shifted indigent medical care from being a county responsibility to a State [*97] responsibility under the Medi-Cal program. [Citation.]" (*Bay General Community Hospital v. County of San Diego (1984) 156 Cal. App. 3d 944, 959 [203 Cal. Rptr. 184]* (*Bay General*); see also Preliminary Rep., *supra*, at p. 18 [with certain exceptions, Medi-Cal "shifted to the state" the responsibility for administration of the medical care provided to eligible persons].) We therefore reject the state's assertion [****58] that, while Medi-Cal covered adult MIP's, county facilities were the sole providers of their medical care, and counties both operated and administered the program that provided that care.

The circumstances we have discussed readily distinguish this case from *County of Los Angeles v. Commission on State Mandates (1995) 32 Cal. App. 4th 805 [38 Cal. Rptr. 2d 304]*, on which the state relies. There, the court rejected the claim that *Penal Code section 987.9*, which required counties to provide criminal defendants with certain defense funds, imposed an unfunded state mandate. Los Angeles filed the claim after the state, which had enacted appropriations between 1977 and 1990 "to reimburse counties for their costs under" the statute, made no appropriation for the 1990-1991 fiscal year. (*County of Los Angeles v. Commission on State Mandates, supra, at p. 812*.) In rejecting the claim, [**330] [***152] the court first held that there was no state mandate because *Penal Code section 987.9* merely implemented the requirements of federal law. (*County of Los Angeles v. Commission on State Mandates, supra, at pp. 814-816*.) Thus, the court stated, "[a]ssuming, arguendo, [****59] the provisions of [*Penal Code] section 987.9* [constituted] a new program" under section 6, there was no state mandate. (*County of Los Angeles v. Commission on State Mandates, supra, at p. 818*.) Here, of course, it is unquestionably the state that has required San Diego to provide medical care to indigent persons.

In dictum, the court also rejected the argument that, under *Lucia Mar, supra, 44 Cal. 3d 830*, the state's "decision not to reimburse the counties for their programs under [*Penal Code] section 987.9*" imposed a new program by shifting financial responsibility for the program to counties. (*County of Los Angeles v. Commission on State Mandates, supra, 32 Cal. App. 4th at p. 817*.) The court explained: "In contrast [to *Lucia Mar*], the program here has never been operated or administered by the State of California. The counties have always borne legal and financial responsibility for implementing the procedures under [*Penal Code] section 987.9*. The state merely reimbursed counties for specific expenses incurred by the counties in their operation of a program for which they had a primary legal and financial responsibility." (*Ibid.*) Here, [****60] as we have explained, between 1971 and 1983, the state administered and bore financial responsibility for the medical care that adult MIP's received under Medi-Cal. The Medi-Cal program was not simply a [*98] method of reimbursement for county costs. Thus, the state's reliance on this dictum is misplaced. [17]

In summary, our discussion demonstrates the Legislature excluded adult MIP's from Medi-Cal *knowing* and *intending* that the 1982 legislation would trigger the counties' responsibility to provide medical care as providers of last resort under *section 17000*. Thus, through the 1982 legislation, the Legislature attempted to do precisely that which the voters enacted section 6 to prevent: "transfer[] to [counties] the fiscal responsibility for providing services [****61] which the state believed should be extended to the public." [18]

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[17] Because *County of Los Angeles v. Commission on State Mandates, supra, 32 Cal. App. 4th 805*, is distinguishable, we need not (and do not) express an opinion regarding the court's analysis in that decision or its conclusions.

[18] The state properly does not contend that the provision of medical care to adult MIP's is not a "program" within the meaning of section 6. (See *County of Los Angeles, supra, 43 Cal. 3d at p. 56* [section 6 applies to "programs that carry out the governmental function of providing services to the

(County of Los Angeles, supra, 43 Cal. 3d at p. 56; see also City of Sacramento v. State of California, supra, 50 Cal. 3d at p. 68 [A "central purpose" of section 6 was "to prevent the state's transfer of the *cost of government* from *itself* to the local level."].) Accordingly, we view the 1982 legislation as having mandated a " 'new program' " on counties by "compelling them to accept financial responsibility in whole or in part for a program," i.e., medical care for adult MIP's, "which was funded entirely by the state before the advent of article XIII B." [19] (Lucia Mar, supra, 44 Cal. 3d at p. 836.)

[**62]** A contrary conclusion would defeat the purpose of section 6. Under the state's interpretation of that section, because section 17000 was enacted before 1975, the Legislature could eliminate the *entire* Medi-Cal program and shift to the counties under section 17000 complete financial responsibility for medical care that the state has been providing **[**331]** **[***153]** since 1966. However, the taxing and spending limitations imposed by articles XIII A and XIII B would greatly limit the ability of counties to meet their expanded section 17000 obligation. "County taxpayers would be forced to accept new taxes or see the county forced to cut existing programs further . . . ." (Kinlaw, supra, 54 Cal. 3d at p. 351 (dis. opn. of Broussard, J.).) As we have previously explained, the voters, recognizing that articles XIII A and XIII B left counties "ill equipped" to assume such increased financial responsibilities, adopted section 6 precisely to avoid this result. (County of Los Angeles, **[*99]** supra, 43 Cal. 3d at p. 61.) Thus, it was the voters who decreed that we must, as the state puts it, "focus[] on one phase in th[e] shifting pattern of [financial] arrangements" **[****63]** between the state and the counties. Under section 6, the state simply cannot "compel[] [counties] to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B . . . ." [20] (Lucia Mar, supra, 44 Cal. 3d at p. 836.)

[**64]** B. *County Discretion to Set Eligibility and Service Standards*

CA(5a)[⬆] **(5a)** The state next argues that, because San Diego had statutory discretion to set eligibility and service standards, there was no reimbursable mandate. Citing section 16704, the state asserts that the 1982 legislation required San Diego to spend MISA funds "only on those whom the county deems eligible under § 17000," "gave the county exclusive authority to determine the level and type of benefits it would provide," and required counties "to include [adult MIP's] in their § 17000 eligibility **only to the extent state funds were available and then only for 3 years.**" (Original emphasis.) [21] **[****65]** According to the state, under section 17001, "[t]he counties **[*100]** have complete discretion over the determination of eligibility, scope of benefits and how the services will be

public"].)

[19] Alternatively, the 1982 legislation can be viewed as having mandated an increase in the services that counties were providing through existing section 17000 programs, by adding adult MIP's to the indigent population that counties already had to serve under that section. (See County of Los Angeles, supra, 43 Cal. 3d at p. 56 ["subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing 'programs' "].)

[20] In reaching a contrary conclusion, the dissent ignores the electorate's purpose in adopting section 6. The dissent also mischaracterizes our decision. We do not hold that "whenever there is a change in a state program that has the effect of increasing a county's financial burden under section 17000 there must be reimbursement by the state." (Dis. opn. of Kennard, J., *post*, at p. 116.) Rather, we hold that HN17[⬆] section 6 prohibits the state from shifting to counties the costs of state programs for which the state assumed complete financial responsibility before adoption of section 6. Whether the state may discontinue assistance that it initiated after section 6's adoption is a question that is not before us.

[21] HN18[⬆] As amended in 1982, section 16704, subdivision (c)(1), provided in relevant part: "The [county board of supervisors] shall assure that it will expend [MISA] funds only for the health services specified in Sections 14132 and 14021 provided to persons certified as eligible for such services pursuant to Section 17000 and shall assure that it will incur no less in net costs of county funds for county health services in any fiscal year than the amount required to obtain the maximum allocation under Section 16702." (Stats. 1982, ch. 1594, § 70, p. 6346.) HN19[⬆] Section 16704, subdivision

provided." [22]

The state exaggerates the extent of a county's discretion under section 17001. It is true "case law . . . has recognized that HN22[] section 17001 confers broad discretion upon the counties in performing their statutory duty to provide general assistance benefits to needy residents. [Citations.]" (Robbins v. [**332] [***154] Superior Court (1985) 38 Cal. 3d 199, 211 [211 Cal. Rptr. 398, 695 P.2d 695] (Robbins).) However, there are "clear-cut limits" to this discretion. (Ibid.) CA(6)[] (6) The counties may exercise their discretion "only within fixed boundaries. In administering General Assistance relief the county acts as an agent of the state. [Citation.] HN23[] When a statute confers upon a state agency the authority to adopt regulations to implement, interpret, make specific or otherwise carry out its provisions, the agency's regulations must be consistent, not in [****66] conflict with the statute, and reasonably necessary to effectuate its purpose. (Gov. Code, § 11374.)" (Mooney, supra, 4 Cal. 3d at p. 679.) Thus, the counties' eligibility and service standards must "carry out" the objectives of section 17000. (Mooney, supra, 4 Cal. 3d at p. 679; see also Poverty Resistance Center v. Hart (1989) 213 Cal. App. 3d 295, 304-305 [261 Cal. Rptr. 545]; § 11000 ["provisions of law relating to a public assistance program shall be fairly and equitably construed to effect the stated objects and purposes of the program"].) County standards that fail to carry out section 17000's objectives "are void and no protestations that they are merely an exercise of administrative discretion can sanctify them." (Morris, supra, 67 Cal. 2d at p. 737.) HN24[] Courts, which have " 'final responsibility for the interpretation of the law,' " must strike them down. (Id. at p. 748.) Indeed, despite the counties' statutory discretion, "courts have consistently invalidated . . . county welfare regulations that fail to meet statutory requirements. [Citations.]" (Robbins, supra, 38 Cal. 3d at p. 212.)

1. *Eligibility*

CA(5b)[] **(5b)** Regarding eligibility, **[****67]** we conclude that counties must provide medical care to all adult MIP's. As we emphasized in *Mooney*, HN25[] section 17000 requires counties to relieve and support " '*all indigent persons* lawfully resident therein, "when such persons are not supported and relieved by their relatives" or by some other means.' " (Mooney, supra, 4 Cal. 3d at p. 678; see also Bernhardt v. Board of Supervisors (1976) 58 Cal. App. 3d 806, 811 [130 Cal. Rptr. 189].) Moreover, section 10000 declares that the statutory "purpose" of division 9 of the Welfare and Institutions Code, which includes section 17000, "is to provide for protection, care, and assistance to the **[*101]** people of the state in need thereof, and to promote the welfare and happiness of all of the people of the state by providing appropriate aid and services to *all of its* needy and distressed." (Italics added.) Thus, HN26[] counties have no discretion to refuse to provide medical care to "indigent persons" within the meaning of section 17000 who do not receive it from other sources. [23] (See Bell v. Board of Supervisors (1994) 23 Cal. App. 4th 1695, 1706 [28 Cal. Rptr. 2d 919] [eligibility standards may not "defeat the **[****68]** purpose of the statutory scheme by depriving qualified recipients of mandated support"]; Washington v. Board of Supervisors (1993) 18 Cal. App. 4th 981, 985 [22 Cal. Rptr. 2d 852] [courts have repeatedly "voided county ordinances which have attempted to redefine eligibility standards set by state statute"].)

Although section 17000 does not define the term

(c)(3), provided in relevant part: "Any person whose income and resources meet the income and resource criteria for certification for services pursuant to Section 14005.7 other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided. Such persons may be held financially liable for these services based upon the person's ability to pay. A county may not establish a payment requirement which would deny medically necessary services. This section shall not be construed to mandate that a county provide any specific level or type of health care service . . . HN20[] . The provisions of this paragraph shall become inoperative if a court ruling is issued which decrees that the provisions of this paragraph mandates [*sic*] that additional state funds be provided and which requires that additional state reimbursement be made to counties for costs incurred under this paragraph. This paragraph shall be operative only until June 30, 1983, unless a later enacted statute extends or deletes that date." (Stats. 1982, ch. 1594, § 70, pp. 6346-6347.)

[22] HN21[] Section 17001 provides: "The board of supervisors of each county, or the agency authorized by county charter, shall adopt standards of aid and care for the indigent and dependent poor of the county or city and county."

[23] We disapprove Bay General, supra, 156 Cal. App. 3d at pages 959-960, insofar as it (1) states that a county's responsibility under section 17000 extends only to indigents as defined by the county's board of supervisors, and (2) suggests that a county may refuse to provide medical care to persons who are "indigent" within the meaning of section 17000 but do not qualify for Medi-Cal.

"indigent persons," the 1982 legislation made clear that all adult MIP's fall within this category for purposes of defining a county's obligation to provide medical care. [24] As part of its exclusion of adult MIP's, that legislation required counties to [****69] participate in the MISA program. (Stats. 1982, ch. 1594, § 68, 70, 86, pp. 6343-6347, 6357.) Regarding that program, the 1982 legislation amended section 16704, subdivision (c)(1), to require [**333] [***155] that a county board of supervisors, in applying for MISA funds, "assure that it will expend such funds only for [specified] health services . . . provided to persons certified as eligible for such services pursuant to Section 17000 . . . ." (Stats. 1982, ch. 1594, § 70, p. 6346.) At the same time, the 1982 legislation amended section 16704, subdivision (c)(3), to provide that "[a]ny person whose income and resources meet the income and resource criteria for certification for services pursuant to Section 14005.7 other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided." (Stats. 1982, ch. 1594, § 70, p. 6346.) As the state correctly explains, under this provision, "counties had to include [Medically Indigent Adults] in their [section] 17000 eligibility" standards. By requiring counties to make all adult MIP's eligible for services paid for with MISA funds, while at the same time [****70] requiring counties to promise to spend such funds *only* on those certified as eligible under section 17000, the Legislature established that all adult MIP's are "indigent persons" for purposes of the counties' duty to provide medical care under section 17000. Otherwise, the counties could not comply with their promise.

[*102] Our conclusion is not affected by language in section 16704, subdivision (c)(3), making it "operative only until June 30, 1985, unless a later enacted statute extends or deletes that date." [25] As we have explained, the subdivision established that HN27 adult MIP's are "indigent persons" within the meaning of section 17000 for medical care purposes. As we have also explained, section 17000 requires counties to relieve and support *all* "indigent persons." Thus, even if [****71] the state is correct in asserting that section 16704, subdivision (c)(3), is now inoperative and no longer prohibits counties from excluding adult MIP's from eligibility for medical services, section 17000 has that effect. [26]

Additionally, the coverage history of Medi-Cal demonstrates that the Legislature has always viewed all adult MIP's as "indigent persons" within the [****72] meaning of section 17000 for medical care purposes. As we have previously explained, when the Legislature created the original Medi-Cal program, which covered only categorically linked persons, it "declar[ed] its concern with the problems which [would] be facing the counties with respect to the medical care of indigent persons who [were] not covered" by Medi-Cal, "whose medical care [had to] be financed entirely by the counties in a time of heavily increasing medical costs." (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 116 [enacting former § 14108.5].) Moreover, to ensure that the counties' Medi-Cal cost share would not leave counties "with insufficient funds to provide hospital care for those persons not eligible for Medi-Cal," the Legislature also created the county option. (Hall, supra, 23 Cal. App. 3d at p. 1061.) Through the county option, "the state agreed to assume all county health care costs . . . in excess of county costs incurred during the 1964-1965 fiscal year, adjusted for population increases." (Lackner, supra, 97 Cal. App. 3d at p. 586.) Thus, the Legislature expressly recognized that the categorically linked persons initially eligible [****73] for Medi-Cal did not constitute all "indigent persons" entitled to medical care under section 17000, and required the state to share in the financial responsibility for providing that care.

In adding adult MIP's to Medi-Cal in 1971, the Legislature extended Medi-Cal coverage to noncategorically linked persons "who [were] financially unable to pay for their medical care." (Legis. Counsel's Dig., Assem. Bill No. 949, 3 Stats. 1971 (Reg. Sess.) Summary Dig., p. 83.) This [*103] description was consistent with prior judicial decisions that, for purposes

[24] Our conclusion is limited to this aspect of a county's duty under section 17000. We express no opinion regarding the scope of a county's duty to provide other forms of relief and support under section 17000.

[25] The 1982 legislation made the subdivision operative until June 30, 1983. (Stats. 1982, ch. 1594, § 70, p. 6347.) In 1983, the Legislature repealed and reenacted section 16704, and extended the operative date of subdivision (c)(3) to June 30, 1985. (Stats. 1983, ch. 323, § 131.1, 131.2, pp. 1079-1080.)

[26] Given our analysis, we express no opinion about the statement in Cooke, supra, 213 Cal. App. 3d at page 412, footnote 9, that the "life" of section 16704, subdivision (c)(3), "was implicitly extended" by the fact that the "paragraph remains in the statute despite three subsequent amendments to the statute . . . ."

of a county's duty to provide "indigent persons" with hospitalization, [***156] had [**334] defined the term to include a person "who has insufficient means to pay for his maintenance in a private hospital after providing for those who legally claim his support." (Goodall v. Brite (1936) 11 Cal. App. 2d 540, 550 [54 P.2d 510].)

Moreover, the fate of amendments to section 17000 proposed at the same time suggests that, in the Legislature's view, the category of "indigent persons" entitled to medical care under section 17000 extended even *beyond* those eligible for Medi-Cal as MIP's. The June 17, 1971, version of [****74] Assembly Bill No. 949 amended section 17000 by adding the following: "however, the health needs of such persons shall be met under [Medi-Cal]." (Assem. Bill No. 949 (1971 Reg. Sess.) § 53.3, as amended June 17, 1971.) The Assembly deleted this amendment on July 20, 1971. (Assem. Bill No. 949 (1971 Reg. Sess.) as amended July 20, 1971, p. 37.) Regarding this change, the Assembly Committee on Health explained: "The proposed amendment to Section 17000, . . . which would have removed the counties' responsibilities as health care provider of last resort, is deleted. This change was originally proposed to clarify the guarantee to hold counties harmless from additional Medi-Cal costs. It is deleted since it cannot remove the fact that counties are, by definition, a 'last resort' for any person, with or without the means to pay, who does not qualify for federal or state aid." (Assem. Com. on Health, Analysis of Assem. Bill No. 949 (1971 Reg. Sess.) as amended July 20, 1971 (July 21, 1971), p. 4.)

The Legislature's failure to amend section 17000 in 1971 figured prominently in the Attorney General's interpretation of that section only two years later. In a 1973 published opinion, the Attorney [****75] General stated that the 1971 inclusion of MIP's in Medi-Cal "did not alter the duty of the counties to provide medical care to those indigents not eligible for Medi-Cal." (56 Ops.Cal.Atty.Gen., *supra*, at p. 569.) He based this conclusion on the 1971 legislation, relevant legislative history, and "the history of state medical care programs." (Id. at p. 570.) The opinion concluded: "The definition of medically indigent in [the chapter establishing Medi-Cal] is applicable only to that chapter and *does not include all those enumerated in section 17000*. If the former medical care program, by providing care only for a specific group, public assistance recipients, did not affect the responsibility of the counties to provide such service under section 17000, we believe the most recent expansion of the medical assistance program does not affect, *absent an express legislative intent to the contrary*, the duty of the counties under section 17000 to continue to provide services to those eligible under section 17000 but not under [Medi-Cal]." (*Ibid.*, italics added.) HN28 The Attorney General's opinion, although not binding, is entitled to considerable weight. [*104] (*Freedom* [****76] Newspapers, Inc. v. Orange County Employees Retirement System (1993) 6 Cal. 4th 821, 829 [25 Cal. Rptr. 2d 148, 863 P.2d 218].) Absent controlling authority, it is persuasive because we presume that the Legislature was cognizant of the Attorney General's construction of section 17000 and would have taken corrective action if it disagreed with that construction. (California Assn. of Psychology Providers v. Rank (1990) 51 Cal. 3d 1, 17 [270 Cal. Rptr. 796, 793 P.2d 2].)

In this case, of course, we need not (and do not) decide whether San Diego's obligation under section 17000 to provide medical care extended beyond adult MIP's. Our discussion establishes, however, that the obligation extended *at least* that far. The Legislature has made it clear that all adult MIP's are "indigent persons" under section 17000 for purposes of San Diego's obligation to provide medical care. Therefore, the state errs in arguing that San Diego had discretion to refuse to provide medical care to this population. [27]

[****77] [**335] [***157] 2. *Service Standards*

CA(7) (7) A number of statutes are relevant to the state's argument that San Diego had discretion in setting service standards. Section 17000 requires in general terms that counties "relieve and support" indigent persons. Section 10000, which sets forth the purpose of the division containing section 17000,

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[27] Although asserting that nothing required San Diego to provide "all" adult MIP's with medical care, the state never precisely identifies which adult MIP's were legally entitled to medical care and which ones were not. Nor does the state ever directly assert that some adult MIP's were not "indigent persons" under section 17000. On the contrary, despite its argument, the state seems to suggest that San Diego's medical care obligation under section 17000 extended even beyond adult MIP's. It asserts: "At no time prior to or following 1983 did Medi-Cal ever provide medical services to, or pay for medical services provided to, all persons who could not afford such services and therefore might be deemed 'medically indigent.' . . . For some period prior to 1983, Medi-Cal paid for services for some indigent adults under its 'medically indigent adults' category. . . . [A]t no time did the state ever assume financial responsibility for all adults who are too indigent to afford health care." (Original emphasis.)

declares the "legislative intent that aid shall be administered and services provided promptly and humanely, with due regard for the preservation of family life," so "as to encourage self-respect, self-reliance, and the desire to be a good citizen, useful to society." (§ 10000.) "HN29[] Section 17000, as authoritatively interpreted, mandates that medical care be provided to indigents and section 10000 requires that such care be provided promptly and humanely. The duty is mandated by statute. There is no discretion concerning whether to provide such care . . . ." (Tailfeather v. Board of Supervisors (1996) 48 Cal. App. 4th 1223, 1245 [56 Cal. Rptr. 2d 255] (*Tailfeather*).)

Courts construing section 17000 have held that HN30[] it "imposes a mandatory duty upon all counties to provide 'medically necessary care,' not just **[*105]** emergency **[****78]** care. [Citation.]" (County of Alameda v. State Bd. of Control (1993) 14 Cal. App. 4th 1096, 1108 [18 Cal. Rptr. 2d 487]; see also Gardner v. County of Los Angeles (1995) 34 Cal. App. 4th 200, 216 [40 Cal. Rptr. 2d 271]; § 16704.1 [prohibiting a county from requiring payment of a fee or charge "before [it] renders medically necessary services to . . . persons entitled to services under Section 17000"].) It further "ha[s] been interpreted . . . to impose a minimum standard of care below which the provision of medical services may not fall." (Tailfeather, supra, 48 Cal. App. 4th at p. 1239.) In *Tailfeather*, the court stated that "section 17000 requires provision of medical services to the poor at a level which does not lead to unnecessary suffering or endanger life and health . . . ." (Id. at p. 1240.) In reaching this conclusion, it cited Cooke, supra, 213 Cal. App. 3d at page 404, which held that section 17000 requires counties to provide "dental care sufficient to remedy substantial pain and infection." (See also § 14059.5 [defining "[a] service [as] 'medically necessary' . . . when it is reasonable and necessary to protect life, to **[****79]** prevent significant illness or significant disability, or to alleviate severe pain"].)

During the years for which San Diego sought reimbursement, Health and Safety Code section 1442.5, former subdivision (c) (former subdivision (c)), also spoke to the level of services that counties had to provide under Welfare and Institutions Code section 17000. [28] **[****81]** As enacted in September 1974, HN31[] former subdivision (c) provided that, whether a county's duty to provide care to all indigent people "is fulfilled directly by the county or through alternative means, the availability of services, and the quality of the treatment received by people who cannot afford to pay for their health care shall be the same as that available to nonindigent people receiving health care services in private facilities in that county." (Stats. 1974, ch. 810, § 3, p. 1765.) The express "purpose and intent" of the act that contained former subdivision (c) was "to insure that the duty of counties to provide health care to indigents [was] properly and continuously fulfilled." (Stats. 1974, ch. 810, § 1, p. 1764.) Thus, until its repeal in September 1992, [29] former subdivision (c) "[r]equire[d] that the availability **[****80]** and quality of services provided to indigents directly by the county or alternatively be the same as that available to nonindigents in private facilities in that county." (Legis. Counsel's Dig., Sen. Bill No. 2369, 2 Stats. 1974 (Reg. Sess.) Summary Dig., p. 130; see also Gardner v. [**336] [***158] County of Los Angeles, supra, 34 Cal. App. 4th at p. 216; **[*106]** Board of Supervisors v. Superior Court, supra, 207 Cal. App. 3d at p. 564 [former subdivision (c) required that care provided "be *comparable* to that enjoyed by the nonindigent"].) [30] "For the 1990-91 fiscal year," the Legislature qualified this obligation by providing: "nothing in [former] subdivision (c) . . . shall require any county to exceed the standard of care provided by the state Medi-Cal program. Notwithstanding any other provision of law, counties shall not be required to increase eligibility or expand the scope of services in the 1990-91 fiscal year for their programs." (Stats. 1990, ch. 457, § 23, p. 2013.)

Although we have identified statutes relevant to service standards, we need not here define the precise contours

[28] The state argues that former subdivision (c) is irrelevant to our determination because, like section 17000, it "predate[d] 1975." Our previous analysis rejecting this argument in connection with section 17000 applies here as well.

[29] Statutes 1992, chapter 719, section 2, page 2882, repealed former subdivision (c) and enacted a new subdivision (c) in its place. This urgency measure was approved by the Governor on September 14, 1992, and filed with the Secretary of State on September 15, 1992.

[30] HN32[] We disapprove Cooke, supra, 213 Cal. App. 3d at page 410, to the extent it held that Health and Safety Code section 1442.5, former subdivision (c), was merely "a limitation on a county's ability to close facilities or reduce services provided in those facilities," and was irrelevant absent a claim that a "county facility was closed [or] that any services in [the] county . . . were reduced." Although former subdivision (c) was contained in a section that dealt in part with closures and service reductions, nothing limited its reach to that context.

of San Diego's statutory health care obligation. The state argues generally that San Diego had discretion regarding the services it provided. However, [****82] the state fails to identify either the specific services that San Diego provided under its CMS program or which of those services, if any, were not required under the governing statutes. Nor does the state argue that San Diego could have eliminated all services and complied with statutory requirements. Accordingly, we reject the state's argument that, because San Diego had some discretion in providing services, the 1982 legislation did not impose a reimbursable mandate. [31]

VI. MINIMUM REQUIRED EXPENDITURE

CA(8)[] (8) The Court of Appeal held that, under the governing statutes, the Commission must initially determine the precise amount of any reimbursement due San Diego. It therefore reversed the damages portion of the trial court's judgment and remanded the matter to the Commission for this [****83] determination. Nevertheless, the Court of Appeal affirmed the trial court's finding that the Legislature required San Diego to spend at least $ 41 million on its CMS program for fiscal years 1989-1990 and 1990-1991. In affirming this finding, the Court of Appeal relied primarily on section 16990, subdivision (a), as it read at all relevant times. The state contends this provision did not mandate that San Diego spend any minimum amount on the CMS program. It further asserts that the Court of Appeal's "ruling in effect sets a damages baseline, in contradiction to [its] ostensible reversal of the damage award."

[*107] Former section 16990, subdivision (a), set forth the financial maintenance-of-effort requirement for counties that received funding under the California Healthcare for the Indigent Program (CHIP). The Legislature enacted CHIP in 1989 to implement Proposition 99, the Tobacco Tax and Health Protection Act of 1988 (codified at Rev. & Tax. Code, § 30121 et seq.). Proposition 99, which the voters approved on November 8, 1988, increased the tax on tobacco products and allocated the resulting revenue in part to medical and hospital care for certain persons who could not [****84] afford those services. (Kennedy Wholesale, Inc. v. State Bd. of Equalization (1991) 53 Cal. 3d 245, 248, 254 [279 Cal. Rptr. 325, 806 P.2d 1360].) During the 1989-1990 and 1990-1991 fiscal years, HN33[] former section 16990, subdivision (a), required counties receiving CHIP funds, "at a minimum," to "maintain a level of financial support of county funds for health services at least equal to its county match and any overmatch of county funds in the 1988-89 fiscal year," adjusted annually as provided. (Stats. 1989, ch. 1331, § 9, p. 5427.) Applying this provision, the Court of Appeal affirmed the trial court's finding that the state had required San Diego to spend in fiscal years 1989-1990 and 1990-1991 [**337] [***159] at least $ 41 million on the CMS program.

We agree with the state that this finding is erroneous. Unlike participation in MISA, which was mandatory, participation in CHIP was voluntary. In establishing CHIP, the Legislature appropriated funds "for allocation to counties *participating* in" the program. (Stats. 1989, ch. 1331, § 10, p. 5436, italics added.) Section 16980, subdivision (a), directed the State Department of Health Services to make CHIP payments [****85] "upon application of the county assuring that it will comply with" applicable provisions. Among the governing provisions were former sections 16990, subdivision (a), and 16995, subdivision (a), which provided: "To be eligible for receipt of funds under this chapter, a county may not impose more stringent eligibility standards for the receipt of benefits under Section 17000 or reduce the scope of benefits compared to those which were in effect on November 8, 1988." (Stats. 1989, ch. 1331, § 9, p. 5431.)

However, San Diego has cited no provision, and we have found none, that *required* eligible counties to participate in the program or apply for CHIP funds. Through Revenue and Taxation Code section 30125, which was part of Proposition 99, the electorate directed that funds raised through Proposition 99 "shall be used to supplement existing levels of service and not to fund existing levels of service." (See also Stats. 1989, ch. 1331, § 1, 19, pp. 5382, 5438.) Counties not wanting to supplement their existing levels of service, and which therefore did not want CHIP funds, were not bound by the program's requirements. Those counties, including San Diego, that chose [*108] to [****86] seek CHIP funds did so voluntarily. [32] Thus, the Court of Appeal

[31] During further proceedings before the Commission to determine the amount of reimbursement due San Diego, the state may argue that particular services available under San Diego's CMS program exceeded statutory requirements.

[32] Consistent with the electorate's direction, in its application for CHIP funds, San Diego assured the state that it would "[e]xpend [CHIP] funds only to supplement existing levels of services provided and not to fund existing levels of service . . ." Because San Diego's initial decision to seek CHIP funds was voluntary, the evidence it cites of state threats to withhold

erred in concluding that former *section 16990, subdivision (a)*, mandated a minimum funding requirement for San Diego's CMS program.

Nor did former *section 16991, subdivision (a)(5)*, which the trial court and Court of Appeal also cited, establish a minimum financial obligation for San Diego's CMS program. Former *section 16991* generally "establish[ed] a procedure for the allocation of funds to each county receiving funds from the [MISA] . . . for the provision of services to persons meeting certain Medi-Cal **[****87]** eligibility requirements, based on the percentage of newly legalized individuals under the federal Immigration Reform and Control Act (IRCA)." (Legis. Counsel's Dig., Assem. Bill No. 75, 4 Stats. 1989 (Reg. Sess.) Summary Dig., p. 548.) Former *section 16991, subdivision (a)(5)*, required the state, for fiscal years 1989-1990 and 1990-1991, to reimburse a county if its combined allocation from various sources was less than the funding it received under section 16703 for fiscal year 1988-1989. [33] Nothing about this state reimbursement requirement imposed on San Diego a minimum funding requirement for its CMS program.

[**88]** Thus, we must reverse the judgment insofar as it finds that former *sections 16990, subdivision (a)*, and *16991, subdivision (a)(5)*, established a $ 41 million spending floor for San Diego's CMS program. Instead, the various statutes that we have previously discussed (e.g., *§ 10000*, *17000*, and *Health & [**338] [***160] Saf. Code, § 1442.5*, former subd. (c)), the cases construing those statutes, and any other relevant authorities must guide the Commission's determination of the level of services that San Diego had to provide and any reimbursement to which it is entitled.

[*109] VII. REMAINING ISSUES

CA(9)[↑] **(9)** The state raises a number of additional issues. It first complains that a mandamus proceeding under *Code of Civil Procedure section 1085* was an improper vehicle for challenging the Commission's position. It asserts that, under *Government Code section 17559*, review by administrative mandamus under *Code of Civil Procedure section 1094.5* is the exclusive method for challenging a Commission decision denying a mandate claim. The Court of Appeal rejected this argument, reasoning that the trial court had jurisdiction under *Code of Civil Procedure section 1085* because, under section **[****89]** 6, the state has a ministerial duty of reimbursement when it imposes a mandate.

Like the Court of Appeal, but for different reasons, we reject the state's argument. *HN35*[↑] "[M]andamus pursuant to *[Code of Civil Procedure] section 1094.5*, commonly denominated 'administrative' mandamus, is mandamus still. It is not possessed of 'a separate and distinctive legal personality. It is not a remedy removed from the general law of mandamus or exempted from the latter's established principles, requirements and limitations.' [Citations.] The full panoply of rules applicable to 'ordinary' mandamus applies to 'administrative' mandamus proceedings, except where modified by statute. [Citations.]" (*Woods v. Superior Court (1981) 28 Cal. 3d 668, 673-674 [170 Cal. Rptr. 484, 620 P.2d 1032]*.) Where the entitlement to mandamus relief is adequately alleged, a trial court may treat a proceeding brought under *Code of Civil Procedure section 1085* as one brought under *Code of Civil Procedure section 1094.5* and should deny a demurrer asserting that the wrong mandamus statute has been invoked. (*Woods, supra, 28 Cal. 3d at pp. 673-674*; *Anton v. San Antonio Community Hosp. (1977) 19 Cal. 3d [****90] 802, 813-814 [140 Cal. Rptr. 442, 567 P.2d 1162]*.) Thus, even if San Diego identified the wrong mandamus statute, the error did not affect the trial court's ability to grant mandamus relief.

"In any event, distinctions between traditional and administrative mandate have little impact on this appeal . . . ." (*McIntosh v. Aubry (1993) 14 Cal. App. 4th 1576, 1584 [18 Cal. Rptr. 2d 680]*.) *HN36*[↑] The determination whether the statutes here at issue

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CHIP funds if it eliminated the CMS program is irrelevant.

[33] *HN34*[↑] Former *section 16991, subdivision (a)(5)*, provided in full: "If the sum of funding that a county received from its allocation pursuant to Section 16703, the amount of reimbursement it received from federal State Legalization Impact Assistance Grant [(SLIAG)] funding for indigent care, and its share of funding provided in this section is less than the amount of funding the county received pursuant to Section 16703 in fiscal year 1988-89 the state shall reimburse the county for the amount of the difference. For the 1990-91 fiscal year, if the sum of funding received from its allocation, pursuant to Section 16703 and the amount of reimbursement it received from [SLIAG] Funding for indigent care that year is less than the amount of funding the county received pursuant to Section 16703 in the 1988-89 fiscal year, the state shall reimburse the amount of the difference. If the department determines that the county has not made reasonable efforts to document and claim federal SLIAG funding for indigent care, the department shall deny the reimbursement." (Stats. 1989, ch. 1331, § 9, p. 5428.)

established a mandate under section 6 is a question of law. (County of Fresno v. Lehman, supra, 229 Cal. App. 3d at p. 347.) In reaching our conclusion, we have relied on no facts that are in dispute. Where, as here, a "purely legal question" is at issue, courts "exercise independent judgment . . ., no matter whether the issue arises by traditional or administrative mandate. [Citations.]" (McIntosh, supra, 14 Cal. App. 4th at p. 1584.) As the state concedes, even under Code of Civil Procedure section 1094.5, a judgment must "be reversed if based on erroneous conclusions of law." Thus, any differences between the two mandamus statutes have had no impact on our analysis.

[*110] The state next contends that the trial **[****91]** court prejudicially erred in denying the "peremptory disqualification" motion that the Director of the Department of Finance filed under Code of Civil Procedure section 170.6. We will not review this ruling, however, because HN37[] it is reviewable only by writ of mandate under Code of Civil Procedure section 170.3, subdivision (d). (People v. Webb (1993) 6 Cal. 4th 494, 522-523 [24 Cal. Rptr. 2d 779, 862 P.2d 779]; People v. Hull (1991) 1 Cal. 4th 266 [2 Cal. Rptr. 2d 526, 820 P.2d 1036].)

Nor can we address the state's argument that the trial court erred in granting a preliminary injunction. The May 1991 order granting the HN38[] preliminary injunction was "immediately and separately appealable" under Code of Civil Procedure section 904.1, subdivision (a)(6). (Art Movers, Inc. v. Ni West, Inc. (1992) 3 Cal. App. 4th 640, 645 [4 Cal. Rptr. 2d 689].) Thus, the state's attempt to challenge the order in an appeal filed after entry of final judgment in December 1992 **[**339]** **[***161]** was untimely. [34] (See Chico Feminist Women's Health Center v. Scully (1989) 208 Cal. App. 3d 230, 251 [256 Cal. Rptr. 194].) Moreover, the state's attempt to appeal the order granting **[****92]** the preliminary injunction is moot because of (1) the trial court's July 1 order granting a peremptory writ of mandate, which expressly "supersede[d] and replace[d]" the preliminary injunction order and (2) entry of final judgment. (Sheward v. Citizens' Water Co. (1891) 90 Cal. 635, 638-639 [27 P. 439]; People v. Morse (1993) 21 Cal. App. 4th 259, 264-265 [25 Cal. Rptr. 2d 816]; Art Movers, Inc., supra, 3 Cal. App. 4th at p. 647.)

Finally, the state requests that we reverse the trial court's reservation of jurisdiction regarding an award of attorney fees. This request is premature. In the judgment, the trial court "retain[ed] jurisdiction to determine any right to and amount of attorneys' fees . . . ." **[****93]** This provision does not declare that San Diego in fact has a right to an award of attorney fees. Nor has San Diego asserted such a right. As San Diego states, at this point, "[t]here is nothing for this Court to review." We will not give an advisory ruling on this issue.

VIII. DISPOSITION

The judgment of the Court of Appeal is affirmed insofar as it holds that the exclusion of adult MIP's from Medi-Cal imposed a mandate on San Diego within the meaning of section 6. The judgment is reversed insofar as it holds that the state required San Diego to spend at least $ 41 million on the CMS program in fiscal years 1989-1990 and 1990-1991. The matter is **[*111]** remanded to the Commission to determine whether, and by what amount, the statutory standards of care (e.g., Health & Saf. Code, § 1442.5, former subd. (c); Welf. & Inst. Code, § 10000, 17000) forced San Diego to incur costs in excess of the funds provided by the state, and to determine the statutory remedies to which San Diego is entitled.

George, C. J., Mosk, J., Baxter, J., Anderson, J., * **[****94]** and Aldrich, J., ** concurred.

Dissent by: KENNARD

Dissent

KENNARD, J.

I dissent.

As part of an initiative measure placing spending limits on state and local government, the voters in 1979 added article XIII B to the California Constitution. Section 6 of this article provides that when the state "mandates a new program or higher level of service on any local

[34] Despite its argument here, when it initially appealed, the state apparently recognized that it could no longer challenge the May 1991 order. In its March 1993 notice of appeal, it appealed only from the judgment entered December 18, 1992, and did not mention the May 1991 order.

* Presiding Justice, Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

** Associate Justice, Court of Appeal, Second Appellate District, Division Three, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

government," the state must reimburse the local government for the cost of such program or service. Under subdivision (c) of this constitutional provision, however, the state "may, but need not," provide such reimbursement *if the state mandate was enacted before January 1, 1975.* (Cal. Const., art. XIII B, § 6, subd. (c).) Subdivision (c) is the critical provision here.

Because the counties have for many decades been under a state mandate to provide for the poor, a mandate that existed before the voters added article XIII B to the state Constitution, the express language of subdivision **[****95]** (c) of section 6 of article XIII B exempts the state from any *legal obligation* to reimburse the counties for the cost of medical care to the needy. The fact that for a certain period after 1975 the state directly paid under the state Medi-Cal program for these costs did not lead to the creation of a new mandate once the state stopped doing so. To hold to the contrary, as the majority does, is to render subdivision (c) a nullity.

The issue here is not whether the poor are entitled to medical care. They are. The issue is whether the state or the counties must pay for this care. The majority places this obligation on the state. The counties' **[**340]** **[***162]** win, however, may be a pyrrhic victory. For, in anticipation of today's decision, the Legislature has enacted legislation that will drastically reduce the counties' share of other state revenue, as discussed in part III below.

I

Beginning in 1855, California imposed a legal obligation on the counties to take care of their poor. (*Mooney v. Pickett (1971) 4 Cal. 3d 669, 677-678* **[*112]** *[94 Cal. Rptr. 279, 483 P.2d 1231]*.) Since 1965, this obligation has been codified in *Welfare and Institutions Code* **[****96]** *section 17000*. (Stats. 1965, ch. 1784, § 5, p. 4090.) That statute states in full: "Every county and every city and county shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." (*Welf. & Inst. Code, § 17000*.) Included in this is a duty to provide medical care to indigents. (*Board of Supervisors v. Superior Court (1989) 207 Cal. App. 3d 552, 557 [254 Cal. Rptr. 905]*.)

A brief overview of the efforts by federal, state, and local governments to furnish medical services to the poor may be helpful.

Before March 1, 1966, the date on which California began its Medi-Cal program, medical services for the poor "were provided in different ways and were funded by the state, county, and federal governments in varying amounts." (Assem. Com. on Public Health, Preliminary Rep. on Medi-Cal (Feb. 29, 1968) p. 3.) The Medi-Cal program, which California adopted to implement the federal Medicaid program (*42 U.S.C. § 1396 et seq.*; see *Morris* **[****97]** *v. Williams (1967) 67 Cal. 2d 733, 738 [63 Cal. Rptr. 689, 433 P.2d 697]*), at first limited eligibility to those persons "linked" to a federal categorical aid program by being over age 65, blind, disabled, or a member of a family with dependent children. (Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of 1971-1972 Budget Bill, Sen. Bill No. 207 (1971 Reg. Sess.), pp. 548, 550.) Persons not linked to federal programs were ineligible for Medi-Cal; they could obtain medical care from the counties. (*County of Santa Clara v. Hall (1972) 23 Cal. App. 3d 1059, 1061 [100 Cal. Rptr. 629]*.)

In 1971, the Legislature revised Medi-Cal by extending coverage to certain so-called "noncategorically linked" persons, or "medically indigent persons." (Stats. 1971, ch. 577, § 12, 13, 22.5, 23, pp. 1110-1111, 1115.) The revisions included a formula for determining each county's share of Medi-Cal costs for the 1972-1973 fiscal year, with increases in later years based on the assessed value of property. (*Id.* at § 41, 42, pp. 1131-1133.)

In 1978, California voters added to the state Constitution article XIII A (Proposition 13), which severely limited property taxes. In that **[****98]** same year, to help the counties deal with the drastic drop in local tax revenue, the Legislature assumed the counties' share of Medi-Cal costs. (Stats. 1978, ch. 292, § 33, p. 610.) In 1979, the Legislature relieved the counties of their obligation to share in Medi-Cal costs. (Stats. 1979, ch. 282, § 106, p. 1059.) **[*113]** Also in 1979, the voters added to the state Constitution article XIII B, which placed spending limits on state and local governments and added the mandate/reimbursement provisions at issue here.

In 1982, the Legislature removed from Medi-Cal eligibility the category of "medically indigent persons" that had been added in 1971. The Legislature also transferred funds for indigent health care services from the state to the counties through the Medically Indigent Services Account. (Stats. 1982, ch. 328, § 6, 8.3, 8.5, pp. 1574-1576; Stats. 1982, ch. 1594, § 19, 86, pp.

6315, 6357.) Medically Indigent Services Account funds were then combined with county health service funds to provide health care to persons not eligible for Medi-Cal (Stats. 1982, ch. 1594, § 86, p. 6357), and counties were to provide health services to persons in this category "to the extent [****99] that state funds are provided" (*id.*, § 70, p. 6346).

From 1983 through June 1989, the state fully funded San Diego County's program for furnishing medical care to the poor. Thereafter, in fiscal years 1989-1990 and 1990-1991, the state partially funded San Diego [**341] [***163] County's program. In early 1991, however, the state refused to provide San Diego County full funding for the 1990-1991 fiscal year, prompting a threat by the county to terminate its indigent medical care program. This in turn led the Legal Aid Society of San Diego to file an action against the County of San Diego, asserting that Welfare and Institutions Code section 17000 imposed a legal obligation on the county to provide medical care to the poor. The county cross-complained against the state. The county argued that the state's 1982 removal of the category of "medically indigent persons" from Medi-Cal eligibility mandated a "new program or higher level of service" within the meaning of section 6 of article XIII B of the California Constitution, because it transferred the cost of caring for these persons to the county. Accordingly, the county contended, section 6 required the state to reimburse [****100] the county for its cost of providing such care, and prohibited the state from terminating reimbursement as it did in 1991. The county eventually reached a settlement with the Legal Aid Society of San Diego, leading to a dismissal of the latter's complaint.

While the County of San Diego's case against the state was pending, litigation was proceeding in a similar action against the state by the County of Los Angeles and the County of San Bernardino. In that action, the Superior Court for the County of Los Angeles entered a judgment in favor of Los Angeles and San Bernardino Counties. The state sought review in the Second District Court of Appeal in Los Angeles. In December 1992, the parties to the Los Angeles case entered into a settlement agreement providing for dismissal of the appeal and vacating of the superior court judgment. [*114] The Court of Appeal thereafter ordered that the superior court judgment be vacated and that the appeal be dismissed.

The County of San Diego's action against the state, however, was not settled. It proceeded on the county's claim against the state for reimbursement of the county's expenditures for medical care to the indigent. [1] The majority [****101] holds that the county is entitled to such reimbursement. I disagree.

II

Article XIII B, section 6 of the California Constitution provides: "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 program or increased level of service, *except that the Legislature may, but need not, provide such subvention of funds for the following mandates:* [P] . . . [P] *(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.*" (Italics added.) [2]

[****102] Of importance here is Welfare and Institutions Code section 17000 (hereafter sometimes section 17000). It imposes a legal obligation on the counties to provide, among other things, medical services to the poor. (Board of Supervisors v. Superior Court, supra, 207 Cal. App. 3d at p. 557; County of San Diego v. Viloria (1969) 276 Cal. App. 2d 350, 352 [80 Cal. Rptr. 869].) Section 17000 was enacted long before, and has existed continuously since, January 1, 1975, the date set forth in subdivision (c) of section 6 of article XIII B of the California Constitution. Thus, section 17000 falls within subdivision (c)'s language of "[l]egislative mandates enacted prior to January 1, 1975," rendering it exempt from the reimbursement provision of section 6.

Contrary to the majority's conclusion, the Legislature's 1982 legislation removing the category of "medically indigent persons" from Medi-Cal did not meet California Constitution, article XIII B, section 6's requirement of imposing on local government "a new program or higher level of service," and therefore did not entitle the counties to reimbursement [**342] [***164] from the state under section 6 of article [****103] XIII B. The counties' legal obligation to provide medical care arises

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[1] I agree with the majority that the superior court had jurisdiction to decide this case. (Maj. opn., *ante*, at pp. 85-90.)

[2] Section 6 of article XIII B pertains to two types of mandates: new programs and higher levels of service. The words "such subvention" in the first paragraph of this constitutional provision makes the subdivision (c) exemption applicable to both types of mandates.

from *section 17000*, not from the subsequently enacted **[*115]** 1982 legislation. The majority itself concedes that the 1982 legislation merely "trigger[ed] the counties' responsibility to provide medical care as providers of last resort under *section 17000*." (Maj. opn., *ante*, at p. 98.) Although certain actions by the state and the federal government during the 1970's and 1980's may have alleviated the counties' financial burden of providing medical care for the indigent, those actions did not supplant or remove the counties' existing legal obligation under *section 17000* to furnish such care. (*Cooke v. Superior Court (1989) 213 Cal. App. 3d 401, 411 [261 Cal. Rptr. 706]*; *Madera Community Hospital v. County of Madera (1984) 155 Cal. App. 3d 136, 151 [201 Cal. Rptr. 768]*.)

The state's reimbursement obligation under *section 6 of article XIII B of the California Constitution* arises only if, after January 1, 1975, the date mentioned in subdivision (c) of section 6, the state imposes on the counties "a new program or higher level of service." That did not occur here. As I pointed out above, **[****104]** the counties' legal obligation to provide for the poor arises from *section 17000*, enacted long before the January 1, 1975, cutoff date set forth in subdivision (c) of section 6. That statutory obligation remained in effect when, during a certain period after 1975, the state assumed the financial burden of providing medical care to the poor, in an effort to help the counties deal with a drastic drop in local revenue as a result of the voters' passage of Proposition 13, which severely limited property taxes. Because the counties' statutory obligation to provide health care to the poor was created before 1975 and has existed unchanged since that time, the state's 1982 termination of Medi-Cal eligibility for "medically indigent persons" did not create a "new program or higher level of service" within the meaning of section 6 of article XIII B, and therefore did not obligate the state to reimburse the counties for their expenditures in health care for the poor.

III

In imposing on the state a legal obligation to reimburse the counties for their cost of furnishing medical services to the poor, the majority's holding appears to bail out financially strapped counties. Not so.

Today's **[****105]** decision will immediately result in a reduction of state funds available to the counties. Here is why. In 1991, the Legislature added *section 11001.5* to the Revenue and Taxation Code, providing that 24.33 percent of the moneys collected by the Department of Motor Vehicles as motor vehicle license fees must be deposited in the State Treasury to the credit of the Local Revenue Fund. In anticipation of today's decision, the Legislature stated in subdivision (d) of this statute: "This section shall cease to be operative on **[*116]** the first day of the month following the month in which the Department of Motor Vehicles is notified by the Department of Finance of a final judicial determination by the California Supreme Court or any California court of appeal [that]: [P] . . . [P] (2) The state is obligated to reimburse counties for costs of providing medical services to medically indigent adults pursuant to Chapters 328 and 1594 of the Statutes of 1982." (*Rev. & Tax. Code, § 11001.5, subd. (d)*; see also *id., § 10753.8, subd. (b)*.)

The loss of such revenue, which the Attorney General estimates at "hundreds of millions of dollars," may put the counties in a serious financial **[****106]** bind. Indeed, realization of the scope of this revenue loss appears to explain why the County of Los Angeles, after a superior court victory in its action seeking state reimbursement for the cost of furnishing medical care to "medically indigent persons," entered into a settlement with the state under which the superior court judgment was effectively obliterated by a stipulated reversal. (See *Neary v. Regents of University of California (1992) 3 Cal. 4th 273 [10 Cal. Rptr. 2d 859, 834 P.2d 119]*.) In a letter addressed to the Second District Court of Appeal, sent while the County of Los Angeles was engaged in settlement negotiations with the state, the county's attorney referred to the legislation mentioned above in these terms: "This legislation was quite clearly written with this case in mind. Consequently, **[**343]** **[***165]** to pursue this matter, *the County of Los Angeles risks losing a funding source it must have to maintain its health services programs at current levels.* The additional funding that might flow to the County from a final judgment in its favor in this matter, is several years away *and is most likely of a lesser amount than this County's share of* **[****107]** *the vehicle license fees.*" (Italics added.) Thus, the County of Los Angeles had apparently determined that a legal victory entitling it to reimbursement from the state for the cost of providing medical care to the category of "medically indigent persons" would not in fact serve its economic interests.

I have an additional concern. According to the majority, whenever there is a change in a state program that has the effect of increasing a county's financial burden under *section 17000* there must be reimbursement by the state. This means that so long as *section 17000* continues to exist, an increase in state funding to a particular county for the care of the poor, once undertaken, may be irreversible, thus locking the state into perpetual financial assistance to that county for health care to the needy. This would, understandably, be a major disincentive for the Legislature to ever increase the state's funding of a county's medical care for the poor.

The rigidity imposed by today's holding will have unfortunate consequences should the state's limited financial resources prove insufficient to **[*117]** reimburse the counties under *section 6 of article XIII B of the California Constitution* **[****108]** for the "new program or higher level of service" of providing medical care to the poor under *section 17000*. In that event, the state may be required to modify this "new program or higher level of service" in order to reconcile the state's reimbursement obligation with its finite resources and its other financial commitments. Such modifications are likely to take the form of limitations on eligibility for medical care or on the amount or kinds of medical care that the counties must provide to the poor under *section 17000*. A more flexible system--one that actively encouraged shared state and county responsibility for indigent medical care, using a variety of innovative funding mechanisms--would be less likely to result in a curtailment of medical services to the poor.

And if the Legislature is unable or unwilling to appropriate funds to comply with the majority's reimbursement order, the law allows the county to file "in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement." (*Gov. Code, § 17612, subd. (c)*; see maj. opn., *ante*, at p. 82.) Such a declaration would do nothing to alleviate the **[****109]** plight of the poor.

Conclusion

The dispute in this case ultimately arises from a collision between the taxing limitations on the counties imposed by article XIII A of the state Constitution and the preexisting, open-ended mandate imposed on them under *Welfare and Institutions Code section 17000* to provide medical care for the poor. As I have explained, the Legislature's assumption thereafter of some of the resulting financial burden to the counties did not repeal *section 17000*'s mandate, nor did the Legislature's later termination of its financial support create a new mandate.. In holding to the contrary, the majority imposes on the Legislature an obligation that the Legislature does not have under the law.

I recognize that my resolution of this issue--that under existing law the state has *no legal obligation* to reimburse the counties for health expenditures for the poor--would leave the counties in the same difficult position in which they find themselves now: providing funding for indigent medical care while maintaining other essential public services in a time of fiscal austerity. But complex policy questions such as the structuring and funding of indigent medical care **[****110]** are best left to the counties, the Legislature, and ultimately the electorate, rather than to the courts. It is the counties that must figure out how to allocate the limited budgets imposed on them by the electorate's adoption of articles XIII A and XIII B of the California Constitution among indigent medical care programs and a host of other pressing **[*118]** and essential needs. It is the Legislature that must decide whether to furnish financial assistance to the counties so **[***166]** they **[**344]** can meet their *section 17000* obligations to provide for the poor, and whether to continue to impose the obligations of *section 17000* on the counties. It is the electorate that must decide whether, given the ever-increasing costs of meeting the needs of indigents under *section 17000*, counties should be afforded some relief from the taxing and spending limits of articles XIII A and XIII B, both enacted by voters' initiative. These are hard choices, but for the reasons just given they are better made by the representative branches of government and the electorate than by the courts.

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County of Fresno v. State

Supreme Court of California

April 22, 1991.

No. S015637.

Reporter

53 Cal. 3d 482 *; 808 P.2d 235 **; 280 Cal. Rptr. 92 ***; 1991 Cal. LEXIS 1363 ****; 91 Daily Journal DAR 4617; 91 Cal. Daily Op. Service 2870

COUNTY OF FRESNO, Plaintiff and Appellant, v. THE STATE OF CALIFORNIA et al., Defendants and Respondents.

Prior History: [****1] Superior Court of Fresno County, No. 379518-4, Gary S. Austin, Judge.

Core Terms

local government, costs, mandates, reimbursement, taxes, user fee, initiative, appropriations, the Act, subvention, facially, taxation, powers, voters, new program, subdivision, expenses, proceeds, levy, increased level of service, mandated costs, limitations, provisions, regulation, Statewide, materials, programs, spending, charges, Ballot

Case Summary

Procedural Posture

Appellant county sought review of a judgment from the Court of Appeal (California), which affirmed the trial court's dismissal of appellant's petition for writ of mandate that sought a declaration that the state reimbursement statute, Cal. Gov't Code § 17556(d), was facially unconstitutional under Cal. Const. art. XIII B, § 6.

Overview

Appellant county filed a petition for writ of mandate and a complaint for declaratory relief against respondents, state, commission, and others, that sought to vacate respondent commission's decision, and sought a declaration that Cal. Gov't Code § 17556(d) was unconstitutional under Cal. Const. art. XIII B, § 6. The trial court denied appellant's petition for writ of mandate and complaint for declaratory relief. The appellate court affirmed. The court granted review for determination on whether § 17556(d) was facially constitutional under Cal. Const. art. XIII B, § 6. The court rejected appellant's argument that the state's enactment of § 17556(d) created a new exception to the reimbursement requirement of Cal. Const. art. XIII B, § 6. The court held that the § 17556(d) was facially constitutional under Cal. Const. art. XIII B, § 6. The court affirmed the appellate court's judgment.

Outcome

The court affirmed the appellate court's judgment, and affirmed the dismissal of appellant county's petition for writ of mandate because the state's reimbursement statute was facially constitutional under the California constitution.

LexisNexis® Headnotes

Constitutional Law > Congressional Duties & Powers > Spending & Taxation

HN1[] **Spending & Taxation**

See Cal. Const. art. XIII B, § 6.

Governments > Local Governments > Administrative Boards

Constitutional Law > Congressional Duties & Powers > Spending & Taxation

Governments > Local Governments > Claims By & Against

HN2[] **Administrative Boards**

Cal. Gov't Code §§ 17500-17630 is enacted to implement Cal. Const. art. XIII B, § 6. Cal. Gov't Code § 17500. A quasi-judicial body is created called the Commission on State Mandates to hear and decide upon any claim by a local government that the local government is entitled to be reimbursed by the state for costs as required by Cal. Const. art. XIII B, § 6. Cal. Gov't. Code § 17551(a).

Constitutional Law > Congressional Duties & Powers > Spending & Taxation

HN3[] **Spending & Taxation**

Costs is defined as costs mandated by the state for any increased costs that the local government is required to incur as a result of any statute, or any executive order implementing any statute, which mandates a new program or higher level of service of any existing program within the meaning of Cal. Const. art. XIII B, § 6. Cal. Gov't. Code § 17514.

Governments > Local Governments > Duties & Powers

Constitutional Law > Congressional Duties & Powers > Spending & Taxation

HN4[] **Duties & Powers**

Cal. Gov't Code § 17556(d) declares that the commission shall not find costs mandated by the state if, after a hearing, the commission finds that the local government has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

Constitutional Law > Congressional Duties & Powers > Spending & Taxation

HN5[] **Spending & Taxation**

Cal. Const. arts. XIIIA, XIIIB work in tandem, together restricting the California government's power both to levy and to spend taxes for public purposes.

Tax Law > State & Local Taxes > General Overview

Constitutional Law > Congressional Duties & Powers > Spending & Taxation

HN6[] Cal. Const. art. XIIIB intention is to apply to taxation specifically that provides permanent protection for taxpayers from excessive taxation, and a reasonable way to provide discipline in tax spending at state and local levels.

Constitutional Law > Congressional Duties & Powers > Spending & Taxation

HN7[] **Spending & Taxation**

The relevant appropriations subject to limitation is defined as any authorization to expend during a fiscal year the proceeds of taxes. Cal. Const. art. XIIIB, § 8(b). Proceeds of taxes is defined as including all tax revenues and the proceeds to government from regulatory licenses, user charges, and user fees to the extent that such proceeds exceed the costs reasonably borne by government in providing the regulation, product, or service. Cal. Const. art. XIIIB, § 8(c). Excess proceeds from licenses, charges, and fees are taxes.

Governments > Local Governments > Finance

Constitutional Law > Congressional Duties & Powers > Spending & Taxation

HN8[] **Finance**

Cal. Const. art. XIIIB, § 6 is included in recognition that Cal. Const. art. XIIIA severely restricts the taxing powers of local governments. The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that are ill equipped to handle the task.

Governments > Local Governments > Duties & Powers

Constitutional Law > Congressional Duties & Powers > Spending & Taxation

HN9[] **Duties & Powers**

Cal. Gov't Code § 17556(d) provides that the commission shall not find costs mandated by the state if, after a hearing, the commission finds that the local government has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

Headnotes/Summary

Summary
CALIFORNIA OFFICIAL REPORTS SUMMARY

A county filed a test claim with the Commission on State Mandates seeking, under Cal. Const., art. XIII B, § 6 (state must provide subvention of funds to reimburse local governments for costs of state-mandated programs or increased levels of service), reimbursement from the state for costs incurred in implementing the Hazardous Materials Release Response Plans and Inventory Act (Health & Saf. Code, § 25500 et seq.). The commission found the county had the authority to charge fees to pay for the program, and the program was thus not a reimbursable state-mandated program under Gov. Code, § 17556, subd. (d), which provides that costs are not state-mandated if the agency has the authority to levy a charge or fee sufficient to pay for the program. The county filed a petition for writ of mandate and a complaint for declaratory relief against the state. The trial court denied relief. (Superior Court of Fresno County, No. 379518-4, Gary S. Austin, Judge.) The Court of Appeal, Fifth Dist., No. F011925, affirmed.

The Supreme Court affirmed the decision of the Court of Appeal. The court held, as to the single issue on review, that Gov. Code, § 17556, subd. (d), was facially constitutional under Cal. Const., art. XIII B, § 6. It held art. XIII B was not intended to reach beyond taxation, and § 6 was included in art. XIII B in recognition that Cal. Const., art. XIII A, severely restricted the taxing powers of local governments. It held that art. XIII B, § 6 was designed to protect the tax revenues of local governments from state mandates that would require an expenditure of such revenues and, when read in textual and historical context, requires subvention only when the costs in question can be recovered solely from tax revenues. Accordingly, the court held that Gov. Code, § 17556, subd. (d), effectively construed the term "cost" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes, and that such a construction is altogether sound. (Opinion by Mosk, J., with Lucas, C. J., Broussard, Panelli, Kennard, JJ., and Best (Hollis G.), J., * concurring. Separate concurring opinion by Arabian, J.)

Headnotes
CALIFORNIA OFFICIAL REPORTS HEADNOTES

Classified to California Digest of Official Reports, 3d Series

CA(1)[] (1)

State of California § 11—Reimbursement to Local Governments for State-mandated Costs—Costs for Which Fees May Be Levied—Validity of Exclusion.

--In a proceeding by a county seeking reversal of a decision by the Commission on State Mandates that the state was not required by Cal. Const., art. XIII B, § 6, to reimburse the county for costs incurred in implementing the Hazardous Materials Release Response Plans and Inventory Act (Health & Saf. Code, § 25500 et seq.), the trial court properly found that Gov. Code, § 17556, subd. (d) (costs are not state-mandated if agency has authority to levy charge or fee sufficient to pay for program), was facially constitutional. Cal. Const., art. XIII B, was intended to apply to taxation and was not intended to reach beyond taxation, as is apparent from its language and confirmed by its history. It was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues; read in its textual and historical contexts, it requires subvention only when the costs in question can be recovered solely from tax revenues. Gov. Code, § 17556, subd. (d), effectively construes the term "costs" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes, and that construction is altogether sound. Accordingly, Gov. Code, § 17556, subd. (d), is facially constitutional under Cal. Const., art. XIII B, § 6.

[See 9 **Witkin,** Summary of Cal. Law (9th ed. 1988) Taxation, § 124.]

Counsel: Max E. Robinson, County Counsel, and Pamela A. Stone, Deputy County Counsel, for Plaintiff and Appellant.

B. C. Barnum, County Counsel (Kern), and Patricia J.

* Presiding Justice, Court of Appeal, Fifth Appellate District, assigned by the Chairperson of the Judicial Council.

Randolph, Deputy County Counsel, as Amici Curiae on behalf of Plaintiff and Appellant.

John K. Van de Kamp and Daniel E. Lungren, Attorneys General, N. Eugene Hill, Assistant Attorney General, and Richard M. Frank, Deputy Attorney General, for Defendants and Respondents.

Judges: Mosk, J. Lucas, C.J., Broussard, J., Panelli, J., Kennard, J., Best (Hollis G.), J., * concur. Arabian, J., concurring.

Opinion by: MOSK

Opinion

[*484] [236] [***93]** MOSK, J.

We granted review in this proceeding to decide whether section 17556, subdivision (d), of the Government Code (section 17556(d)) is facially valid under article XIII B, section 6, of the California Constitution (article XIII B, section 6).

HN1 Article XIII B, section 6, provides: "Whenever the Legislature or **[****2]** 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 program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [P] (a) Legislative mandates requested by the local agency affected; [P] (b) Legislation defining a new crime or changing an existing definition of a crime; or [P] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

The Legislature enacted HN2 Government Code sections 17500 through 17630 to implement article XIII B, section 6. (Gov. Code, § 17500.) It created a "quasi-judicial body" (*Ibid* .) called the Commission on State Mandates (commission) (*id* ., § 17525) to "hear and decide upon [any] claim" by a local government that the local government "is entitled to be reimbursed by the state for costs" as required by article XIII B, section 6. (Gov. Code, § 17551, subd. (a).) It defined HN3 "costs" as "costs mandated by the state"—"any increased **[****3]** costs" that the local government "is required to incur . . . as a result of any statute . . . , or any executive order implementing any statute . . . , which mandates a new program or higher level of service of any existing program" within the meaning of article XIII B, section 6. (Gov. Code, § 17514.) Finally, HN4 in section 17556(d) it declared that "The commission shall not find costs mandated by the state . . . if, after a hearing, the commission finds that" the local government "has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

For the reasons discussed below, we conclude that section 17556(d) is facially constitutional under article XIII B, section 6.

[*485] I. FACTS AND PROCEDURAL HISTORY

The present proceeding arose after the Legislature enacted the Hazardous Materials Release Response Plans and Inventory Act (Act). (Health & Saf. Code, § 25500 et seq.) The Act establishes minimum statewide standards for business and area plans relating to the handling and release or threatened release of hazardous materials. (*Id* ., § 25500.) It requires local governments to implement its provisions. **[****4]** (*Id* ., § 25502.) To cover the costs they may incur, it authorizes them to collect fees from those who handle hazardous materials. (*Id*., § 25513.)

The County of Fresno (County) implemented the Act but chose not to impose the authorized fees. Instead, it filed a so-called "test" or initial claim with the commission (Gov. Code, § 17521) seeking reimbursement from the State of California (State) under article XIII B, section 6. After a hearing, the commission rejected the claim. In its statement of decision, the commission made the following findings, among others: the Act constituted a "new program"; the County did indeed incur increased **[**237] [***94]** costs; but because it had authority under the Act to levy fees sufficient to cover such costs, section 17556(d) prohibited a finding of reimbursable costs.

The County then filed a petition for writ of mandate and complaint for declaratory relief against the State, the commission, and others, seeking vacation of the commission's decision and a declaration that section 17556(d) is unconstitutional under article XIII B, section 6. While the matter was pending, the commission amended its statement of decision to include another

* Presiding Justice, Court of Appeal, Fifth Appellate District, sitting under assignment by the Chairperson of the Judicial Council.

basis for denial [****5] of the test claim: the Act did not constitute a "program" under the rationale of County of Los Angeles v. State of California (1987) 43 Cal.3d 46 [233 Cal.Rptr. 38, 729 P.2d 202] (*County of Los Angeles*), because it did not impose unique requirements on local governments.

After a hearing, the trial court denied the petition and effectively dismissed the complaint. It determined, inter alia, that mandate under Code of Civil Procedure section 1094.5 was the County's sole remedy, and that the commission was the sole properly named respondent. It also determined that section 17556(d) is constitutional under article XIII B, section 6. It did not address the question whether the Act constituted a "program" under *County of Los Angeles* . Judgment was entered accordingly.

The Court of Appeal affirmed. It held the Act did indeed constitute a "program" under County of Los Angeles , supra , 43 Cal.3d 46. It also held section 17556(d) is constitutional under article XIII B, section 6.

[*486] CA(1)[] **(1)** We granted review to decide a single issue, i.e., whether section 17556(d) is facially constitutional under article XIII B, section 6.

[**6]** II. DISCUSSION

We begin our analysis with the California Constitution. At the June 6, 1978, Primary Election, article XIII A was added to the Constitution through the adoption of Proposition 13, an initiative measure aimed at controlling ad valorem property taxes and the imposition of new "special taxes." (*Amador Valley Joint Union High Sch. Dist.* v. State Bd. of Equalization (1978) 22 Cal.3d 208, 231-232 [149 Cal.Rptr. 239, 583 P.2d 1281].) The constitutional provision imposes a limit on the power of state and local governments to adopt and levy taxes. (City of Sacramento v. State of California (1990) 50 Cal.3d 51, 59, fn. 1 [266 Cal.Rptr. 139, 785 P.2d 522] (*City of Sacramento*).)

At the November 6, 1979, Special Statewide Election, article XIII B was added to the Constitution through the adoption of Proposition 4, another initiative measure. That measure places limitations on the ability of both state and local governments to appropriate funds for expenditures.

HN5[] "Articles XIII A and XIII B work in tandem, together restricting California governments' power both to levy and **[****7]** to spend [taxes] for public purposes." (City of Sacramento , supra , 50 Cal.3d at p. 59, fn. 1.)

HN6[] Article XIII B of the Constitution was intended to apply to taxation specifically, to provide "permanent protection for taxpayers from excessive taxation" and "a reasonable way to provide discipline in tax spending at state and local levels." (See County of Placer v. Corin (1980) 113 Cal.App.3d 443, 446 [170 Cal.Rptr. 232], quoting and following Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), argument in favor of Prop. 4, p. 18.) To this end, it establishes an "appropriations limit" for both state and local governments (Cal. Const., art. XIII B, § 8, subd. (h)) and allows no "appropriations subject to limitation" in excess thereof (*id* ., § 2). (See County of Placer v. Corin , supra , 113 Cal.App.3d at p. 446.) It defines HN7[] the relevant "appropriations subject to limitation" as "any authorization to expend during a fiscal year the proceeds of taxes . . . ." (Cal. Const., art. XIII B, § 8, subd. (b).) It defines "proceeds of **[****8]** taxes" as including "all tax revenues and the proceeds to . . . government from," inter alia, "regulatory licenses, user charges, and user fees *to the extent that such proceeds exceed the costs reasonably borne by [government] in providing* **[**238]** **[***95]** *the regulation, product, or service* . . . ." (Cal. Const., art. XIII B, § 8, subd. (c), italics added.) Such "excess" proceeds from "licenses," "charges," and "fees" "are but **[*487]** *taxes* " for purposes here. (County of Placer v. Corin , supra , 113 Cal.App.3d at p. 451, italics in original.)

Article XIII B of the Constitution, however, was not intended to reach beyond taxation. That fact is apparent from the language of the measure. It is confirmed by its history. In his analysis, the Legislative Analyst declared that Proposition 4 "would not restrict the growth in appropriations financed from other [i.e., nontax] sources of revenue, including federal funds, bond funds, traffic fines, user fees based on reasonable costs, and income from gifts." (Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), analysis by Legislative Analyst, **[****9]** p. 16.)

HN8[] Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See County of Los Angeles , supra , 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid* .; see *Lucia Mar*

Unified School Dist. v. Honig (1988) 44 Cal.3d 830, 836, fn. 6 [244 Cal.Rptr. 677, 750 P.2d 318].) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the "state shall provide a subvention of funds to reimburse . . . local government for the costs [of a state-mandated new] program or higher level of service," read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues* .

In view of the foregoing analysis, **[****10]** the question of the facial constitutionality of section 17556(d) under article XIII B, section 6, can be readily resolved. As noted, HN9[] the statute provides that "The commission shall not find costs mandated by the state . . . if, after a hearing, the commission finds that" the local government "has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." Considered within its context, the section effectively construes the term "costs" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a construction is altogether sound. As the discussion makes clear, the Constitution requires reimbursement only for those expenses that are recoverable solely from taxes. It follows that section 17556(d) is facially constitutional under article XIII B, section 6.

The County argues to the contrary. It maintains that section 17556(d) in essence creates a new exception to the reimbursement requirement of article XIII B, section 6, for self-financing programs and that the Legislature cannot create exceptions to the reimbursement requirement beyond those enumerated in the **[****11]** Constitution.

We do not agree that in enacting section 17556(d) the Legislature created a new exception to the reimbursement requirement of article **[*488]** XIII B, section 6. As explained, the Legislature effectively and properly construed the term "costs" as excluding expenses that are recoverable from sources other than taxes. In a word, such expenses are outside of the scope of the requirement. Therefore, they need not be explicitly excepted from its reach.

The County nevertheless argues that no matter how characterized, section 17556(d) is indeed inconsistent with article XIII B, section 6. Its contention is in substance as follows: the source of section 17556(d) is former Revenue and Taxation Code section 2253.2; at the time of Proposition 4, subdivision (b)(4) of that former section stated that the State Board of Control shall not allow a claim for reimbursement of costs mandated by the state if the legislation contains a self-financing authority; the **[**239]** **[***96]** drafters of Proposition 4 incorporated some of the provisions of former Revenue and Taxation Code section 2253.2 into article XIII B, section 6, but did not incorporate former subdivision (b)(4); their failure to do so reveals **[****12]** an intent to treat as immaterial the presence or absence of a "self-financing" provision; and such an intent is confirmed by the "legislative history" set out at page 55 in Spirit of 13, Inc., Summary of Proposed Implementing Legislation and Drafters' Intent: "the state may not arbitrarily declare that it is not going to comply with Section 6 . . . if the state provides new compensating revenues."

In our view, the County's argument is unpersuasive. Even if we assume arguendo that the intent of those who drafted Proposition 4 is as claimed, what is crucial here is the intent of those who voted for the measure. (See County of Los Angeles , supra , 43 Cal.3d 46, 56.) There is no substantial evidence that the voters sought what the County assumes the drafters desired. Moreover, the "legislative history" cited above cannot be considered relevant; it was written and circulated after the passage of Proposition 4. As such, it could not have affected the voters in any way.

To avoid this result, the County advances one final argument: "Based on the authority of [section 17556(d)], the Commission on State Mandates refuses to hear mandates on **[****13]** the merits once it finds that the authority to charge fees is given by the Legislature. This position is taken whether or not fees can actually or legally be charged to recover the entire costs of the program."

[*489] The County appears to be making one or both of the following arguments: (1) the commission applies section 17556(d) in an unconstitutional manner; or (2) the Act's self-financing authority is somehow lacking. Such contentions, however, miss the designated mark. They raise questions bearing on the constitutionality of section 17556(d) as applied and the legal efficacy of the authority conferred by the Act. The sole issue on review, however, is the facial constitutionality of section 17556(d).

III. CONCLUSION

For the reasons set forth above, we conclude that section 17556(d) is facially constitutional under article XIII B, section 6.

The judgment of the Court of Appeal is affirmed.

Lucas, C. J., Broussard, J., Panelli, J., Kennard, J., and Best (Hollis G.), J., * concurred.

[**14]**

Concur by: ARABIAN

Concur

ARABIAN, J., Concurring.

I concur in the determination that Government Code section 17556, subdivision (d) [1] (section 17556(d)), does not offend article XIII B, section 6, of the California Constitution (article XIII B, section 6). In my estimation, however, the constitutional measure of the issue before us warrants fuller examination than the majority allow. A literalistic analysis begs the question of whether the Legislature had the authority to act statutorily upon a subject matter the electorate has spoken to constitutionally through the initiative process.

Article XIII B, section 6, unequivocally commands that "the state shall provide a subvention of funds to reimburse . . . local government for the costs of [a new] program or increased level of service" except as specified therein. Article XIII B does not define this reference to "costs." (See Cal. Const., art. XIII B, § 8.) Rather, the Legislature assumed the **[****15]** task of explicating the related concept of "costs mandated by the state" when it created the Commission on State Mandates and enacted procedures intended to implement article XIII B, section 6, more effectively. (See § 17500 et seq.) As part of this statutory scheme, it exempted the state from its constitutionally imposed subvention obligation under certain enumerated circumstances. Some of these exemptions the electorate expressly contemplated in approving article XIII B, section 6 (§ 17556, subds. (a), (c), & (g); see **[**240]** **[***97]** § 17514), while others are strictly of legislative formulation and derive from **[*490]** former Revenue and Taxation Code section 2253.2. (§ 17556, subds. (b), (d), (e), & (f).)

The majority find section 17556 valid notwithstanding the mandatory language of article XIII B, section 6, based on the circular and conclusory rationale that "the Legislature effectively and properly construed the term 'costs' as excluding expenses that are recoverable from sources other than taxes. In a word, such expenses are outside of the scope of the [subvention] requirement. Therefore, they need not be explicitly excepted from its reach." (Maj. opn., *ante* , at p. 488.) In my view, **[****16]** excluding or otherwise removing something from the purview of a law is tantamount to creating an exception thereto. When an exclusionary implication is clear from the import or effect of the statutory language, use of the word "except" should not be necessary to construe the result for what it clearly is. In this circumstance, "I would invoke the folk wisdom that if an object looks like a duck, walks like a duck and quacks like a duck, it is likely to be a duck." (In re Deborah C. (1981) 30 Cal.3d 125, 141 [177 Cal.Rptr. 852, 635 P.2d 446] (conc. opn. by Mosk, J.).)

Of at least equal importance, section 17500 et seq. constitutes a legislative implementation of article XIII B, section 6. As such, the overall statutory scheme must comport with the express constitutional language it was designed to effectuate as well as the implicit electoral intent. Eschewing semantics, I would squarely and forthrightly address the fundamental and substantial question of whether the Legislature could lawfully enlarge upon the scope of article XIII B, section 6, to include exceptions not originally designated in the initiative.

I do not hereby seek to undermine **[****17]** the majority holding but rather to set it on a firmer constitutional footing. "[S]tatutes must be given a reasonable interpretation, one which will carry out the intent of the legislators and render them valid and operative rather than defeat them. In so doing, sections of the Constitution, as well as the codes, will be harmonized where reasonably possible, in order that all may stand." (Rose v. State of California (1942) 19 Cal.2d 713, 723 [123 P.2d 505]; see also County of Los Angeles v. State of California (1987) 43 Cal.3d 46, 58 [233 Cal.Rptr. 38, 729 P.2d 202].) To this end, it is a fundamental premise of our form of government that "the Constitution of this State is not to be considered as a grant of power, but rather as a restriction upon the powers of the Legislature; and . . . it is competent for the Legislature to

*Presiding Justice, Court of Appeal, Fifth Appellate District, assigned by the Chairperson of the Judicial Council.

[1] Unless otherwise indicated, all further statutory references are to the Government Code.

exercise all powers not forbidden . . . ." (People v. Coleman (1854) 4 Cal. 46, 49.) "Two important consequences flow from this fact. First, the entire law-making authority of the state, except the people's right of initiative and referendum, is vested [****18] in the [*491] Legislature, and that body may exercise any and all legislative powers which are not expressly or by necessary implication denied to it by the Constitution. [Citations.] *In other words, 'we do not look to the Constitution to determine whether the legislature is authorized to do an act, but only to see if it is prohibited* .' [Citation.] [P] Secondly, all intendments favor the exercise of the Legislature's plenary authority: 'If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. Such restrictions and limitations [imposed by the Constitution] are to be construed strictly, and are not to be extended to include matters not covered by the language used.' [Citations.]" (Methodist Hosp. of Sacramento v. Saylor (1971) 5 Cal.3d 685, 691 [97 Cal.Rptr. 1, 488 P.2d 161], italics added.) "Specifically, the express enumeration of legislative powers is not an exclusion of others not named unless accompanied by negative terms. [Citations.]" (Dean v. Kuchel (1951) 37 Cal.2d 97, 100 [230 P.2d 811].)

As [****19] the majority opinion impliedly recognizes, neither the language nor the intent of article XIII B conflicts with the exercise of legislative prerogative we review today. Of paramount significance, neither section 6 nor any other provision of article XIII B prohibits statutory delineation of additional [**241] [***98] circumstances obviating reimbursement for state mandated programs. (See Dean v. Kuchel , supra , 37 Cal.2d at p. 101; Roth Drugs, Inc. v. Johnson (1936) 13 Cal.App.2d 720, 729 [57 P.2d 1022]; see also Kehrlein v. City of Oakland (1981) 116 Cal.App.3d 332, 338 [172 Cal.Rptr. 111].)

Furthermore, the initiative was "[b]illed as a flexible way to provide discipline in government spending" by creating appropriations limits to restrict the amount of such expenditures. (County of Placer v. Corin (1980) 113 Cal.App.3d 443, 447 [170 Cal.Rptr. 232]; see Cal. Const., art. XIII B, § 1.) By their nature, user fees do not affect the equation of local government spending: While they facilitate implementation of newly mandated state programs or increased [****20] levels of service, they are excluded from the "appropriations subject to limitations" calculation and its attendant budgetary constraints. (See Cal. Const., art. XIII B, § 8; see also City Council v. South (1983) 146 Cal.App.3d 320, 334 [194 Cal.Rptr. 110]; County of Placer v. Corin , supra , 113 Cal.App.3d at pp. 448-449; Cal. Const., art. XIII B, § 3, subd. (b); cf. Russ Bldg. Partnership v. City and County of San Francisco (1987) 199 Cal.App.3d 1496, 1505 [246 Cal.Rptr. 21] ["fees not exceeding the reasonable cost of providing the service or regulatory activity for which the fee is charged and which are not levied for general revenue purposes, have been considered outside the realm of "special taxes" [limited by California Constitution, article XIII A]q "]; Terminal Plaza Corp. v. City [*492] and County of San Francisco (1986) 177 Cal.App.3d 892, 906 [223 Cal.Rptr. 379] [same].)

This conclusion fully accommodates the intent of the voters in adopting article XIII B, as reflected in the ballot materials accompanying the proposition. [****21] (See Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization (1978) 22 Cal.3d 208, 245-246 [149 Cal.Rptr. 239, 583 P.2d 1281].) In general, these materials convey that "[t]he goals of article XIII B, of which section 6 is a part, were to protect residents from excessive taxation and government spending." (County of Los Angeles v. State of California , supra , 43 Cal.3d at p. 61; Huntington Park Redevelopment Agency v. Martin (1985) 38 Cal.3d 100, 109-110 [211 Cal.Rptr. 133, 695 P.2d 220].) To the extent user fees are not borne by the general public or applied to the general revenues, they do not bear upon this purpose. Moreover, by imputation, voter approval contemplated the continued imposition of reasonable user fees outside the scope of article XIII B. (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Limitation of Government Appropriations, Special Statewide Elec. (Nov. 6, 1979), arguments in favor of and against Prop. 4, p. 18 [initiative "WILL curb excessive user fees imposed by local government" [****22] but "will NOT eliminate user fees . . ."]; see County of Placer v. Corin , supra , 113 Cal.App.3d at p. 452.)

"The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public." (County of Los Angeles v. State of California , supra , 43 Cal.3d at p. 56; see City of Sacramento v. State of California (1990) 50 Cal.3d 51, 66 [266 Cal.Rptr. 139, 785 P.2d 522].) "Section 6 had the additional purpose of precluding a shift of financial responsibility for carrying out governmental functions from the state to local agencies which had had their taxing powers restricted by the enactment of article XIII A in the preceding year and were ill equipped to take responsibility for any new programs." (County of Los Angeles v. State of California , supra , 43 Cal.3d at p. 61.) **[****23]** An exemption from reimbursement for state mandated programs for which local governments are authorized to charge offsetting user fees does not frustrate or compromise these goals or otherwise disturb the balance of local government financing **[**242]** **[***99]** and expenditure. [2] (See County of Placer v. Corin , supra , 113 Cal.App.3d at p. 452, [*493] fn. 7.) Article XIII B, section 8, subdivision (c), specifically includes regulatory licenses, user charges, and user fees in the appropriations limitation equation only "to the extent that those proceeds exceed the costs reasonably borne by [the governmental] entity in providing the regulation, product, or service . . . ."

[**24]** The self-executing nature of article XIII B does not alter this analysis. "It has been uniformly held that the legislature has the power to enact statutes providing for reasonable regulation and control of rights granted under constitutional provisions. [Citations.]" (Chesney v. Byram (1940) 15 Cal.2d 460, 465 [101 P.2d 1106].) ""Legislation may be desirable, by way of providing convenient remedies for the protection of the right secured, or of regulating the claim of the right so that its exact limits may be known and understood; but all such legislation must be subordinate to the constitutional provision, and in furtherance of its purpose, and must not in any particular attempt to narrow or embarrass it." [Citations.]"' (Id ., at pp. 463-464; see also County of Contra Costa v. State of California (1986) 177 Cal.App.3d 62, 75 [222 Cal.Rptr. 750].) Section 17556(d) is not "merely [a] transparent attempt[] to do indirectly that which cannot lawfully be done directly." (Carmel Valley Fire Protection Dist. v. State of California (1987) 190 Cal.App.3d 521, 541 [234 Cal.Rptr. 795].) **[****25]** On the contrary, it creates no conflict with the constitutional directive it subserves. Hence, rather than pursue an interpretive expedient, this court should expressly declare that it operates as a valid legislative implementation thereof.

"[Initiative] provisions of the Constitution and of charters and statutes should, as a general rule, be liberally construed in favor of the reserved power. [Citations.] As opposed to that principle, however, 'in examining and ascertaining the intention of the people with respect to the scope and nature of those . . . powers, it is proper and important to consider what the consequences of applying it to a particular act of legislation would be, and if upon such consideration it be found that by so applying it the inevitable effect would be greatly to impair or wholly destroy the efficacy of some other governmental power, the practical application of which is essential and, perhaps, . . . indispensable, to the convenience, comfort, and well-being of the inhabitants of certain legally established districts or subdivisions of the state or of the whole state, then in such case the courts may and should assume that the people intended no such result **[****26]** to flow from the application of those powers and that they do not so apply.' [Citation.]" (Hunt v. Mayor & Council of Riverside (1948) 31 Cal.2d 619, 628-629 [191 P.2d 426].)

[*494] This court is not infrequently called upon to resolve the tension of apparent or actual conflicts in the express will of the people. [3] Whether that expression emanates directly from the ballot or indirectly through legislative implementation, each deserves our fullest estimation and effectuation. Given the historical and abiding role of government by initiative, I decline to circumvent that responsibility and accept uncritically the Legislature's self-validating statutory scheme as the basis for approving **[***100]** the exercise **[**243]** of its prerogative. It is not enough to say a broader constitutional analysis yields the same result and therefore is unnecessary. We provide a higher quality of justice harmonizing rather than ignoring the divers voices of the people, for such is the nature of our office.

[**27]**

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[2] This conclusion also accords with the traditional and historical role of user fees in promoting the multifarious functions of local government by imposing on those receiving a service the cost of providing it. (Cf. County of Placer v. Corin , supra , 113 Cal.App.3d at p. 454 ["Special assessments, being levied only for improvements that benefit particular parcels of land, and not to raise general revenues, are simply not the type of exaction that can be used as a mechanism for circumventing these tax relief provisions. [Citation.]"].)

[3] See, e.g., Zumwalt v. Superior Court (1989) 49 Cal.3d 167 [260 Cal.Rptr. 545, 776 P.2d 247]; Los Angeles County Transportation Com. v. Richmond (1982) 31 Cal.3d 197 [182 Cal.Rptr. 324, 643 P.2d 941]; California Housing Finance Agency v. Patitucci (1978) 22 Cal.3d 171 [148 Cal.Rptr. 875, 583 P.2d 729]; California Housing Finance Agency v. Elliott (1976) 17 Cal.3d 575 [131 Cal.Rptr. 361, 551 P.2d 1193]; Blotter v. Farrell (1954) 42 Cal.2d 804 [270 P.2d 481]; Dean v. Kuchel , supra , 37 Cal.2d 97; Hunt v. Mayor & Council of Riverside , supra , 31 Cal.2d 619.

Kinlaw v. State of California

Supreme Court of California

August 30, 1991

No. S014349

Reporter

54 Cal. 3d 326 *; 814 P.2d 1308 **; 285 Cal. Rptr. 66 ***; 1991 Cal. LEXIS 3745 ****; 91 Daily Journal DAR 10744; 91 Cal. Daily Op. Service 7086

FRANCES KINLAW et al., Plaintiffs and Appellants, v. THE STATE OF CALIFORNIA et al., Defendants and Respondents

Prior History: [****1] Superior Court of Alameda County, No. 632120-4, Henry Ramsey, Jr., and Demetrios P. Agretelis, Judges.

Disposition: The judgment of the Court of Appeal is reversed.

Core Terms

funds, counties, reimbursement, local agency, state mandate, school district, costs, Medi-Cal, local government, healthcare, mandates, procedures, medically indigent, services, merits, superior court, state-mandated, effective, subvention, taxpayers, Institutions, programs, Finance, appropriations limit, test claim, obligations, injunction, provides, italics, entity

Case Summary

Procedural Posture

Defendant State of California and the Director of the Department of Health Services, challenged an order of the court of appeal (California), which ruled that plaintiffs, medically indigent adults and taxpayers, had standing to seek enforcement of Cal. Const. art. XIII B, § 6. The court of appeal held that their class action seeking declaratory and injunctive relief was not barred by the availability of administrative remedies.

Overview

Plaintiffs, medically indigent adults and taxpayers, filed a class-action suit against defendants, State of California and the Director of the Department of Health Services. Plaintiffs sought enforcement of Cal. Const. art. XIII B, § 6, which imposed on defendant state an obligation to reimburse local agencies for the cost of most programs and services they were required to provide pursuant to a state mandate. Plaintiffs requested restoration of Medi-Cal, from which they were removed under 1982 Stats. ch. 328, or reimbursement to the county for the cost of providing health care to them. The trial court granted summary judgment to defendants. On appeal, the court of appeal held that plaintiffs had standing and that the action was not barred by the availability of administrative remedies. Defendants appealed. The court reversed and concluded that plaintiffs lacked standing. The legislature adopted a comprehensive legislative scheme with the express intent of providing the exclusive remedy for a claimed violation of art. XIII, § 6. The administrative remedy created was adequate to fully implement art. XIII, § 6. Plaintiffs had no right to any reimbursement for health care services.

Outcome

The court reversed and ruled that plaintiffs, medically indigent adults and taxpayers, lacked standing. The legislature established administrative procedures for local agencies and school districts directly affected by a state mandate to seek reimbursement for the cost of programs and services. The legislature's comprehensive scheme was the exclusive means by which the state's obligations were to be determined and enforced.

LexisNexis® Headnotes

Governments > State & Territorial Governments > Finance

Governments > Legislation > Initiative &

Referendum

HN1[] **Finance**

Cal. Const. art. XIII B, § 6, adopted on November 6, 1979, as part of an initiative measure imposing spending limits on state and local government, also imposes on the state an obligation to reimburse local agencies for the cost of most programs and services which they must provide pursuant to a state mandate, if the local agencies were not under a preexisting duty to fund the activity.

Governments > State & Territorial Governments > Finance

HN2[] **Finance**

See Cal. Const. art. XIII B, § 6.

Governments > Local Governments > Finance

Public Health & Welfare Law > Healthcare > General Overview

HN3[] **Finance**

1982 Cal. Stats. ch. 328 removed medically indigent adults from the state Medi-Cal program effective January 1, 1983.

Civil Procedure > ... > Jury Trials > Right to Jury Trial > Actions in Equity

Governments > Local Governments > Claims By & Against

HN4[] **Actions In Equity**

An injunction against enforcement of a state mandate is available only after the legislature fails to include funding in a local government claims bill following a determination by the Commission on State Mandates that a state mandate exists. Cal. Gov't Code §17612.

Administrative Law > Agency Rulemaking > State Proceedings

HN5[] **State Proceedings**

The legislature enacted comprehensive administrative procedures for resolution of claims arising out of Cal. Const. art. XIII B, § 6. Cal. Gov't Code § 17500.

Civil Procedure > Pleading & Practice > Joinder of Claims & Remedies > Joinder of Claims

Administrative Law > Agency Rulemaking > State Proceedings

Civil Procedure > Pleading & Practice > Joinder of Claims & Remedies > General Overview

HN6[] **Joinder of Claims**

The legislature created the Commission on State Mandates (Commission), Cal. Gov't Code § 17525, to adjudicate disputes over the existence of a state-mandated program, Cal. Gov't Code §§ 17551, 17557, and to adopt procedures for submission and adjudication of reimbursement claims. Cal. Gov't Code § 17553. The five-member Commission includes the Controller, the Treasurer, the Director of Finance, the Director of the Office of Planning and Research, and a public member experienced in public finance. Cal. Gov't Code § 17525. The legislation establishes a test-claim procedure to expeditiously resolve disputes affecting multiple agencies, Cal. Gov't Code § 17554, establishes the method of payment of claims, Cal. Gov't Code §§ 17558, 17561, and creates reporting procedures which enable the legislature to budget adequate funds to meet the expense of state mandates. Cal. Gov't Code §§ 17562, 17600, 17612(a).

Administrative Law > Agency Rulemaking > State Proceedings

HN7[] **State Proceedings**

Pursuant to procedures which the Commission on State Mandates (Commission) is authorized to establish, Cal. Gov't Code § 17553, local agencies and school districts are to file claims for reimbursement of state-mandated costs with the Commission, Cal. Gov't Code §§ 17551, 17560, and reimbursement is to be provided only through this statutory procedure. Cal. Gov't Code §§ 17550, 17552.

Governments > Local Governments > General Overview

HN8[] "Local agency" means any city, county, special district, authority, or other political subdivision of the state. Cal. Gov't Code § 17518.

Education Law > Administration & Operation > Elementary & Secondary School Boards > Authority of School Boards

HN9[] **Authority of School Boards**

"School district" means any school district, community college district, or county superintendent of schools. Cal. Gov't Code § 17519.

Administrative Law > Agency Rulemaking > State Proceedings

HN10[] **State Proceedings**

The first reimbursement claim filed which alleges that a state mandate is created under a statute or executive order is treated as a "test claim." Cal. Gov't Code § 17521. A public hearing must be held promptly on any test claim. At the hearing on a test claim or on any other reimbursement claim, evidence may be presented not only by the claimant, but also by the Department of Finance and any other department or agency potentially affected by the claim. Cal. Gov't Code § 17553. Any interested organization or individual may participate in the hearing. Cal. Gov't Code § 17555.

Administrative Law > Judicial Review > General Overview

Administrative Law > Agency Rulemaking > State Proceedings

Civil Procedure > ... > Writs > Common Law Writs > Mandamus

HN11[] A local agency filing a test claim need not first expend sums to comply with the alleged state mandate, but may base its claim on estimated costs. Cal. Gov't Code § 17555. The Commission on State Mandates (Commission) must determine both whether a state mandate exists and, if so, the amount to be reimbursed to local agencies and school districts, adopting parameters and guidelines for reimbursement of any claims relating to that statute or executive order. Cal. Gov't Code § 17557. Procedures for determining whether local agencies have achieved statutorily authorized cost savings and for offsetting these savings against reimbursements are also provided. Cal. Gov't Code § 17620 et seq. Finally, judicial review of the Commission decision is available through petition for writ of mandate filed pursuant to Cal. Civ. Proc. Code § 1094.5. Cal. Gov't Code § 17559.

Administrative Law > Agency Rulemaking > State Proceedings

HN12[] **State Proceedings**

The parameters and guidelines adopted by the Commission on State Mandates must be submitted to the controller, who is to pay subsequent claims arising out of the mandate. Cal. Gov't Code § 17558. Executive orders mandating costs are to be accompanied by an appropriations bill to cover the costs if the costs are not included in the budget bill, and in subsequent years the costs must be included in the budget bill. Cal. Gov't Code § 17561(a) and (b). Regular review of the costs is to be made by the legislative analyst, who must report to the legislature and recommend whether the mandate should be continued. Cal. Gov't Code § 17562.

Administrative Law > Agency Rulemaking > State Proceedings

HN13[] **State Proceedings**

The Commission on State Mandates is also required to make semiannual reports to the legislature of the number of mandates found and the estimated reimbursement cost to the state. Cal. Gov't Code § 17600. The legislature must then adopt a local government claims bill. If that bill does not include funding for a state mandate, an affected local agency or school district may seek a declaration from the superior court for the County of Sacramento that the mandate is unenforceable, and an injunction against enforcement. Cal. Gov't Code § 17612. Additional procedures, enacted in 1985, create a system of state-mandate apportionments to fund reimbursement. Cal. Gov't Code § 17615 et seq.

Administrative Law > Agency Rulemaking > State Proceedings

HN14[] State Proceedings

See Cal. Gov't Code § 17552.

Administrative Law > Separation of Powers > Constitutional Controls > General Overview

Administrative Law > Agency Rulemaking > State Proceedings

Constitutional Law > Substantive Due Process > Scope

HN15[] Unless the exercise of a constitutional right is unduly restricted, the court must limit enforcement to the procedures established by the legislature.

Governments > Local Governments > Finance

Public Health & Welfare Law > Healthcare > General Overview

HN16[] Finance

Cal. Gov't Code § 17563 gives the local agency complete discretion in the expenditure of funds received pursuant to Cal. Const. art. XIII B, § 6.

Governments > Local Governments > Finance

HN17[] Finance

See Cal. Gov't Code § 17563.

Governments > Local Governments > Claims By & Against

Civil Procedure > Judgments > Declaratory Judgments > General Overview

Governments > Local Governments > Finance

Public Health & Welfare Law > Healthcare > General Overview

HN18[] Claims By & Against

The remedy for the failure to fund a program is a declaration that the mandate is unenforceable. That relief is available only after the Commission on State Mandates has determined that a mandate exists and the legislature has failed to include the cost in a local government claims bill, and only on petition by the county. Cal. Gov't Code § 17612.

Headnotes/Summary

Summary
CALIFORNIA OFFICIAL REPORTS SUMMARY

Medically indigent adults and taxpayers brought an action pursuant to Code Civ. Proc., § 526a, against the state, alleging that it had violated Cal. Const., art. XIII B, § 6 (reimbursement of local governments for state-mandated new programs), by shifting its financial responsibility for the funding of health care for the poor onto the county without providing the necessary funding, and that as a result the state had evaded its constitutionally mandated spending limits. The trial court granted summary judgment for the State after concluding plaintiffs lacked standing to prosecute the action. (Superior Court of Alameda County, No. 632120-4, Henry Ramsey, Jr., and Demetrios P. Agretelis, Judges.) The Court of Appeal, First Dist., Div. Two, Nos. A041426 and A043500, reversed.

The Supreme Court reversed the judgment of the Court of Appeal, holding the administrative procedures established by the Legislature (Gov. Code, § 17500 et seq.), which are available only to local agencies and school districts directly affected by a state mandate, were the exclusive means by which the state's obligations under Cal. Const., art. XIII B, § 6, were to be determined and enforced. Accordingly, the court held plaintiffs lacked standing to prosecute the action. (Opinion by Baxter, J., with Lucas, C. J., Panelli, Kennard, and Arabian, JJ., concurring. Separate dissenting opinion by Broussard, J., with Mosk, J., concurring.)

Headnotes
CALIFORNIA OFFICIAL REPORTS HEADNOTES

Classified to California Digest of Official Reports, 3d

Series

CA(1)[] (1)

State of California § 7—Actions—State-mandated Costs—Reimbursement—Exclusive Statutory Remedy.

-- Gov. Code, § 17500 et seq., creates an administrative forum for resolution of state mandate claims arising under Cal. Const., art. XIII B, § 6, and establishes procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created. The statutory scheme also designates the Sacramento County Superior Court as the venue for judicial actions to declare unfunded mandates invalid. In view of the comprehensive nature of the legislative scheme, and from the expressed intent, the Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce Cal. Const., art. XIII B, § 6.

CA(2)[] (2)

State of California § 7—Actions—State-mandated Costs—Reimbursement—Private Action to Enforce—Standing.

--In an action by medically indigent adults and taxpayers seeking to enforce Cal. Const., art. XIII B, § 6, for declaratory and injunctive relief requiring the state to reimburse the county for the cost of providing health care services to medically indigent adults who, prior to 1983, had been included in the state Medi-Cal program, the Court of Appeal erred in holding that the existence of an administrative remedy (Gov. Code, § 17500 et seq.) by which affected local agencies could enforce their constitutional right under art. XIII B, § 6 to reimbursement for the cost of state mandates did not bar the action. Because the right involved was given by the Constitution to local agencies and school districts, not individuals either as taxpayers or recipients of government benefits and services, the administrative remedy was adequate to fully implement the constitutional provision. The Legislature has the authority to establish procedures for the implementation of local agency rights under art. XIII B, § 6; unless the exercise of a constitutional right is unduly restricted, a court must limit enforcement to the procedures established by the Legislature. Plaintiffs' interest, although pressing, was indirect and did not differ from the interest of the public at large in the financial plight of local government. Relief by way of reinstatement to Medi-Cal pending further action by the state was not a remedy available under the statute, and thus was not one which a court may award.

[See 7 **Witkin,** Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 112.]

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Judges: Opinion by Baxter, J., with Lucas, C. J., Panelli, Kennard, and Arabian, JJ., concurring. Separate dissenting opinion by Broussard, J., with Mosk, J., concurring.

Opinion by: BAXTER

Opinion

[*328] [1309] [***67]** Plaintiffs, medically indigent adults and taxpayers, seek to enforce section 6 of **[****2]** article XIII B (hereafter, section 6) of the California Constitution through an action for declaratory and injunctive relief. They invoked the jurisdiction of the superior court as taxpayers pursuant to Code of Civil Procedure section 526a and as persons affected by the alleged failure of the state to comply with section 6. The superior court granted summary judgment for defendants State of California and Director of the Department of Health Services, after concluding that plaintiffs lacked standing to prosecute the action. On appeal, the Court of Appeal held that plaintiffs have standing and that the action is not barred by the availability of administrative remedies.

[1310] [***68]** We reverse. The administrative procedures established by the Legislature, which are available only to local agencies and school districts directly affected by a state mandate, are the exclusive means by which the state's obligations under section 6 are to be determined and enforced. Plaintiffs therefore lack standing.

I

State Mandates

HN1[] Section 6, adopted on November 6, 1979, as part of an initiative measure imposing spending limits on state and local government, also imposes on the state an obligation **[****3]** to reimburse local agencies for the cost of most programs and services which they must provide pursuant to a state mandate if the local agencies were not under a preexisting duty to fund the activity. It provides:

[*329] "HN2[] 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 program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

"(a) Legislative mandates requested by the local agency affected;

"(b) Legislation defining a new crime or changing an existing definition of a crime; or

"(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

A complementary provision, section 3 of article XIII B, provides for a shift from the state to the local agency of a portion of the spending or "appropriation" limit of the state when responsibility for funding an activity is shifted to a local agency:

"The appropriations limit for any **[****4]** fiscal year . . . shall be adjusted as follows: [para.] (a) In the event that the financial responsibility of providing services is transferred, in whole or in part, . . . from one entity of government to another, then for the year in which such transfer becomes effective the appropriations limit of the transferee entity shall be increased by such reasonable amount as the said entities shall mutually agree and the appropriations limit of the transferor entity shall be decreased by the same amount."

II

Plaintiffs' Action

The underlying issue in this action is whether the state is obligated to reimburse the County of Alameda, and shift to Alameda County a concomitant portion of the state's spending limit, for the cost of providing health care services to medically indigent adults who prior to 1983 had been included in the state Medi-Cal program. Assembly Bill No. 799 (1981-1982 Reg. Sess.) (AB 799) (HN3[] Stats. 1982, ch. 328, p. 1568) removed medically indigent adults from Medi-Cal effective January 1, 1983. At the time section 6 was adopted, the state was funding Medi-Cal coverage for these persons without requiring any county financial contribution.

Plaintiffs initiated this action in **[****5]** the Alameda County Superior Court. They sought relief on their own behalf and on behalf of a class of similarly **[*330]** situated medically indigent adult residents of Alameda County. The only named defendants were the State of California, the Director of the Department of Health Services, and the County of Alameda.

In the complaint for declaratory and injunctive relief, plaintiffs sought an injunction compelling the state to restore Medi-Cal eligibility to medically indigent adults or to reimburse the County of Alameda for the cost of providing health care to those persons. They also prayed for a declaration that the transfer of responsibility from the state-financed Medi-Cal program to the counties without adequate reimbursement violated the California Constitution. [1]

[**6] [**1311] [***69]** At the time plaintiffs initiated their action neither Alameda County, nor any other county or local agency, had filed a reimbursement claim with the Commission on State Mandates (Commission).

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[1] The complaint also sought a declaration that the county was obliged to provide health care services to indigents that were equivalent to those available to nonindigents. This issue is not before us. The County of Alameda aligned itself with plaintiffs in the superior court and did not oppose plaintiffs' effort to enforce section 6.

2

Whether viewed as an action seeking restoration of Medi-Cal benefits, one to compel state reimbursement of county costs, or one for declaratory relief, therefore, the action required a determination that the enactment of AB 799 created a state [****7] mandate within the contemplation of section 6. Only upon resolution of that issue favorably to plaintiffs would the state have an obligation to reimburse the county for its increased expense and shift a portion of its appropriation limit, or to reinstate Medi-Cal benefits for plaintiffs and the class they seek to represent.

The gravamen of the action is, therefore, enforcement of section 6. [3]

[****8] [*331] III

Enforcement of Article XIII B, Section 6

In 1984, almost five years after the adoption of article XIII B, HN5[] the Legislature enacted comprehensive administrative procedures for resolution of claims arising out of section 6. (§ 17500.) The Legislature did so because the absence of a uniform procedure had resulted in inconsistent rulings on the existence of state mandates, unnecessary litigation, reimbursement delays, and, apparently, resultant uncertainties in accommodating reimbursement requirements in the budgetary process. The necessity for the legislation was explained in section 17500:

"The Legislature finds and declares that the existing system for reimbursing local agencies and school districts for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under Section 6 of Article XIII B of the California Constitution. The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary [****9] and, therefore, in order to relieve unnecessary congestion of the judicial system, *it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs.*" (Italics added.)

In part 7 of division 4 of title 2 of the Government Code, "State-Mandated Costs," which commences with section 17500, HN6[] the Legislature created the Commission (§ 17525), to adjudicate disputes over the existence of a state mandated program (§§ 17551, 17557) and to adopt procedures for submission and adjudication of reimbursement claims (§ 17553). The five-member Commission includes the Controller, the Treasurer, the Director of Finance, the Director of the Office of Planning and [**1312] [***70] Research, and a public member experienced in public finance. (§ 17525.)

The legislation establishes a test-claim procedure to expeditiously resolve disputes affecting multiple agencies (§ 17554), [4] establishes the method of [*332]

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[2] On November 23, 1987, the County of Los Angeles filed a test claim with the Commission. San Bernardino County joined as a test claimant. The Commission ruled against the counties, concluding that no state mandate had been created. The Los Angeles County Superior Court subsequently granted the counties' petition for writ of mandate (Code Civ. Proc., § 1094.5), reversing the Commission, on April 27, 1989. (No. C-731033.) An appeal from that judgment is presently pending in the Court of Appeal. (*County of Los Angeles* v. *State of California*, No. B049625.)

[3] Plaintiffs argue that they seek only a declaration that AB 799 created a state mandate and an injunction against the shift of costs until the state decides what action to take. This is inconsistent with the prayer of their complaint which sought an injunction requiring defendants to restore Medi-Cal eligibility to all medically indigent adults until the state paid the cost of full health services for them. It is also unavailing.

HN4[] An injunction against enforcement of a state mandate is available only after the Legislature fails to include funding in a local government claims bill following a determination by the Commission that a state mandate exists. (Gov. Code, § 17612.) Whether plaintiffs seek declaratory relief and/or an injunction, therefore, they are seeking to enforce section 6.

All further statutory references are to the Government Code unless otherwise indicated.

[4] The test claim by the County of Los Angeles was filed prior to that proposed by Alameda County. The Alameda County claim was rejected for that reason. (See § 17521.) Los Angeles County permitted San Bernardino County to join in its claim which the Commission accepted as a test claim intended to resolve the issues the majority elects to address instead in this proceeding. Los Angeles County declined a request from Alameda County that it be included in the test claim because the two counties' systems of documentation were so similar that joining Alameda County would not be of any benefit. Alameda County and these plaintiffs were, of course, free to participate in the Commission hearing on the test claim. (§

payment of claims (§§ 17558, 17561), and creates reporting procedures which enable the Legislature to budget adequate funds to meet the expense of state [****10] mandates (§§ 17562, 17600, 17612, subd. (a).)

HN7[] Pursuant to procedures which the Commission was authorized to establish (§ 17553), local agencies [5] and school districts [6] are to file claims for reimbursement of state-mandated costs with the Commission (§§ 17551, 17560), and reimbursement is to be provided [****11] only through this statutory procedure. (§§ 17550, 17552.)

HN10[] The first reimbursement claim filed which alleges that a state mandate has been created under a statute or executive order is treated as a "test claim." (§ 17521.) A public hearing must be held promptly on any test claim. At the hearing on a test claim or on any other reimbursement claim, evidence may be presented not only by the claimant, but also by the Department of Finance and any other department or agency potentially affected by the claim. (§ 17553.) Any interested organization or individual may participate in the hearing. (§ 17555.)

HN11[] A local agency filing a test claim need not first expend sums to comply with the alleged state mandate, but may base its claim on estimated costs. (§ 17555.) The Commission [****12] must determine both whether a state mandate exists and, if so, the amount to be reimbursed to local agencies and school districts, adopting "parameters and guidelines" for reimbursement of any claims relating to that statute or executive order. (§ 17557.) Procedures for determining whether local agencies have achieved statutorily authorized cost savings and for offsetting these savings against reimbursements are also provided. (§ 17620 et seq.) Finally, judicial review of the Commission decision is available through petition for writ of mandate filed pursuant to Code of Civil Procedure section 1094.5. (§ 17559.)

The legislative scheme is not limited to establishing the claims procedure, however. It also contemplates reporting to the Legislature and to departments and agencies of the state which have responsibilities related to funding state mandates, budget planning, and payment. HN12[] The parameters and guidelines adopted by the Commission must be submitted to the Controller, who is to pay subsequent claims arising out of the mandate. (§ 17558.) Executive orders mandating costs are to be accompanied by an appropriations [*333] bill to cover the costs if the costs are not included [****13] in the budget bill, and in subsequent years the costs must be included in the budget bill. (§ 17561, subds. (a) & (b).) Regular review of the costs is to be made by the Legislative Analyst, who must report to the Legislature and recommend whether the mandate should be continued. (§ 17562.) HN13[] The Commission is also required to make semiannual reports to the Legislature of the number of mandates found and the estimated reimbursement cost to the state. (§ 17600.) The Legislature must then adopt a "local government claims bill." If that bill does not include funding for a state mandate, an affected local agency or school district may seek a declaration from the superior court for the County of Sacramento that the mandate is unenforceable, [**1313] [***71] and an injunction against enforcement. (§ 17612.)

Additional procedures, enacted in 1985, create a system of state-mandate apportionments to fund reimbursement. (§ 17615 et seq.)

CA(1)[] (1) It is apparent from the comprehensive nature of this legislative scheme, and from the Legislature's expressed intent, that the exclusive remedy for a claimed violation of section 6 lies in these procedures. The statutes create an administrative forum [****14] for resolution of state mandate claims, and establishes procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created. The statutory scheme also designates the Sacramento County Superior Court as the venue for judicial actions to declare unfunded mandates invalid (§ 17612).

The legislative intent is clearly stated in section 17500: "It is the intent of the Legislature in enacting this part to provide for the implementation of Section 6 of Article XIII B of the California Constitution and to consolidate the procedures for reimbursement of statutes specified in the Revenue and Taxation Code with those identified in the Constitution. . . ." And section 17550 states:

17555.)

[5] "HN8[] 'Local agency' means any city, county, special district, authority, or other political subdivision of the state." (§ 17518.)

[6] "HN9[] 'School district' means any school district, community college district, or county superintendant of schools." (§ 17519.)

"Reimbursement of local agencies and school districts for costs mandated by the state shall be provided pursuant to this chapter."

Finally, HN14[] section 17552 provides: "This chapter shall provide *the sole and exclusive procedure* by which a local agency or school district may claim reimbursement for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." [****15] (Italics added.)

In short, the Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce section 6.

[*334] IV

Exclusivity

CA(2)[] (2) Plaintiffs argued, and the Court of Appeal agreed, that the existence of an administrative remedy by which affected local agencies could enforce their right under section 6 to reimbursement for the cost of state mandates did not bar this action because the administrative remedy is available only to local agencies and school districts.

The Court of Appeal recognized that the decision of the County of Alameda, which had not filed a claim for reimbursement at the time the complaint was filed, was a discretionary decision which plaintiffs could not challenge. (*Dunn v. Long Beach L. & W. Co. (1896) 114 Cal. 605, 609, 610-611 [46 P. 607]*; *Silver v. Watson (1972) 26 Cal.App.3d 905, 909 [103 Cal.Rptr. 576]*; *Whitson v. City of Long Beach (1962) 200 Cal.App.2d 486, 506 [19 Cal.Rptr. 668]*; *Elliott v. Superior Court (1960) 180 Cal.App.2d 894, 897 [5 Cal.Rptr. 116]*.) [****16] The court concluded, however, that public policy and practical necessity required that plaintiffs have a remedy for enforcement of section 6 independent of the statutory procedure.

The right involved, however, is a right given by the Constitution to local agencies, not individuals either as taxpayers or recipients of government benefits and services. Section 6 provides that the "state shall provide a subvention of funds *to reimburse . . . local governments* . . . ." (Italics added.) The administrative remedy created by the Legislature is adequate to fully implement section 6. That Alameda County did not file a reimbursement claim does not establish that the enforcement remedy is inadequate. Any of the 58 counties was free to file a claim, and other counties did so. The test claim is now before the Court of Appeal. The administrative procedure has operated as intended.

The Legislature has the authority to establish procedures for the implementation of local agency rights under section 6. HN15[] Unless the exercise of a constitutional right is unduly restricted, the court must limit enforcement to the procedures established by the Legislature. (*People v. [**1314] [***72] Western Air Lines, Inc. (1954) 42 Cal.2d 621, 637 [268 P.2d 723]*; [****17] *Chesney v. Byram (1940) 15 Cal.2d 460, 463 [101 P.2d 1106]*; *County of Contra Costa v. State of California (1986) 177 Cal.App.3d 62, 75 [222 Cal.Rptr. 750]*.)

Plaintiffs' argument that they must be permitted to enforce section 6 as individuals because their right to adequate health care services has been compromised by the failure of the state to reimburse the county for the cost [*335] of services to medically indigent adults is unpersuasive. Plaintiffs' interest, although pressing, is indirect and does not differ from the interest of the public at large in the financial plight of local government. Although the basis for the claim that the state must reimburse the county for its costs of providing the care that was formerly available to plaintiffs under Medi-Cal is that AB 799 created a state mandate, plaintiffs have no right to have any reimbursement expended for health care services of any kind. Nothing in article XIII B or other provision of law controls the county's expenditure of the funds plaintiffs claim must be paid to the county. To the contrary, HN16[] section 17563 gives the [****18] local agency complete discretion in the expenditure of funds received pursuant to section 6, providing: "HN17[] Any funds received by a local agency or school district pursuant to the provisions of this chapter may be used for any public purpose."

The relief plaintiffs seek in their prayer for state reimbursement of county expenses is, in the end, a reallocation of general revenues between the state and the county. Neither public policy nor practical necessity compels creation of a judicial remedy by which individuals may enforce the right of the county to such revenues. The Legislature has established a procedure by which the county may claim any revenues to which it believes it is entitled under section 6. That test-claim statute expressly provides that not only the claimant, but also "any other interested organization or individual may participate" in the hearing before the Commission (§ 17555) at which the right to reimbursement of the costs of such mandate is to be determined. Procedures for receiving any claims must "provide for presentation of evidence by the claimant, the Department of Finance and any other affected department or agency, *and any other interested person.*" [****19] (§ 17553. Italics added.) Neither the county nor an interested individual is without an opportunity to be heard on these questions. These procedures are both adequate and exclusive. [7]

The alternative relief plaintiffs seek -- reinstatement [****20] to Medi-Cal pending further action by the state -- is not a remedy available under the statute, and thus is not one which this court may award. HN18[] The remedy for the failure to fund a program is a declaration that the mandate is unenforceable. That relief is available only after the Commission has determined that a mandate exists [*336] and the Legislature has failed to include the cost in a local government claims bill, and only on petition by the county. (§ 17612.) [8]

Moreover, the judicial remedy approved by the Court of Appeal permits resolution of the issues raised in a state mandate claim without the participation of those [****21] officers and individuals the Legislature deems necessary to a full and fair exposition and resolution of the issues. Neither the Controller nor the Director of Finance [**1315] [***73] was named a defendant in this action. The Treasurer and the Director of the Office of Planning and Research did not participate. All of these officers would have been involved in determining the question as members of the Commission, as would the public member of the Commission. The judicial procedures were not equivalent to the public hearing required on test claims before the Commission by section 17555. Therefore, other affected departments, organizations, and individuals had no opportunity to be heard. [9]

[****22] Finally, since a determination that a state mandate has been created in a judicial proceeding rather than one before the Commission does not trigger the procedures for creating parameters and guidelines for payment of claims, or for inclusion of estimated costs in the state budget, there is no source of funds available for compliance with the judicial decision other than the appropriations for the Department of Health Services. Payment from those funds can only be at the expense of another program which the department is obligated to fund. No public policy supports, let alone requires, this result.

The superior court acted properly in dismissing this action.

The judgment of the Court of Appeal is reversed.

Dissent by: BROUSSARD

Dissent

ROUSSARD, J.

I dissent. For nine years the Legislature has defied the mandate of article XIII B of the California Constitution (hereafter article XIII B). Having transferred responsibility for the care of medically indigent adults (MIA's) to county governments, the Legislature has failed to provide the counties with sufficient money to meet this responsibility, yet the [*337] Legislature computes its own appropriations limit as if it fully funded the program. [****23] The majority, however, declines to remedy this violation because, it says, the persons most directly harmed by the violation -- the medically indigent who are denied adequate health care -- have no standing to raise the matter. I disagree, and will demonstrate that (1) plaintiffs have standing as citizens to seek a declaratory judgment to determine whether

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[7] Plaintiffs' argument, that the Legislature's failure to make provision for individual enforcement of section 6 before the Commission demonstrates an intent to permit legal actions, is not persuasive. The legislative statement of intent to relegate all mandate disputes to the Commission is clear. A more likely explanation of the failure to provide for test cases to be initiated by individuals lies in recognition that (1) because section 6 creates rights only in governmental entities, individuals lack sufficient beneficial interest in either the receipt or expenditure of reimbursement funds to accord them standing; and (2) the number of local agencies having a direct interest in obtaining reimbursement is large enough to ensure that citizen interests will be adequately represented.

[8] Plaintiffs are not without a remedy if the county fails to provide adequate health care, however. They may enforce the obligation imposed on the county by Welfare and Institutions Code sections 17000 and 17001, and by judicial action. (See, e.g., Mooney v. Pickett (1971) 4 Cal.3d 669 [94 Cal.Rptr. 279, 483 P.2d 1231].)

[9] For this reason, it would be inappropriate to address the merits of plaintiff's claim in this proceeding. (Cf. Dix v. Superior Court (1991) 53 Cal.3d 442 [279 Cal.Rptr. 834, 807 P.2d 1063].) Unlike the dissent, we do not assume that in representing the state in this proceeding, the Attorney General necessarily represented the interests and views of these officials.

the state is complying with its constitutional duty under article XIII B; (2) the creation of an administrative remedy whereby counties and local districts can enforce article XIII B does not deprive the citizenry of its own independent right to enforce that provision; and (3) even if plaintiffs lacked standing, our recent decision in Dix v. Superior Court (1991) 53 Cal.3d 442 [279 Cal.Rptr. 834, 807 P.2d 1063] permits us to reach and resolve any significant issue decided by the Court of Appeal and fully briefed and argued here. I conclude that we should reach the merits of the appeal.

On the merits, I conclude that the state has not complied with its constitutional obligation under article XIII B. To prevent the state from avoiding the spending limits imposed [****24] by article XIII B, section 6 of that article prohibits the state from transferring previously state-financed programs to local governments without providing sufficient funds to meet those burdens. In 1982, however, the state excluded the medically indigent from its Medi-Cal program, thus shifting the responsibility for such care to the counties. Subvention funds provided by the state were inadequate to reimburse the counties for this responsibility, and became less adequate every year. At the same time, the state continued to compute its spending limit as if it fully financed the entire program. The result is exactly what article XIII B was intended to prevent: the state enjoys a falsely inflated spending limit; the county is compelled to assume a burden it cannot afford; and the medically indigent receive inadequate health care.

I. Facts and Procedural History

Plaintiffs -- citizens, taxpayers, and persons in need of medical care -- allege that [**1316] [***74] the state has shifted its financial responsibility for the funding of health care for MIA's to the counties without providing the necessary funding and without any agreement transferring appropriation limits, and that [****25] as a result the state is violating article XIII B. Plaintiffs further allege they and the class they claim to represent cannot, consequently, obtain adequate health care from the County of Alameda, which lacks the state funding to provide it. The county, although nominally a defendant, aligned [*338] itself with plaintiffs. It admits the inadequacy of its program to provide medical care for MIA's but blames the absence of state subvention funds. [1]

At hearings below, plaintiffs presented uncontradicted evidence [****26] regarding the enormous impact of these statutory changes upon the finances and population of Alameda County. That county now spends about $ 40 million annually on health care for MIA's, of which the state reimburses about half. Thus, since article XIII B became effective, Alameda County's obligation for the health care of MIA's has risen from zero to more than $ 20 million per year. The county has inadequate funds to discharge its new obligation for the health care of MIA's; as a result, according to the Court of Appeal, uncontested evidence from medical experts presented below shows that, "The delivery of health care to the indigent in Alameda County is in a state of shambles; the crisis cannot be overstated . . . ." "Because of inadequate state funding, some Alameda County residents are dying, and many others are suffering serious diseases and disabilities, because they cannot obtain adequate access to the medical care they need . . . ." "The system is clogged to the breaking point. . . . All community clinics . . . are turning away patients." "The funding received by the county from the state for MIAs does not approach the actual cost of providing health care to the MIAs. [****27] As a consequence, inadequate resources available to county health services jeopardize the lives and health of thousands of people . . . ."

The trial court acknowledged that plaintiffs had shown irreparable injury, but denied their request for a preliminary injunction on the ground that they could not prevail in the action. It then granted the state's motion for summary judgment. Plaintiffs appealed from both decisions of the trial court.

The Court of Appeal consolidated the two appeals and reversed the rulings below. It concluded that plaintiffs had standing to bring this action to enforce the constitutional spending limit of article XIII B, and that the action is not barred by the existence of administrative remedies available to counties. It then held that the shift of a portion of the cost of medical indigent care by the state to Alameda County constituted a state-mandated new program under the provisions of article XIII B, which triggered that article's provisions requiring a subvention of funds by the state to reimburse Alameda

[1] The majority states that "Plaintiffs are not without a remedy if the county fails to provide adequate health care . . . . They may enforce the obligation imposed on the county by Welfare and Institutions Code sections 17000 and 17001, and by judicial action." (Maj. opn., *ante*, p. 336, fn. 8)

The majority fails to note that plaintiffs have already tried this remedy, and met with the response that, owing to the state's inadequate subvention funds, the county cannot afford to provide adequate health care.

[*339] County for the costs of such program it was required to assume. The judgments denying a preliminary injunction and granting summary judgment **[****28]** for defendants were reversed. We granted review.

II. Standing

A. *Plaintiffs have standing to bring an action for declaratory relief to determine whether the state is complying with article XIII B.*

Plaintiffs first claim standing as taxpayers under Code of Civil Procedure section 526a, which provides that: "An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county . . . , may be maintained **[**1317]** **[***75]** against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. . . ." As in Common Cause v. Board of Supervisors (1989) 49 Cal.3d 432, 439 [261 Cal.Rptr. 574, 777 P.2d 610], however, it is "unnecessary to reach the question whether plaintiffs have standing to seek an injunction under Code of Civil Procedure section 526a, because there is an independent basis for permitting them to proceed." Plaintiffs here **[****29]** seek a declaratory judgment that the transfer of responsibility for MIA's from the state to the counties without adequate reimbursement violates article XIII B. A declaratory judgment that the state has breached its duty is essentially equivalent to an action in mandate to compel the state to perform its duty. (See California Assn. of Psychology Providers v. Rank (1990) 51 Cal.3d 1, 9 [270 Cal.Rptr. 796, 793 P.2d 2], which said that a declaratory judgment establishing that the state has a duty to act provides relief equivalent to mandamus, and makes issuance of the writ unnecessary.) Plaintiffs further seek a mandatory injunction requiring that the state pay the health costs of MIA's under the Medi-Cal program until the state meets its obligations under article XIII B. The majority similarly characterize plaintiffs' action as one comparable to mandamus brought to enforce section 6 of article XIII B.

We should therefore look for guidance to cases that discuss the standing of a party seeking a writ of mandate to compel a public official to perform his or her duty. [2] Such an action may be brought by any person "beneficially **[****30]** interested" in the issuance of the writ. (Code Civ. Proc., § 1086.) In Carsten **[*340]** v. Psychology Examining Com. (1980) 27 Cal.3d 793, 796 [166 Cal.Rptr. 844, 614 P.2d 276], we explained that the "requirement that a petitioner be 'beneficially interested' has been generally interpreted to mean that one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." We quoted from Professor Davis, who said, "One who is in fact adversely affected by governmental action should have standing to challenge that action if it is judicially reviewable." (Pp. 796-797, quoting 3 Davis, Administrative Law Treatise (1st ed. 1958) p. 291.) Cases applying this standard include Stocks v. City of Irvine (1981) 114 Cal.App.3d 520 [170 Cal.Rptr. 724], which held that low-income residents of Los Angeles had standing to challenge exclusionary zoning laws of suburban communities which prevented the plaintiffs from moving there; *Taschner* v. *City Council, supra*, 31 Cal.App.3d 48, **[****31]** which held that a property owner has standing to challenge an ordinance which may limit development of the owner's property; and Felt v. Waughop (1924) 193 Cal. 498 [225 P. 862], which held that a city voter has standing to compel the city clerk to certify a correct list of candidates for municipal office. Other cases illustrate the limitation on standing: Carsten v. Psychology Examining Com., supra, 27 Cal.3d 793, held that a member of the committee who was neither seeking a license nor in danger of losing one had no

[2] It is of no importance that plaintiffs did not request issuance of a writ of mandate. In Taschner v. City Council (1973) 31 Cal.App.3d 48, 56 [107 Cal.Rptr. 214] (overruled on other grounds in Associated Home Builders etc., Inc. v. City of Livermore (1976) 18 Cal.3d 582, 596 [135 Cal.Rptr. 41, 557 P.2d 473, 92 A.L.R.3d 1038]), the court said that "[a]s against a general demurrer, a complaint for declaratory relief may be treated as a petition for mandate [citations], and where a complaint for declaratory relief alleges facts sufficient to entitle plaintiff to mandate, it is error to sustain a general demurrer without leave to amend."

In the present case, the trial court ruled on a motion for summary judgment, but based that ruling not on the evidentiary record (which supported plaintiffs' showing of irreparable injury) but on the issues as framed by the pleadings. This is essentially equivalent to a ruling on demurrer, and a judgment denying standing could not be sustained on the narrow ground that plaintiffs asked for the wrong form of relief without giving them an opportunity to correct the defect. (See Residents of Beverly Glen, Inc. v. City of Los Angeles (1973) 34 Cal.App.3d 117, 127-128 [109 Cal.Rptr. 724].)

standing to challenge **[**1318] [***76]** a change in the method of computing the passing score on the licensing examination; Parker v. Bowron (1953) 40 Cal.2d 344 [254 P.2d 6] held that a union official who was neither a city employee nor a city resident had no standing to compel a city to follow a prevailing wage ordinance; and Dunbar v. Governing Board (1969) 275 Cal.App.2d 14 [79 Cal.Rptr. 662] held that a member of a student organization had standing **[****32]** to challenge a college district's rule barring a speaker from campus, but persons who merely planned to hear him speak did not.

[**33]** No one questions that plaintiffs are affected by the lack of funds to provide care for MIA's. Plaintiffs, except for plaintiff Rabinowitz, are not merely citizens and taxpayers; they are medically indigent persons living in Alameda County who have been and will be deprived of proper medical care if funding of MIA programs is inadequate. Like the other plaintiffs here, **[*341]** plaintiff Kinlaw, a 60-year-old woman with diabetes and hypertension, has no health insurance. Plaintiff Spier has a chronic back condition; inadequate funding has prevented him from obtaining necessary diagnostic procedures and physiotherapy. Plaintiff Tsosie requires medication for allergies and arthritis, and claims that because of inadequate funding she cannot obtain proper treatment. Plaintiff King, an epileptic, says she was unable to obtain medication from county clinics, suffered seizures, and had to go to a hospital. Plaintiff "Doe" asserts that when he tried to obtain treatment for AIDS-related symptoms, he had to wait four to five hours for an appointment and each time was seen by a different doctor. All of these are people personally dependent upon the quality of care of Alameda County's **[****34]** MIA program; most have experienced inadequate care because the program was underfunded, and all can anticipate future deficiencies in care if the state continues its refusal to fund the program fully.

The majority, however, argues that the county has no duty to use additional subvention funds for the care of MIA's because under Government Code section 17563 "[a]ny funds received by a local agency . . . pursuant to the provisions of this chapter may be used for any public purpose." Since the county may use the funds for other purposes, it concludes that MIA's have no special interest in the subvention. [3]

This argument would be sound if the county were already meeting its obligations to MIA's under Welfare **[****35]** and Institutions Code section 17000. If that were the case, the county could use the subvention funds as it chose, and plaintiffs would have no more interest in the matter than any other county resident or taxpayer. But such is not the case at bar. Plaintiffs here allege that the county is not complying with its duty, mandated by Welfare and Institutions Code section 17000, to provide health care for the medically indigent; the county admits its failure but pleads lack of funds. Once the county receives adequate funds, it must perform its statutory duty under section 17000 of the Welfare and Institutions Code. If it refused, an action in mandamus would lie to compel performance. (See Mooney v. Pickett (1971) 4 Cal.3d 669 [94 Cal.Rptr. 279, 483 P.2d 1231].) In fact, the county has made clear throughout this litigation that it would use the subvention funds to provide care for MIA's. The majority's conclusion that plaintiffs lack a special, beneficial interest in the state's compliance with article XIII B ignores the practical realities of health care funding.

Moreover, we have recognized an exception to the rule **[****36]** that a plaintiff must be beneficially interested. "Where the question is one of public right **[*342]** and the object of the mandamus is to procure the enforcement of a public duty, the relator need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question **[**1319] [***77]** enforced." (Bd. of Soc. Welfare v. County of L. A. (1945) 27 Cal.2d 98, 100-101 [162 P.2d 627].) We explained in Green v. Obledo (1981) 29 Cal.3d 126, 144 [172 Cal.Rptr. 206, 624 P.2d 256], that this "exception promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right. . . . It has often been invoked by California courts. [Citations.]"

Green v. *Obledo* presents a close analogy to the present case. Plaintiffs there filed suit to challenge whether a state welfare regulation limiting deductibility of work-related expenses in determining eligibility for aid to families **[****37]** with dependent children (AFDC) assistance complied with federal requirements. Defendants claimed that plaintiffs were personally

[3] The majority's argument assumes that the state will comply with a judgment for plaintiffs by providing increased subvention funds. If the state were instead to comply by restoring Medi-Cal coverage for MIA's, or some other method of taking responsibility for their health needs, plaintiffs would benefit directly.

affected only by a portion of the regulation, and had no standing to challenge the balance of the regulation. We replied that "[t]here can be no question that the proper calculation of AFDC benefits is a matter of public right [citation], and plaintiffs herein are certainly citizens seeking to procure the enforcement of a public duty. [Citation.] It follows that plaintiffs have standing to seek a writ of mandate commanding defendants to cease enforcing [the regulation] in its entirety." (29 Cal.3d at p. 145.)

We again invoked the exception to the requirement for a beneficial interest in *Common Cause v. Board of Supervisors, supra, 49 Cal.3d 432*. Plaintiffs in that case sought to compel the county to deputize employees to register voters. We quoted *Green v. Obledo, supra, 29 Cal.3d 126, 144*, and concluded that "[t]he question in this case involves a public right to voter **[****38]** outreach programs, and plaintiffs have standing as citizens to seek its vindication." (49 Cal.3d at p. 439.) We should reach the same conclusion here.

B. *Government Code sections 17500- 17630 do not create an exclusive remedy which bars citizen-plaintiffs from enforcing article XIII B.*

Four years after the enactment of article XIII B, the Legislature enacted Government Code sections 17500 through 17630 to implement article XIII B, section 6. These statutes create a quasi-judicial body called the Commission on State Mandates, consisting of the state Controller, state Treasurer, state Director of Finance, state Director of the Office of Planning and Research, and one public member. The commission has authority to "hear and decide upon [any] claim" by a local government that it "is entitled to be reimbursed by the state" for costs under article XIII B. (Gov. Code, § 17551, **[*343]** subd. (a).) Its decisions are subject to review by an action for administrative mandamus in the superior court. (See Gov. Code, § 17559.)

The majority maintains that a proceeding before the Commission on State Mandates is the exclusive means **[****39]** for enforcement of article XIII B, and since that remedy is expressly limited to claims by local agencies or school districts (Gov. Code, § 17552), plaintiffs lack standing to enforce the constitutional provision. [4] I disagree, for two reasons.

[**40] [**1320] [***78]** First, Government Code section 17552 expressly addressed the question of exclusivity of remedy, and provided that "[t]his chapter shall provide the sole and exclusive procedure by which *a local agency or school district* may claim reimbursement for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." (Italics added.) The Legislature was aware that local agencies and school districts were not the only parties concerned with state mandates, for in Government Code section 17555 it provided that "any other interested organization or individual may participate" in the commission hearing. Under these circumstances the Legislature's choice of words -- "the sole and exclusive procedure by which a local agency or school district may claim reimbursement" -- limits the procedural rights of those claimants only, and does not affect rights of other persons. *Expressio unius est exclusio alterius* -- "the expression of certain things in a statute necessarily involves exclusion of other things not expressed." (*Henderson v. Mann Theatres Corp. (1976) 65 Cal.App.3d 397, 403 [135 Cal.Rptr. 266]*.) **[****41]**

The case is similar in this respect to *Common Cause v. Board of Supervisors, supra, 49 Cal.3d 432*. Here defendants contend that the counties' right of action under Government Code sections 17551- 17552 impliedly excludes **[*344]** any citizen's remedy; in

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[4] The majority emphasizes the statement of purpose of Government Code section 17500: "The Legislature finds and declares that the existing system for reimbursing local agencies and school districts for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under section 6 of article XIII B of the California Constitution. The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary, and, therefore, in order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs."

The "existing system" to which Government Code section 17500 referred was the Property Tax Relief Act of 1972 (Rev. & Tax. Code, §§ 2201- 2327), which authorized local agencies and school boards to request reimbursement from the state Controller. Apparently dissatisfied with this remedy, the agencies and boards were bypassing the Controller and bringing actions directly in the courts. (See, e.g., *County of Contra Costa v. State of California (1986) 177 Cal.App.3d 62 [222 Cal.Rptr. 750]*.) The legislative declaration refers to this phenomena. It does not discuss suits by individuals.

Common Cause defendants claimed the Attorney General's right of action under Elections Code section 304 impliedly excluded any citizen's remedy. We replied that "the plain language of section 304 contains no limitation on the right of private citizens to sue to enforce the section. To infer such a limitation would contradict our long-standing approval of citizen actions to require governmental officials to follow the law, expressed in our expansive interpretation of taxpayer standing [citations], and our recognition of a 'public interest' exception to the requirement that a petitioner for writ of mandate have a personal beneficial interest in the proceedings [citations]." (49 Cal.3d at p. 440, fn. omitted.) Likewise in this case the plain language of Government Code sections 17551- 17552 contain no limitation [****42] on the right of private citizens, and to infer such a right would contradict our long-standing approval of citizen actions to enforce public duties.

The United States Supreme Court reached a similar conclusion in Rosado v. Wyman (1970) 397 U.S. 397 [25 L.Ed.2d 442, 90 S.Ct. 1207]. In that case New York welfare recipients sought a ruling that New York had violated federal law by failing to make cost-of-living adjustments to welfare grants. The state replied that the statute giving the Department of Health, Education and Welfare authority to cut off federal funds to noncomplying states constituted an exclusive remedy. The court rejected the contention, saying that "[w]e are most reluctant to assume Congress has closed the avenue of effective judicial review to those individuals most directly affected by the administration of its program." (P. 420 [25 L.Ed.2d at p. 460].) The principle is clear: the persons actually harmed by illegal state action, not only some administrator who has no personal stake in the matter, should have standing to challenge that action.

[****43] Second, article XIII B was enacted to protect taxpayers, not governments. Section 1 and 2 of article XIII B establish strict limits on state and local expenditures, and require the refund of all taxes collected in excess of those limits. Section 6 of article XIII B prevents the state from evading those limits and burdening county taxpayers by transferring financial responsibility for a program to a county, yet counting the cost of that program toward the limit on state expenditures.

These provisions demonstrate a profound distrust of government and a disdain for excessive government spending. An exclusive remedy under which only governments can enforce article XIII B, and the taxpayer-citizen can appear only if a government [**1321] [***79] has first instituted proceedings, is inconsistent with the ethos that led to article XIII B. The drafters of article XIII B and the voters who enacted it would not accept that the state Legislature -- the principal body regulated by the article -- could establish a procedure [*345] under which the only way the article can be enforced is for local governmental bodies to initiate proceedings before a commission composed largely of state [****44] financial officials.

One obvious reason is that in the never-ending attempts of state and local government to obtain a larger proportionate share of available tax revenues, the state has the power to coerce local governments into forgoing their rights to enforce article XIII B. An example is the Brown-Presley Trial Court Funding Act (Gov. Code, § 77000 et seq.), which provides that the county's acceptance of funds for court financing may, in the discretion of the Governor, be deemed a waiver of the counties' rights to proceed before the commission on all claims for reimbursement for state-mandated local programs which existed and were not filed prior to passage of the trial funding legislation. [5] The ability of

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[5] "(a) The initial decision by a county to opt into the system pursuant to Section 77300 *shall constitute a waiver of all claims for reimbursement for state-mandated local programs not theretofore approved by the State Board of Control, the Commission on State Mandates, or the courts to the extent the Governor, in his discretion, determines that waiver to be appropriate*; provided, that a decision by a county to opt into the system pursuant to Section 77300 beginning with the second half of the 1988-89 fiscal year shall not constitute a waiver of a claim for reimbursement based on a statute chaptered on or before the date the act which added this chapter is chaptered, which is filed in acceptable form on or before the date the act which added this chapter is chaptered. A county may petition the Governor to exempt any such claim from this waiver requirement; and the Governor, in his discretion, may grant the exemption in whole or in part. The waiver shall not apply to or otherwise affect any claims accruing after initial notification. Renewal, renegotiation, or subsequent notification to continue in the program shall not constitute a waiver. [para.] (b) The initial decision by a county to opt into the system pursuant to Section 77300 shall constitute a waiver of any claim, cause of action, or action whenever filed, with respect to the Trial Court Funding Act of 1985, Chapter 1607 of the Statutes of 1985, or Chapter 1211 of the Statutes of 1987." (Gov. Code, § 77203.5, italics added.)

"As used in this chapter, 'state-mandated local program' *means any and all reimbursements owed or owing by* state government by financial threat or inducement to persuade counties to waive their right of action before the commission renders the counties' right of action inadequate to protect the public interest in the enforcement of article XIII B.

[****45] The facts of the present litigation also demonstrate the inadequacy of the commission remedy. The state began transferring financial responsibility for MIA's to the counties in 1982. Six years later no county had brought a proceeding before the commission. After the present suit was filed, two counties filed claims for 70 percent reimbursement. Now, nine years after the 1982 legislation, the counties' claims are pending before the Court of Appeal. After that court acts, and we decide whether to review its decision, the matter may still have to go back to the commission for hearings to [*346] determine the amount of the mandate -- which is itself an appealable order. When an issue involves the life and health of thousands, a procedure which permits this kind of delay is not an adequate remedy.

In sum, effective, efficient enforcement of article XIII B requires that standing to enforce that measure be given to those harmed by its violation -- in this case, the medically indigent -- and not be vested exclusively in local officials who have no personal interest at stake and are subject to financial and political pressure to overlook violations.

C. *Even if plaintiffs lack standing* [****46] *this court should nevertheless address and resolve the merits of the appeal.*

Although ordinarily a court will not decide the merits of a controversy if the plaintiffs lack standing (see McKinny v. Board of Trustees (1982) 31 Cal.3d 79, 90 [181 Cal.Rptr. 549, 642 P.2d 460]), we recognized [**1322] [***80] an exception to this rule in our recent decision in Dix v. Superior Court, supra, 53 Cal.3d 442 (hereafter *Dix*). In *Dix*, the victim of a crime sought to challenge the trial court's decision to recall a sentence under *Penal Code section 1170.* We held that only the prosecutor, not the victim of the crime, had standing to raise that issue. We nevertheless went on to consider and decide questions raised by the victim concerning the trial court's authority to recall a sentence under *Penal Code section 1170, subdivision (d).* We explained that the sentencing issues "are significant. The case is fully briefed and all parties apparently seek a decision on the merits. Under such circumstances, we deem it appropriate to address [the victim's] sentencing [****47] arguments for the guidance of the lower courts. Our discretion to do so under analogous circumstances is well settled. [Citing cases explaining when an appellate court can decide an issue despite mootness.]" (53 Cal.3d at p. 454.) In footnote we added that "Under article VI, section 12, subdivision (b) of the California Constitution . . . , we have jurisdiction to 'review the *decision of a Court of Appeal* in any cause.' (Italics added.) Here the Court of Appeal's decision addressed two issues -- standing and merits. Nothing in article VI, section 12(b) suggests that, having rejected the Court of Appeal's conclusion on the preliminary issue of standing, we are foreclosed from 'review[ing]' the second subject addressed and resolved in its decision." (Pp. 454-455, fn. 8.)

I see no grounds on which to distinguish *Dix*. The present case is also one in which the Court of Appeal decision addressed both standing and merits. It is fully briefed. Plaintiffs and the county seek a decision on the merits. While the state does not seek a decision on the merits in this proceeding, its appeal of the superior court decision in the [****48] mandamus proceeding brought by the County of Los Angeles (see maj. opn., *ante*, p. 330, fn. 2) shows that it is not opposed to an appellate decision on the merits.

[*347] The majority, however, notes that various state officials -- the Controller, the Director of Finance, the Treasurer, and the Director of the Office of Planning and Research -- did not participate in this litigation. Then in a footnote, the majority suggests that this is the reason they do not follow the *Dix* decision. (Maj. opn., *ante*, p. 336, fn. 9.) In my view, this explanation is insufficient. The present action is one for declaratory relief against the state. It is not necessary that plaintiffs also sue particular state officials. (The state has never claimed that such officials were necessary parties.) I do not believe we should refuse to reach the merits of this appeal because of the nonparticipation of persons who, if they sought to participate, would be here merely as amici curiae. [6]

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operation of either Section 6 of Article XIII B of the California Constitution, or *Section 17561 of the Government Code*, or both." (Gov. Code, § 77005, italics added.)

[6] It is true that these officials would participate in a proceeding before the Commission on State Mandates, but they would do so as members of an administrative tribunal. On appellate review of a commission decision, its members, like the members of the Public Utilities Commission or the Workers' Compensation Appeals Board, are not respondents and do not appear to present their individual views and positions. For example, in Lucia Mar Unified School Dist. v. Honig (1988) 44

[****49] The case before us raises no issues of departmental policy. It presents solely an issue of law which this court is competent to decide on the briefs and arguments presented. That issue is one of great significance, far more significant than any raised in *Dix*. Judges rarely recall sentencing under *Penal Code section 1170, subdivision (d)*; when they do, it generally affects only the individual defendant. In contrast, the legal issue here involves immense sums of money and affect budgetary planning for both the state and counties. State and county governments need to know, as soon as possible, what their [**1323] [***81] rights and obligations are; legislators considering proposals to deal with the current state and county budget crisis need to know how to frame legislation so it does not violate article XIII B. The practical impact of a decision on the people of this state is also of great importance. The failure of the state to provide full subvention funds and the difficulty of the county in filling the gap translate into inadequate staffing and facilities for treatment of thousands of persons. Until the constitutional issues are resolved the legal uncertainties may [****50] inhibit both levels of government from taking the steps needed to address this problem. A delay of several years until the Los Angeles case is resolved could result in pain, hardship, or even death for many people. I conclude that, whether or not plaintiffs have standing, this court should address and resolve the merits of the appeal.

D. *Conclusion as to standing.*

As I have just explained, it is not necessary for plaintiffs to have standing for us to be able to decide the merits of the appeal. Nevertheless, I conclude [*348] that plaintiffs have standing both as persons "beneficially interested" under Code of Civil Procedure section 1086 and under the doctrine of Green v. Obledo, supra, 29 Cal.3d 126, to bring an action to determine whether the state has violated its duties under article XIII B. The remedy given local agencies and school districts by Government Code sections 17500- 17630 is, as Government Code section 17552 states, the exclusive remedy by which those bodies can challenge the state's refusal to provide subvention funds, but the statute does not limit the remedies available to individual citizens. [****51]

III. Merits of the Appeal

A. *State funding of care for MIA's.*

Welfare and Institutions Code section 17000 requires every county to "relieve and support" all indigent or incapacitated residents, except to the extent that such persons are supported or relieved by other sources. [7] From 1971 until 1982, and thus at the time article XIII B became effective, counties were not required to pay for the provision of health services to MIA's, whose health needs were met through the state-funded Medi-Cal program. Since the medical needs of MIA's were fully met through other sources, the counties had no duty under Welfare and Institutions Code section 17000 to meet those needs. While the counties did make general contributions to the Medi-Cal program (which covered persons other than MIA's) from 1971 until 1978, at the time article XIII B became effective in 1980 the counties were not required to make any financial contributions to Medi-Cal. It is therefore undisputed that the counties were not required to provide financially for the health needs of MIA's when article XIII B became effective. The state funded all such needs of MIA's.

[****52] In 1982, the Legislature passed Assembly Bill No. 799 (1981-1982 Reg. Sess.; Stats. 1982, ch. 328, pp. 1568-1609) (hereafter AB No. 799), which removed MIA's from the state-funded Medi-Cal program as of January 1, 1983, and thereby transferred to the counties, through the County Medical Services Plan which AB No. 799 created, the financial responsibility to provide health services to approximately 270,000 MIA's. AB No. 799 required that the counties provide health care for MIA's, yet appropriated only 70 percent of what the state would have spent on MIA's had those persons remained a state responsibility under the Medi-Cal program.

Since 1983, the state has only partially defrayed the costs to the counties of providing health care to MIA's. Such state funding to counties was [*349] initially relatively constant, generally more than $ 400 million per year. By 1990, however, state [***82] funding [**1324] had decreased to less than $ 250 million. The

Cal.3d 830 [244 Cal.Rptr. 677, 750 P.2d 318], in which we reviewed a commission ruling relating to subvention payments for education of handicapped children, the named respondents were the state Superintendent of Public Instruction, the Department of Education, and the Commission on State Mandates. The individual members of the commission were not respondents and did not participate.

[7] Welfare and Institutions Code section 17000 provides that "[e]very county . . . shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions."

state, however, has always included the full amount of its former obligation to provide for MIA's under the Medi-Cal program in the year preceding July 1, 1980, as part of its article XIII B "appropriations limit," i.e., as part [****53] of the base amount of appropriations on which subsequent annual adjustments for cost-of-living and population changes would be calculated. About $ 1 billion has been added to the state's adjusted spending limit for population growth and inflation *solely* because of the state's inclusion of all MIA expenditures in the appropriation limit established for its base year, 1979-1980. The state has not made proportional increases in the sums provided to counties to pay for the MIA services funded by the counties since January 1, 1983.

B. *The function of article XIII B.*

Our recent decision in County of Fresno v. State of California (1991) 53 Cal.3d 482, 486-487 [280 Cal.Rptr. 92, 808 P.2d 235] (hereafter *County of Fresno*), explained the function of article XIII B and its relationship to article XIII A, enacted one year earlier:

"At the June 6, 1978, Primary Election, article XIII A was added to the Constitution through the adoption of Proposition 13, an initiative measure aimed at controlling ad valorem property taxes and the imposition of new 'special taxes.' (Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization (1978) 22 Cal.3d 208, 231-232 [149 Cal.Rptr. 239, 583 P.2d 1281].) [****54] The constitutional provision imposes a limit on the power of state and local governments to adopt and levy taxes. (City of Sacramento v. State of California (1990) 50 Cal.3d 51, 59, fn. 1 [266 Cal.Rptr. 139, 785 P.2d 522] (*City of Sacramento*).)

"At the November 6, 1979, Special Statewide Election, article XIII B was added to the Constitution through the adoption of Proposition 4, another initiative measure. That measure places limitations on the ability of both state and local governments to appropriate funds for expenditures.

"'Articles XIII A and XIII B work in tandem, together restricting California governments' power both to levy and to spend [taxes] for public purposes.' (City of Sacramento, supra, 50 Cal.3d at p. 59, fn. 1.)

"Article XIII B of the Constitution was intended . . . to provide 'permanent protection for taxpayers from excessive taxation' and 'a reasonable way to provide discipline in tax spending at state and local levels.' (See County of Placer v. Corin (1980) 113 Cal.App.3d 443, 446 [170 Cal.Rptr. 232], [****55] quoting and following Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), argument [*350] in favor of Prop. 4, p. 18.) To this end, it establishes an 'appropriations limit' for both state and local governments (Cal. Const., art. XIII B, § 8, subd. (h)) and allows no 'appropriations subject to limitation' in excess thereof (*id.*, § 2). [8] (See County of Placer v. Corin, supra, 113 Cal.App.3d at p. 446.) It defines the relevant 'appropriations subject to limitation' as 'any authorization to expend during a fiscal year the proceeds of taxes . . . .' (Cal. Const., art. XIII B, § 8, subd. (b).)" (County of Fresno, supra, 53 Cal.3d at p. 486.)

[****56] Under section 3 of article XIII B the state may transfer financial responsibility for a program to a county if the state and county mutually agree that the appropriation limit of the state will be decreased and that of the county increased by the same amount. [9] [**1325] [***83] Absent such an agreement, however, section 6 of article XIII B generally precludes the state from avoiding the spending limits it must observe by shifting to local governments programs and their attendant financial burdens which were a state responsibility prior to the effective date of article XIII B. It does so by requiring that "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 cost of such program or increased level of service . . . ." [10]

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[8] Article XIII B, section 1 provides: "The total annual appropriations subject to limitation of the state and of each local government shall not exceed the appropriations limit of such entity of government for the prior year adjusted for changes in the cost of living and population except as otherwise provided in this Article."

[9] Section 3 of article XIII B reads in relevant part: "The appropriations limit for any fiscal year . . . shall be adjusted as follows:

"(a) In the event that the financial responsibility of providing services is transferred, in whole or in part . . . from one entity of government to another, then for the year in which such transfer becomes effective the appropriation limit of the transferee entity shall be increased by such reasonable amount as the said entities shall mutually agree and the appropriations limit of the transferor entity shall be decreased by the same amount. . . ."

[10] Section 6 of article XIII B further provides that the "Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates

The plaintiff districts filed a test claim before the commission, contending they were entitled to state reimbursement under section 6 of article XIII B. The commission found the plaintiffs were not entitled to state reimbursement, on the rationale that the increase in costs to the districts compelled by section 59300 imposed no new program or higher level of services. The trial and intermediate appellate courts affirmed on the ground that section 59300 called for only an "'adjustment of costs'" of educating the severely handicapped, and that "*a shift in the funding of an existing program is not a new program or a higher level of service*" within the meaning of article XIII B. (Lucia Mar Unified School Dist. v. Honig, supra, 44 Cal.3d at p. 834, italics added.)

We reversed, **[****62]** rejecting the state's theories that the funding shift to the county of the subject program's costs does not constitute a new program. "[There can be no] doubt that although the schools for the handicapped have been operated by the state for many years, the program was new insofar as plaintiffs are concerned, since *at the time section 59300 became effective* they were not required to contribute to the education of students from their districts at such schools. [para.] . . . To hold, under the circumstances of this case, that a shift in funding of an existing program from the state to a local entity is not a new program as to the local agency would, we think, violate the intent underlying section 6 of article XIIIB. That article imposed spending limits on state and local governments, and it followed by one year the adoption by initiative of article XIIIA, which severely limited the taxing **[*353]** power of local governments. . . . [para.] The intent of the section would plainly be violated if the state could, while retaining administrative control [11] of programs it has supported with state **[***85]** tax money, **[**1327]** simply shift the cost of the programs to local government **[****63]** on the theory that the shift does not violate section 6 of article XIIIB because the programs are not 'new.' Whether the shifting of costs is accomplished by compelling local governments to pay the cost of entirely new programs created by the state, *or by compelling them to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIIIB, the result seems equally violative of the fundamental purpose underlying section 6 of that article.*" (Lucia Mar Unified School Dist. v. Honig, supra, 44 Cal.3d at pp. 835-836, fn. omitted, italics added.)

[**64]** The state seeks to distinguish *Lucia Mar* on the ground that the education of handicapped children in state schools had never been the responsibility of the local school district, but overlooks that the local district had previously been required to contribute to the cost. Indeed the similarities between *Lucia Mar* and the present case are striking. In *Lucia Mar*, prior to 1979 the state and county shared the cost of educating handicapped children in state schools; in the present case from 1971-1979 the state and county shared the cost of caring for MIA's under the Medi-Cal program. In 1979, following enactment of Proposition 13, the state took full responsibility for both programs. Then in 1981 (for handicapped children) and 1982 (for MIA's), the state sought to shift some of the burden back to the counties. To distinguish these cases on the ground that care for MIA's is a county program but education of handicapped children a state program is to rely on arbitrary labels in place of financial realities.

The state presents a similar argument when it points to the following emphasized language from Lucia Mar Unified School Dist. v. Honig, supra, 44 Cal.3d 830: **[****65]** "[B]ecause section 59300 shifts partial financial responsibility for the support of students in the state-operated schools from the state to school districts -- *an obligation the school districts did not have at the time article XIII B was adopted* -- it calls for plaintiffs to support a 'new program' within the meaning of section 6." (P. 836, fn. omitted, italics added.) It urges *Lucia Mar* reached its result *only* because the "program" requiring school district funding in that case *was not required by statute* at the effective date of **[*354]** article XIII B. The state then argues that the case at bench is distinguishable because it contends Alameda County had a continuing obligation *required by statute* antedating that effective date, which had only been "temporarily" [12] suspended when article XIII B became effective. I fail to see the distinction between a case --

[11] The state notes that, in contrast to the program at issue in *Lucia Mar*, it has not retained administrative control over aid to MIA's. But the quoted language from *Lucia Mar*, while appropriate to the facts of that case, was not intended to establish a rule limiting article XIII B, section 6, to instances in which the state retains administrative control over the program that it requires the counties to fund. The constitutional language admits of no such limitation, and its recognition would permit the Legislature to evade the constitutional requirement.

[12] The state's repeated emphasis on the "temporary" nature of its funding is a form of post hoc reasoning. At the time article XIII B was enacted, the voters did not know which programs would be temporary and which permanent.

[****57] "Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles [v. State of California* (1987)] 43 Cal.3d 46, 61 [233 Cal.Rptr. 38, 729 P.2d 202].) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see Lucia Mar Unified School Dist. v. Honig, supra, 44 Cal.3d 830, 836, fn. 6.) Specifically, it was designed to protect the tax [*351] revenues of local governments from state mandates that would require expenditure of such revenues." (County of Fresno, supra, 53 Cal.3d at p. 487.)

C. *Applicability of article XIII B to health care for MIA's.*

The state argues that care of the indigent, including medical care, has long been a county responsibility. It claims that although the state undertook to fund this responsibility from [****58] 1979 through 1982, it was merely temporarily (as it turned out) helping the counties meet their responsibilities, and that the subsequent reduction in state funding did not impose any "new program" or "higher level of service" on the counties within the meaning of section 6 of article XIII B. Plaintiffs respond that the critical question is not the traditional roles of the county and state, but who had the fiscal responsibility on November 6, 1979, when article XIII B took effect. The purpose of article XIII B supports the plaintiffs' position.

As we have noted, article XIII A of the Constitution (Proposition 13) and article XIII B are complementary measures. The former radically reduced county revenues, which led the state to assume responsibility for programs previously financed by the counties. Article XIII B, enacted one year later, froze both state and county appropriations at the level of the 1978-1979 budgets -- a year when the budgets included state financing for the prior county programs, but not county financing for these programs. Article XIII B further limited the state's authority to transfer obligations to the counties. Reading the two together, it seems clear [****59] that article XIII B was intended to limit the power of the Legislature to retransfer to the counties those obligations which the state had assumed in the wake of Proposition 13.

Under article XIII B, both state and county appropriations limits are set on the basis of a calculation that begins with the budgets in effect when article XIII B was enacted. If the state could transfer to the county a program for which the state at that time had full financial responsibility, the county could be forced to assume additional financial obligations without the right to appropriate additional moneys. The state, at the same time, would get credit toward its appropriations limit for expenditures it did not pay. County taxpayers [**1326] [***84] would be forced to accept new taxes or see the county forced to cut existing programs further; state taxpayers would discover that the state, by counting expenditures it did not pay, had acquired an actual revenue surplus while avoiding its obligation to refund revenues in excess of the appropriations limit. Such consequences are inconsistent with the purpose of article XIII B.

Our decisions interpreting article XIII B demonstrate that the state's [****60] subvention requirement under section 6 is not vitiated simply because the [*352] "program" existed before the effective date of article XIII B. The alternate phrase of section 6 of article XIII B, "'higher level of service[,]' . . . must be read in conjunction with the predecessor phrase 'new program' to give it meaning. Thus read, it is apparent that *the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing 'programs.'*" (County of Los Angeles v. State of California (1987) 43 Cal.3d 46, 56 [233 Cal.Rptr. 38, 729 P.2d 202], italics added.)

Lucia Mar Unified School Dist. v. Honig, supra, 44 Cal.3d 830, presents a close analogy to the present case. The state Department of Education operated schools for severely handicapped students, but prior to 1979 *school districts were required by statute to contribute* to education of those students from the district at the state schools. In 1979, in response to the restrictions on school district revenues [****61] imposed by Proposition 13, the statutes requiring such district contributions were repealed and the state assumed full responsibility for funding. The state funding responsibility continued until June 28, 1981, when Education Code section 59300 (hereafter section 59300), requiring school districts to share in these costs, became effective.

requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." None of these exceptions apply in the present case.

Lucia Mar -- in which no existing statute as of 1979 imposed an obligation on the local government and one -- this case -- in which the statute existing in 1979 imposed no obligation on local government.

[**66]** The state's argument misses the salient point. As I have explained, the application of section 6 of article XIII B does not depend upon when the program was created, but upon who had the burden of funding it when article XIII B went into effect. Our conclusion in *Lucia Mar* that the educational program there in issue was a "new" program as to the school districts was not based on the presence or absence of any antecedent statutory obligation therefor. *Lucia Mar* determined that whether the program was new *as to the districts* depended on *when* they were compelled to assume the obligation to partially fund an existing program which they had not funded at the time article XIII B became effective.

The state further relies on two decisions, *Madera Community Hospital v. County of Madera (1984) 155 Cal.App.3d 136 [201 Cal.Rptr. 768]* and *Cooke v. Superior Court (1989) 213 Cal.App.3d 401 [261 Cal.Rptr. 706]*, which hold that the county has a statutory obligation to provide medical care for indigents, but that it need not provide precisely **[**1328]** **[***86]** the same level of **[****67]** services as the state provided under Medi-Cal. [13] Both are correct, but irrelevant to this case. [14] The county's obligation to MIA's is defined by *Welfare and Institutions Code section 17000*, not by the former Medi-Cal program. [15] If the **[*355]** state, in transferring an obligation to the counties, permits them to provide less services than the state provided, the state need only pay for the lower level of services. But it cannot escape its responsibility entirely, leaving the counties with a state-mandated obligation and no money to pay for it.

[**68]** The state's arguments are also undercut by the fact that it continues to use the approximately $ 1 billion in spending authority, generated by its previous total funding of the health care program in question, as a portion of its initial *base spending limit* calculated pursuant to sections 1 and 3 of article XIII B. In short, the state may maintain here that care for MIA's is a county obligation, but when it computes its appropriation limit it treats the entire cost of such care as a state program.

IV. Conclusion

This is a time when both state and county governments face great financial difficulties. The counties, however, labor under a disability not imposed on the state, for article XIII A of the Constitution severely restricts their ability to raise additional revenue. It is, therefore, particularly important to enforce the provisions of article XIII B which prevent the state from imposing additional obligations upon the counties without providing the means to comply with these obligations.

The present majority opinion disserves the public interest. It denies standing to enforce article XIII B both to those persons whom it was designed to protect -- the citizens and taxpayers **[****69]** -- and to those harmed by its violation -- the medically indigent adults. And by its reliance on technical grounds to avoid coming to grips with the merits of plaintiffs' appeal, it permits the state to continue to violate article XIII B and postpones the day when the medically indigent will receive adequate health care.

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[13] It must, however, provide a *comparable* level of services. (See *Board of Supervisors v. Superior Court (1989) 207 Cal.App.3d 552, 564 [254 Cal.Rptr. 905]*.)

[14] Certain language in *Madera Community Hospital v. County of Madera, supra, 155 Cal.App.3d 136*, however, is questionable. That opinion states that the "Legislature intended that County bear an obligation to its poor and indigent residents, *to be satisfied from county funds*, notwithstanding federal or state programs which exist concurrently with County's obligation and alleviate, to a greater or lesser extent, County's burden." (P. 151.) *Welfare and Institutions Code section 17000* by its terms, however, requires the county to provide support to residents only "when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." Consequently, to the extent that the state or federal governments provide care for MIA's, the county's obligation to do so is reduced pro tanto.

[15] The county's right to subvention funds under article XIII B arises because its duty to care for MIA's is a state-mandated responsibility; if the county had no duty, it would have no right to funds. No claim is made here that the funding of medical services for the indigent shifted to Alameda County is not a program "'mandated'" by the state; i.e., that Alameda County has any option other than to pay these costs. (*Lucia Mar Unified School Dist. v. Honig, supra, 44 Cal.3d at pp. 836-837*.)

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 December 4, 2019, I served the:

- **Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date issued December 4, 2019**
- **Test Claim filed by the County of Los Angeles on October 15, 2019**

  Vote by Mail: Identification Envelopes with 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 December 4, 2019 at Sacramento, California.

Jill L. Magee
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 12/3/19

Claim Number: 19-TC-01

Matter: Vote by Mail: Identification Envelopes with Prepaid Postage

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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RECEIVED
January 02, 2020
Commission on
State Mandates

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EXHIBIT B

January 3, 2020

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

Response to Test Claim 19-TC-01, *Vote by Mail Ballots: Prepaid Postage*

Dear Ms. Halsey:

The Department of Finance (Finance) has reviewed Test Claim 19-TC-01 submitted to the Commission on State Mandates (Commission) by the County of Los Angeles (Claimant). The Claimant alleges there are state-mandated, reimbursable costs associated with Chapter 120, Statutes of 2018 (AB 216).

In 2001, the California Legislature enacted AB 1520 (Chapter 922, Statutes of 2001), allowing voters to permanently Vote By Mail (VBM). In 2018, the Legislature enacted AB 216 (Chapter 120, Statutes of 2018), requiring local elections officials to include prepaid postage for the return of VBM ballots.

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.

Additionally, it appears that Claimant's asserted 2018-19 costs have been overstated. The 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.

Sincerely,

Erika Li

ERIKA LI
Program Budget Manager

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 January 3, 2020, I served the:

- **Department of Finance's (Finance's) Comments on the Test Claim filed January 2, 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 January 3, 2020 at Sacramento, California.

Lorenzo Duran
Commission on State Mandates
980 Ninth Street, Suite 300
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(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/2/20

Claim Number: 19-TC-01

Matter: Vote by Mail Ballots: Prepaid Postage

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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EXHIBIT C

RECEIVED
February 3, 2020
Commission on
State Mandates

County of San Diego

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February 3, 2020

Via Drop Box

Heather Halsey
Executive Director
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RE: Comments on Test Claim
Vote by Mail Ballots: Prepaid Postage, 19-TC-01
Elections Code Section 3010; Statutes 2018, Chapter 120 (AB 216)
Interested Party County of San Diego

Dear Ms. Halsey:

I represent interested party County of San Diego. The County of San Diego supports the test claim of the County of Los Angeles.

I. AB 216 Contains a Reimbursable State Mandate.

AB 216, codified in Section 3010 of the Elections Code, mandates a new program or higher level of service on local governments. The analysis is simple: 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.

A statute creates a "program" when it creates: "[1] programs that carry out the governmental function of providing services to the public, or [2] laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." *County of Los Angeles v. State of California*, 43 Cal. 3d 46, 56 (1987). A program is "new' if the local governmental entity had not previously been required to institute it." *County of Los Angeles v. Comm'n on State Mandates*, 110 Cal. App. 4th 1176, 1189 (2003).

A "higher level of service" means an "increase[] in the services provided by local agencies in existing 'programs.'" *County of Los Angeles*, 43 Cal. 3d at 56. A higher level of service exists when: (i) the requirements [in the law] are new in comparison with the preexisting scheme in view of the circumstance that they did not exist prior to the enactment of [the law]; and (ii) the requirements were intended to provide an enhanced service to the public…." *San Diego Unified Sch. Dist. v. Comm'n on State Mandates*, 33 Cal. 4th 859, 878 (2004).

The purpose of the constitutional provision requiring reimbursement to local governments for a new program or higher level of service is to prevent "transferring to [local] agencies the fiscal responsibility for providing services which the state believed should be extended to the public." *County of Los Angeles*, 43 Cal. 3d at 56-57.

The test claim statute meets both alternate definitions of a "program." The statute carries out the governmental function of providing services to the public—i.e., providing payment in advance for the return of VBM ballots. Assembly Comm. on Elections and Redistricting (March 22, 2017), Comments on AB 216 (purpose of AB 216 is to remedy inequities and voter confusion in voting, when prior to its enactment, some counties voluntarily provided postage on vote by mail ballots and others did not).[1]

The statute also imposes requirements unique to local governments. Neither the state, private citizens, nor private employers are required to provide prepaid postage on VBM ballots. *See* Cal. Elec. Code § 3010 (a)(2) ("the elections official" must provide the prepaid postage on the return envelope)[2]; Cal. Elec. Code § 320 (defining elections official as the person who has the duty of conducting an election, or the person having jurisdiction over elections).[3]

The program created by the statute is "new." Prior to the enactment of AB 216, Section 3010 of the Elections Code required elections officials to deliver to VBM voters only: (1) the ballot, and (2) all supplies necessary for the use and return of the ballot. Now, not only must they include supplies for the return of the ballot, but they must also include a return envelope with prepaid postage.[4] *See* Assembly Comm. on Elections and Redistricting (March 22, 2017), Comments on AB 216 ("existing law does not require the return postage on VBM ballots to be prepaid," but AB 216 would "requir[e] that an

[1] Exhibit A, attached hereto, also available at http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB216 (last accessed January 31, 2020).

[2] Supporting Documents, Test Claim, pp. 18-21.

[3] Exhibit B, attached hereto.

[4] Supporting Documents, Test Claim, pp. 14-21 (former Section 3010 and current Section 3010).

envelope with prepaid postage be included with every VBM ballot in the state of California.") [5]

Alternatively, the statute imposes a "higher level of service" on local governments because elections officials must include an additional item (prepaid postage on return envelopes) along with VBM ballots, and its requirements were intended to provide an enhanced service to the public. *See San Diego Unified Sch. Dist.*, 33 Cal. 4th at 878.

Indeed, this test claim is identical in all material respects to a test claim the Commission on State Mandates partially approved in 2006, *Permanent Absent Voter II*, 03-TC-11.[6] The statutes at issue in that test claim required the elections official to include in absentee ballot mailings some information about the absentee voting procedure, which was not required prior to the enactment of the statute. This Commission held those statutes imposed a new program or higher level of service on counties.

The Commission explained:

> Prior to the amendment by Statutes 2001, chapter 922, county elections officials did not have a statutory duty to "Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Section 3206." … Providing this information to voters mandates a new program or higher level of service upon counties….[7]

If the new requirement to place information into ballot mailings constituted a new program or higher level of service, it follows that the same is true for a new requirement to provide prepaid postage.

Further, the Legislature anticipated that AB 216 would impose a mandate on local governments, as indicated in the legislative history. Assembly Comm. on Elections and Redistricting (March 22, 2017), Fiscal Effect of AB 216 ("State-mandated local program; contains reimbursement direction")[8]; 2018 Cal. Legis. Serv. Ch. 120 (Assembly Bill No. 216) ("By imposing additional duties on local elections officials, this bill would impose a

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[5] Exhibit A.

[6] Statement of Decision, *Permanent Absent Voter II*, 03-TC-11, July 28, 2006, available at https://www.csm.ca.gov/decisions/03tc11sod.pdf (last accessed January 31, 2020).

[7] *Id.* at 10.

[8] Exhibit A.

state-mandated local program")[9]; Assembly Comm. on Appropriations (April 5, 2017), Fiscal Effect of AB 216 (fiscal effect would be "GF costs in the low millions of dollars each statewide election, and less for local elections, for potentially reimbursable state mandate to provide prepaid postage on ballot return envelopes for VBM voters")[10]; Senate Comm. on Appropriations (August 21, 2017), Fiscal Impact ("By requiring VBM ballots to have prepaid postage, this bill creates a state-mandated local program. To the extent the Commission on State Mandates determines the provisions of this bill create a new program or impose a higher level of service on local agencies, local agencies could claim reimbursement of those costs (General Fund).")[11]

Although these comments are not binding on the Commission, *see* Cal. Gov't Code § 17575, it is clear the Legislature understood the statute would "transfer[] to [local] agencies the fiscal responsibility for providing services which the state believed should be extended to the public." *County of Los Angeles*, 43 Cal. 3d at 56-57.

The Department of Finance in its comments contends that AB 216 only increased the cost of providing a service, which is not reimbursable.[12] The Department of Finance cites *City of Anaheim v. State*, 189 Cal. App. 3d 1478 (1987) and *San Diego Unified School Dist. v. Commission on State Mandates*, 33 Cal. 4th 859 (2004). But the courts in those cases distinguished laws like AB 216—which impose a requirement specifically on local governments—from laws of general application that impose the same requirements on the state, or on all residents generally, but only have an incidental financial effect on local governments. According to the courts, the former create reimbursable mandates; the latter do not.

In *City of Anaheim*, the statute at issue required a state agency (PERS) to increase pension payments to retired public employees. 189 Cal. App. 3d at 1482. Local governments had no control over the pension payments, and the statute did not require them to do anything. *Id.* However, the change had an incidental effect on the City of Anaheim because the resulting transfer of funds between accounts caused the City to increase its contributions to employee salaries. *Id.* at 1482-1483. The Court of Appeal held that the law imposed requirements on the state but only had an incidental effect on

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[9] Supporting Documents, Test Claim, p. 13.

[10] Exhibit C, attached hereto, also available at http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB216 (last accessed January 31, 2020).

[11] Exhibit D, attached hereto, also available at http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB216 (last accessed January 31, 2020).

[12] Department of Finance's Comments on the Test Claim.

local governments. *Id.* at 1483. Further, the Court explained the City's increased contributions to employee salaries were not a service to the public—they were merely a higher cost of the City compensating its own employees. *Id.* at 1484. As later explained by the Supreme Court of California, "[t]he law increased the cost of employing public servants, but it did not in any tangible manner increase the level of service provided by those employees to the public." *San Diego Unified School Dist.*, 33 Cal. 4th at 875.

In *San Diego Unified*, the statute at issue required schools to expel students under certain circumstances. 33 Cal. 4th at 868-69. The Supreme Court of California held that the expulsion statute mandated a "higher level of service" on local governments because it applied uniquely to public schools, and because enhancing the safety of the students was a service to the public. *Id.* at 879. However, in its discussion, the Court distinguished other cases in which Courts of Appeal found that statutes did not impose mandates when the statutes imposed universal requirements on private employers and local governments alike. *Id*. (citing *County of Los Angeles v. State of California*, 43 Cal. 3d 46 (1987) and *City of Sacramento v. State of California*, 50 Cal. 3d 51 (1990).) In that context, the Supreme Court noted that simply because a state law increases the costs borne by local government in providing services, that does not automatically qualify the law as a reimbursable mandate. *Id.* at 876. However, the Supreme Court contrasted such laws with statutes that impose an "increase in the actual level or quality of governmental services provided," which do impose reimbursable mandates. *Id.* at 877.

Section 3010 of the Elections Code is such a statute, and it contains a reimbursable mandate. It imposes a requirement unique to local governments, and it requires the local governments to provide a specific service to the public—that is, paying in advance for postage on VBM ballots. This is not a mere incidental effect of a law of general application. Nor it is 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.

Further, none of the exceptions to the definition of a mandate set forth in Section 17556 of the Government Code apply here. And the County of San Diego is unaware of any state, federal, or nonlocal agency funds that would cover the cost of the mandate.[13]

///

[13] Other local governments whose elections are consolidated with and administered by the County of San Diego's Registrar of Voters will contribute in part to the cost of administering the election, including prepaid postage. However, such contributions are simply other local governments' funds and thus do not impact the analysis of whether the test claim statute imposes a reimbursable mandate.

II. AB 216 Applies to Both Statewide and Local Elections.

As a point of clarification, the test claim statute applies not only to statewide elections, but also to local elections (and special elections, which could be either statewide or local). The statute does not on its face distinguish between the various types of elections. *See* Cal. Elec. Code § 3010.

Further, the legislative history also makes clear the statute was intended to apply to both types of elections. Assembly Comm. on Elections and Redistricting (March 22, 2017), Comments on AB 216 ("The provisions outlined in this bill would apply to both state and local elections.")[14]; Senate Comm. on Appropriations (August 21, 2017), Staff Comments ("Staff notes that this bill will apply to state and local elections.")[15]

III. Local Governments May Incur Some Costs in Addition to Postage.

In addition to postage, the County of San Diego anticipates incurring other costs that are "reasonably necessary for the performance of the state-mandated program" as contemplated by Section 17557 of the Government Code. The sums are expected to be relatively insignificant. Other local governments may incur similar costs.

For example, due to the anticipated increase in mail, the Registrar of Voters purchased a high volume mail subscription ("qualified business reply mail"), with a quarterly fee of $2,460 over and above the Registrar's prior subscription.[16] Additionally, the County's Registrar of Voters cannot use VBM envelopes that were already printed because these envelopes indicate that postage is required, as opposed to stating that postage is already paid. The Registrar of Voters incurred a cost of $0.049 per envelope to print the now-unusable envelopes. [17]

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

THOMAS E. MONTGOMERY, County Counsel

By: Christina Snider

CHRISTINA SNIDER, Senior Deputy

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[14] Exhibit A.

[15] Exhibit D.

[16] Exhibit E, Declaration of Liliana Lau ¶ 4, attached hereto.

[17] *Id.* ¶ 5.

EXHIBIT “A”

Date of Hearing: March 22, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Evan Low, Chair
AB 216 (Gonzalez Fletcher) – As Introduced January 24, 2017

SUBJECT: Vote by mail ballots: identification envelopes: prepaid postage.

SUMMARY: Requires the postage on return envelopes for vote by mail (VBM) ballots to be prepaid. Specifically, **this bill** requires an elections official, when delivering a VBM ballot to a voter, to include a return envelope with postage prepaid.

EXISTING LAW requires an elections official to deliver all of the following to each qualified applicant for a VBM ballot:

1) The ballot for the precinct in which the voter resides and, in the case of a presidential primary election, the ballot for the central committee of the party for which the voter has declared a preference, if any; and,

2) All supplies necessary for the use and return of the ballot.

FISCAL EFFECT: Unknown. State-mandated local program; contains reimbursement direction.

COMMENTS:

1) **Purpose of the Bill:** According to the author:

> Voting by mail is becoming more popular both for individual voters and for conducting entire elections.
>
> Since 2012, between 50 and 60 percent of ballots cast in California statewide elections have been by mail. As of June 2016, 52.3 percent 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 47 cents 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 $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.

2) **Rates of Vote by Mail Voting:** AB 1520 (Shelley), Chapter 922, Statutes of 2001, allowed any voter to become a permanent VBM voter. Since that time, the percentage of voters in California who choose to receive a VBM ballot has increased significantly. A majority of California voters now choose to vote using a VBM ballot, either by returning that ballot through the mail or by dropping off their VBM ballot in person. In 2016, about 58% of votes in the primary election and about 59% of votes in the general election were cast using VBM ballots. In 2014, when voter turnout was lower, an even larger percentage of votes were cast on VBM ballots: over 60% of the general election votes and nearly 70% of the votes in the primary election were cast using VBM ballots.

3) **VBM Postage Rules and Voter Confusion:** Since existing law does not require the return postage on VBM ballots to be prepaid, in most counties, a VBM voter must affix the correct amount of postage on the return envelope of their ballot. The amount of postage required can vary depending on the size of the ballot, potentially causing confusion for voters. Some jurisdictions in California already prepay return postage on their VBM ballots even though it is not currently required by state law.

   According to California Common Cause, the variations in postage requirements that currently exist between counties and even within elections in the same county add an unreasonable degree of confusion and uncertainty for voters.

   By requiring that an envelope with prepaid postage be included with every VBM ballot in the state of California, this bill could help reduce voter confusion. The provisions outlined in this bill would apply to both state and local elections.

4) **Insufficient Postage and VBM Ballot Rejection:** Although California has one of the highest mail ballot rejection rates in the country, it does not appear that insufficient postage is a significant factor in the rejection of mail ballots. In a statewide survey of the 58 county elections offices conducted in 2014, the California Civic Engagement Project (CCEP) found that the top reasons for rejection of VBM ballots were ballots not arriving on time (50%), or having issues with signatures (37%) including ballots not being signed, or because the signatures could not be verified. CCEP research also found that every California county that responded to their survey (54 of the state's 58 counties sent a response) reported that the county covered the cost of insufficient postage for VBM ballots.

   Furthermore, in order to protect against the inadvertent disenfranchisement of voters, it is the policy of the United States Postal Service (Postal Service) that VBM ballots with insufficient postage "must not be detained or treated as unpaid mail." Instead, under Postal Service policy, postal workers are supposed to deliver the ballot to the appropriate elections official, and to seek to recover the postage due from the elections official. Notwithstanding this policy, ballots nonetheless are occasionally returned to voters for insufficient postage.

5) **Prepaid Return Postage Could Delay Ballots:** One of the most common methods of providing prepaid postage is by using Business Reply Mail. The advantage of using Business Reply Mail is that postage is paid only on the pieces that are sent back to the county. The disadvantage however, is that Business Reply Mail can increase processing time and delay the delivery of ballots to the elections official.

   A 2014 California Voter Foundation study of the VBM process in three California counties cautioned about possible delays when counties use Business Reply Mail to prepay the return postage on VBM ballots. The study found that in Sacramento County, the ballots that had prepaid postage through the use of Business Reply Mail could be delayed at the post office, because those ballots had to be processed through the business reply unit of the post office in order to be charged against the county's business reply account. The study noted that "[w]hen only one person works in the business reply unit, mail can be delayed if that person is out of the office or if there is a surge of business reply mail from other sources, possibly disenfranchising a voter who waited until close to the election to return his or her ballot." While the report did not recommend against providing prepaid return postage for VBM ballots, it cautioned that "[w]hile some have suggested providing postage-paid envelopes to all VBM voters (and not just those overseas or living in an all vote-by-mail precinct as current law provides), doing so can actually delay VBM ballot processing since postage paid mail is typically sent business class, not first class."

   Additionally, the restructuring of the Postal Service in recent years called *network rationalization* has closed many smaller processing plants across the country, adversely impacting the speed of processing. The Bipartisan Policy Center's report *New Realities of Voting by Mail* cautions "without realizing that voting by mail in 2016 is very different than in years past, voters are more likely to unwittingly disenfranchise themselves." Business Reply Mail takes longer to reach recipients since "The Postal Service of 2016 does not operate under the same service standards as it did even one or two presidential cycles ago. Mail volume is down, and the USPS has adjusted its infrastructure accordingly. Delivery standards have also changed." This is problematic especially during the lead up to election day when a higher volume of ballots are expected.

   Under SB 29 (Correa), Chapter 618, Statutes of 2014, ballots that are mailed by election day are able to be counted if they are received by the elections official by the third day after the election. While SB 29 may help protect against voters being inadvertently disenfranchised if ballots are delayed due to the use of Business Reply Mail under this bill, if delays in the return of VBM ballots nonetheless persist, the timeframe for ballots to be received that was established in SB 29 may need to be revisited to ensure that voters are not inadvertently disenfranchised.

6) **Impact of SB 450 Vote Center Model:** SB 450 (Allen), Chapter 832, Statutes of 2016, permits specified counties beginning in 2018, and all other counties beginning in 2020, to conduct 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, subject to certain conditions. Counties in California that opt to conduct elections in accordance with SB 450 generally will be required to send VBM ballots to all registered

voters 28 days before election day. As counties implement SB 450, the number of voters who receive a ballot in the mail will increase, which may also increase the number of VBM ballots that are returned by mail. On the other hand, because SB 450 requires participating counties to make ballot drop-off locations available, an increasing number of voters may choose to return VBM ballots in person, rather than through the mail. In any case, SB 450 likely will increase the involvement of the postal system in elections conducted in the state, but SB 450 did not require the return postage on VBM ballots to be prepaid. AB 216 will help address this by providing prepaid envelopes to voters so they can return their ballots.

7) **State Mandates**: The last six state budgets have suspended various state mandates as a mechanism for cost savings. Among the mandates that were suspended were all existing elections-related mandates, including VBM programs. All the existing elections-related mandates have been proposed for suspension again by the Governor in his budget for the 2017-18 fiscal year. This bill adds another elections-related mandate by requiring local elections official to prepay the return postage for VBM ballots.

8) **Previous Legislation**: This bill is similar to AB 800 (Gomez) of 2015, AB 1519 (De La Torre) of 2009, and SB 117 (Murray) of 2005, which were all held on the Assembly Appropriations Committee's suspense file, and to SB 1062 (Block) of 2014, which was held on the Senate Appropriations Committee's suspense file.

REGISTERED SUPPORT / OPPOSITION:

Support

Advancement Project
American Civil Liberties Union of California
California Labor Federation
California League of Conservation Voters
California Professional Firefighters
California State Association of Letter Carriers
California Voter Foundation
Disability Rights California
Equal Justice Society
Service Employees International Union, California State Council

Opposition

None on file.

Analysis Prepared by: Bish Paul / E. & R. / (916) 319-2094

EXHIBIT “B”

West's Annotated California Codes Elections Code (Refs & Annos) Division 0.5. Preliminary Provisions (Refs & Annos) Chapter 4. Definitions

West's Ann.Cal.Elec.Code § 320

§ 320. Elections official

Effective: January 1, 2008
Currentness

"Elections official" means any of the following:

(a) A clerk or any person who is charged with the duty of conducting an election.

(b) A county clerk, city clerk, registrar of voters, or elections supervisor having jurisdiction over elections within any county, city, or district within the state.

Credits
(Stats.1994, c. 920 (S.B.1547), § 2. Amended by Stats.2007, c. 125 (A.B.1732), § 1.)

West's Ann. Cal. Elec. Code § 320, CA ELEC § 320
Current with all laws through Ch. 870 of 2019 Reg.Sess.

End of Document

EXHIBIT "C"

Date of Hearing: April 5, 2017

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Lorena Gonzalez Fletcher, Chair
AB 216 (Gonzalez Fletcher) – As Introduced January 24, 2017

Policy Committee: Elections and Redistricting Vote: 5 - 2

Urgency: No State Mandated Local Program: Yes Reimbursable: Yes

SUMMARY:

This bill requires return envelopes for vote by mail (VBM) ballots to include prepaid postage.

FISCAL EFFECT:

GF costs in the low millions of dollars each statewide election, and less for local elections, for potentially reimbursable state mandate to provide prepaid postage on ballot return envelopes for VBM voters.

For example, if 5.8 million voters (the same that voted by mail in the November 2016 election) returned a ballot by mail at an average cost of $0.65 per envelope, the cost for prepaid postage would be almost $3.8 million per election.

COMMENTS:

1) **Background.** Existing law requires an elections official to deliver to a voter requesting a VBM ballot: (1) the ballot for the precinct in which the voter resides and, in the case of a presidential primary election, the ballot for the central committee of the party for which the voter has declared a preference, if any, and (2) all supplies necessary for the use and return of the ballot. Some counties, including San Francisco, Santa Clara, Santa Cruz, Alpine, and Sierra include prepaid postage on all return envelopes for VBM ballots.

2) **Purpose.** This bill would require all counties to include prepaid postage on the return envelopes provided to VBM voters. According to the author, "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."

   The author also states, "with a stamp currently costing 47 cents 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. AB 216 will require that the return envelope provided to vote-by-mail voters by elections officials have pre-paid postage, ensuring that voting is free for all California voters."

3) **Staff Comments.** Under SB 450 (Allen), Chapter 832, Statutes of 2016, counties are allowed to opt-in to an all VBM election where all voters receive a ballot in the mail. For SB 450 opt-in counties, these mailed ballots can be returned by mail or dropped off at various specified locations, such as a vote center. Some counties are likely to opt-in to SB 450 mail election and vote center model, which will likely increase the number of VBM voters in future elections. Thus, it is likely that the costs of providing prepaid postage for the return envelope for ballots would increase in the future. However, counties that opt-in to SB 450 are likely to experience long-term savings.

Analysis Prepared by: Jessica Peters / APPR. / (916) 319-2081

EXHIBIT "D"

SENATE COMMITTEE ON APPROPRIATIONS
Senator Ricardo Lara, Chair
2017 - 2018 Regular Session

AB 216 (Gonzalez Fletcher) - Vote by mail ballots: identification envelopes: prepaid postage

Version: January 24, 2017
Urgency: No
Hearing Date: August 21, 2017
Policy Vote: E. & C.A. 5 - 0
Mandate: Yes
Consultant: Robert Ingenito

This bill meets the criteria for referral to the Suspense File.

Bill Summary: AB 216 would require the postage on return envelopes for vote-by-mail (VBM) ballots to be prepaid.

Fiscal Impact: By requiring VBM ballots to have prepaid postage, this bill creates a state-mandated local program. To the extent the Commission on State Mandates determines the provisions of this bill create a new program or impose a higher level of service on local agencies, local agencies could claim reimbursement of those costs (General Fund). If 8.4 million voters (the number of VBM voters in the 2016 General Election) voted by mail at an average cost of $.65 per envelope, the cost of prepaid postage would be about $5.5 million. State mandate costs for future local elections would be unknown, also potentially in the millions of dollars.

Background: Existing law allows any voter to become a permanent VBM voter whereby he or she can cast their ballot by mail. The voter, however, is currently responsible for placing the correct amount of postage on the return envelope, which can vary depending on the size of the ballot. VBM voting has been on the increase since 2000 and now more than half of California's eligible voters cast their ballot by mail instead of going to the polls on elections day.

Proposed Law: This bill would require an elections official, when delivering a VBM ballot to a voter, to include a return envelope with postage prepaid.

Related Legislation: This bill is similar to SB 1062 (Block, 2014), which was held on the Senate Appropriations Committee's suspense file, and to AB 800 (Gomez, 2015), AB 1519 (De La Torre, 2009), and SB 117 (Murray, 2005), which were all held on the Assembly Appropriations Committee's suspense file.

Staff Comments: Under the provisions of the bill, the counties would pay for the postage costs and then submit a claim to the Commission on State Mandates for reimbursement from the General Fund.

Some counties already provide postage paid return envelopes, including Alpine, San Francisco, Santa Clara and Sierra. Additionally, the counties of Glenn, Kern, and Tuolumne offer prepaid postage for mandatory VBM ballot voters who do not have a designated polling location provided by the county. Although some counties are already providing postage paid return envelopes, under the state mandates provisions, these costs would now be borne by the General Fund.

Staff notes that this bill will apply to state and local elections, and while counties currently pay the costs for the expenses associated to local elections, this bill could result in the State paying the postage costs for all ballots related to local elections.

The last seven state budgets have suspended various state mandates as a mechanism for cost savings. Among the mandates that were suspended were all existing elections-related mandates, including VBM programs. This bill would add another elections-related mandate by requiring local elections official to prepay the return postage for VBM ballots.

-- END --

EXHIBIT "E"

DECLARATION OF LILIANA LAU

I, Liliana Lau, declare as follows:

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

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

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

4. Due to the anticipated increase in mail after the passage of AB 216, the Registrar of Voters purchased a high volume mail subscription ("qualified business reply mail") from the United States Postal Service ("USPS"). According to the USPS website, this subscription has a quarterly fee of $2,460 over and above the Registrar's prior subscription.

5. Additionally, the Registrar cannot use VBM envelopes that were already printed because these envelopes indicate that postage is required, as opposed to stating that postage is already paid. According to an invoice from the Registrar's vendor, each of these envelopes cost the Registrar $0.049. I have requested information regarding how many envelopes were already printed and are no longer usable in order to calculate the actual cost.

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

Executed this 3rd day of February, 2020, in San Diego County.

Signed: ______________________

Liliana Lau

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 February 4, 2020, I served the:

- **County of San Diego's Comments on the Test Claim filed February 3, 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 February 4, 2020 at Sacramento, California.

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

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/28/20

Claim Number: 19-TC-01

Matter: Vote by Mail Ballots: Prepaid Postage

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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RECEIVED
February 27, 2020
Commission on State Mandates

LATE FILING

EXHIBIT D

March 3, 2020 **Via Drop Box**

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

Dear Ms. Halsey:

RESPONSE TO THE DEPARTMENT OF FINANCE'S COMMENTS ON AB 216 TEST CLAIM FILED ON JANUARY 2, 2020
19-TC-01

The County of Los Angeles ("Claimant") submits its response to the Department of Finance's comments on the *AB 216, Vote by Mail Ballots: Prepaid Postage* Test Claim.

If you have any questions please contact me, or our staff may call Hasmik Yaghobyan at (213) 974-9653 or via e-mail at hyaghobyan@auditor.lacounty.gov.

Very truly yours,

Arlene Barrera

Arlene Barrera
Auditor-Controller

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Attachment

RESPONSE TO THE DEPARTMENT OF FINANCE'S COMMENTS ON AB 216 TEST CLAIM FILED ON JANUARY 2, 2020 19-TC-01

The Claimant disagrees with the Department of Finance's comments ("DOF")[1] on *Vote by Mail Ballots("VBM"): Prepaid Postage (AB 216)* on the following grounds:

THE REQUIREMENTS OF AB 216 CREATE A NEW PROGRAM, HIGHER LEVEL OF SERVICE, AND AN INCREASED COST FOR THE CLAIMANT

Relying on two cases: *City of Anaheim v. State*[2] *("Anaheim")* and *San Diego Unified School District v. Commission on State Mandates*[3] *("San Diego"),* DOF contends that the *AB 216* requirement of providing prepaid postage does not amount to a new program or higher level of service.

First, *AB 216* contains a reimbursable mandate. It 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.

Second, both cases cited by the DOF are distinguishable from *AB 216*. In *Anaheim*, the statute at issue required a state agency to increase pension payments to retired public employees. Local governments had no control over the pension payments, and the statute did not require them to do anything. The Appeal Court held that appellant could not recover its costs because the pension fund legislation at issue did not compel appellant to do anything and the pension payments made did not constitute a new program or higher level of service under the California Constitution.

Further, in the *San Diego*, at issue was whether the hearing costs incurred as a result of the mandatory expulsions that were compelled by the California Education Code § 48915, were reimbursable. 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.

Lastly, *AB 216* contains a reimbursable mandate. It imposes a requirement unique to local governments, and it requires the local governments to provide a specific service to the public, that is, paying postage on VBM ballots. This 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.

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[1] Department of Finance-Respond to Test Claim 19-TC-01, Vote by Mail Ballots: Prepaid Postage, dated January 3, 2020, ¶ 3.

[2] 189 Cal. App. 3d. 1478 (1987).

[3] 33 Cal. 4th 859 (2044).

RESPONSE TO THE DEPARTMENT OF FINANCE'S COMMENTS ON AB 216 TEST CLAIM FILED ON JANUARY 2, 2020 19-TC-01

CLAIMANT IS SEEKING REIMBURSEMENT FOR COST INCURRED AFTER JANUARY 1, 2019

The Claimant is seeking reimbursement for costs incurred after January 1, 2019[4], pursuant to Government Code §17551 (c); Cal. Code regs., tit. 2, §§ 1183.1 (c) and 1187.5. Therefore, the Claimant is claiming *actual* increased costs during the fiscal year for which the Test Claim was filed for implementing the alleged mandate.

CONCLUSION

AB 216 imposes state mandated activity and costs on the Claimant. This state mandated cost is not exempted from subvention requirements of § 6, there are no other funding sources, and the Claimant lacks authority to develop and impose fees to fund this new state mandated activity.

[4] Department of Finance-Respond to Test Claim 19-TC-01, Vote by Mail Ballots: Prepaid Postage, dated January 3, 2020, ¶ 4.

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 March 11, 2020, I served the:

- **Claimant's Late Rebuttal Comments filed February 27, 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 March 11, 2020 at Sacramento, California.

Jill Magee

Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/4/20

Claim Number: 19-TC-01

Matter: Vote by Mail Ballots: Prepaid Postage

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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STATE *of* CALIFORNIA
COMMISSION ON STATE MANDATES

EXHIBIT E

May 6, 2020

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

Ms. Hasmik Yaghobyan
County of Los Angeles
500 West Temple Street, Room 603
Los Angeles, CA 90012

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

Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
Vote by Mail Ballots: Prepaid Postage 19-TC-01
Elections Code Section 3010; Statutes 2018, Chapter 120 (AB 216)
County of Los Angeles, Claimant

Dear Ms. Li and Ms. Yaghobyan:

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

Written Comments

Written comments may be filed on the Draft Proposed Decision by **May 27, 2020**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[1]

You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

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

Hearing

This matter is set for hearing on **Friday, July 24, 2020** at 10:00 a.m. via Zoom. The Proposed Decision will be issued on or about July 10, 2020.

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[1] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

\\10.0.0.11\data\MANDATES\2019\TC\19-TC-01 Vote by Mail Ballots Prepaid Postage\Correspondence\draftPDtrans.docx

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

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

Sincerely,

Heather Halsey
Executive Director

ITEM ___

TEST CLAIM

DRAFT PROPOSED DECISION

Elections Code Section 3010

Statutes 2018, Chapter 120 (AB 216)

Vote by Mail Ballots: Prepaid Postage

19-TC-01

County of Los Angeles, Claimant

EXECUTIVE SUMMARY

Overview

This Test Claim was filed on Statutes 2018, chapter 120 (AB 216), which amended Elections Code section 3010, effective January 1, 2019, to require elections officials to include prepaid postage on identification envelopes delivered to vote-by-mail voters for returning their ballots.

Staff finds that Elections Code section 3010, as amended by the test claim statute, imposes a reimbursable state-mandated program on counties and cities. Accordingly, staff recommends that the Commission on State Mandates (Commission) approve this Test Claim as specified herein.

Procedural History

The claimant filed the Test Claim on October 15, 2019.[1] The Department of Finance (Finance) filed comments on the Test Claim on January 2, 2020.[2] Interested party County of San Diego filed comments on the Test Claim on February 3, 2020.[3] The claimant filed late rebuttal comments on February 27, 2020.[4] Commission staff issued the Draft Proposed Decision on May 6, 2020.[5]

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of

[1] Exhibit A, Test Claim, page 1.

[2] Exhibit B, Finance's Comments on the Test Claim, page 1.

[3] Exhibit C, County of San Diego's Comments on the Test Claim, page 1.

[4] Exhibit D, Claimant's Late Rebuttal Comments, page 1.

[5] Exhibit E, Draft Proposed Decision.

service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statue or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with 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 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[6]

Claims

The following chart provides a brief summary of the claims and issues raised and staff's recommendation.

Issue	**Description**	**Staff Recommendation**
Was the Test Claim timely filed, and if so, when does the reimbursement period begin?	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." Government Code section 17557(e) requires 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."	*Timely filed with a Potential Period of Reimbursement Beginning January 1, 2019* - The effective date of the test claim statute (Stats. 2018, ch. 12) is January 1, 2019. The Test Claim was filed on October 15, 2019,[7] within 12 months of the effective date of the test claim statute. Because this test claim was filed on October 15, 2019, the potential period of reimbursement under section 17557 would begin on July 1, 2018. However, since the test claim statute has a later effective date, the period of reimbursement for this Test Claim begins on the statute's effective date, January 1, 2019.

[6] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[7] Exhibit A, Test Claim, page 1.

Issue	Description	Staff Recommendation
Does the test claim statute impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution?	The test claim statute requires elections officials to provide prepaid postage on identification envelopes delivered to vote-by-mail voters for returning their ballots. Finance argues that the test claim statute merely imposes increased costs, but is not a new program or higher level of service.	*Approve* –The test claim statute imposes a new requirement on "elections officials" to provide prepaid postage on identification envelopes delivered with vote-by-mail ballots for all state and local elections. "Elections official" is defined broadly in Elections Code section 320. However, counties and cities conduct elections for school districts and community college districts, and counties conduct elections for special districts.[8] Thus, the requirement to provide prepaid postage on identification envelopes is mandated only on counties and cities. 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."[9] 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

[8] Education Code sections 5200 et seq., 5220, 5300, 5303, Elections Code section 10517; *County of Yolo v. Los Rios Community College Dist.* (1992) 5 Cal.App.4th 1242.

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

Issue	Description	Staff Recommendation
		meaning of article XIII B, section 6.[10] Thus, the test claim statute imposes a state-mandated program when a state or local election is called on an election date established by state law or by the Governor, or for elections that must be held by a statutory deadline and cannot be accommodated at the next established election date. If, however, a local government calls for other special local elections that are authorized by law, this is at the discretion of local government, and the downstream requirement to provide prepaid postage on the identification envelope is not mandated by the state and thus, not eligible for reimbursement. Also, this mandate imposes a new program or higher level of service because it is imposed uniquely on cities and counties, and provides a service (postage-free vote-by-mail voting) to the public. The test claim statute also imposes costs mandated by the state on cities and counties that conduct elections. Although various statutes provide counties and cities fee authority to recover some of their election costs from other local

[10] *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* (2009) 170 Cal.App.4th 1355, 1365-1366.

Issue	Description	Staff Recommendation
		governments,[11] the fees are not "sufficient to pay for the mandated program or increased level of service" within the meaning of Government Code section 17556(d). There is no authority to charge fees when counties administer statewide elections, when counties and cities administer their own required municipal elections, and when counties and cities administer school and community college district elections consolidated with non-educational issues or elective offices.[12] However, any fee revenue that county and city elections officials are authorized to collect from other local governments for their share of the costs to comply with the mandate in accordance with applicable statutes, shall be identified as offsetting revenue and deducted from the costs claimed.

Staff Analysis

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."[13] The effective date of the test claim statute is January 1, 2019. The Test Claim was filed on October 15,

[11] Elections Code sections 10002, 10517, 10520 and Education Code section 5227.

[12] Education 3204.

[13] Government Code section 17551(c).

2019,[14] 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 that are "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.

B. Elections Code Section 3010, as Amended by Statutes 2018, Chapter 120, Imposes a Reimbursable State-Mandated Program on County and City Elections Officials by Requiring Prepaid Postage on the Identification Envelopes Delivered to Vote-By-Mail Voters only when a State or Local Election Is Called on an Election Date Established by State Law or by the Governor, or for Elections That Must Be Held by a Statutory Deadline that Cannot Be Accommodated at the Next Established Election Date. If, However, a Local Government Calls for a Special Local Election Authorized by Law, the Downstream Requirement to Provide Prepaid Postage on the Identification Envelope Is Not Mandated by the State.

Statutes 2018, chapter 120 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.

Although "supplies for the use and return of the ballot" is not defined in section 3010, preexisting law (Elec. Code, § 3011) requires sending the vote-by-mail voter an identification envelope that includes "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." Since prior law required delivering an identification envelope to the voter as part of the "supplies for the use and return of the ballot," the requirement to deliver the identification envelope is not new. The only new requirement is for "elections officials" to provide prepaid postage on identification envelopes delivered with vote-by-mail ballots for all state and local elections. Although the legislative history of the test claim statute indicates that some counties were already providing prepaid postage on the identification envelopes, the requirement has now become mandated by

[14] Exhibit A, Test Claim, page 1.

the state.[15] 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."

"Elections official" is defined broadly in section 320 of the Elections Code. However, school districts, community college districts, and special districts do not conduct their own elections. Under Education Code sections 5300 and 5303, county election officials conduct elections for school and community college districts "in accordance with the Elections Code."[16] 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.[17] 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." Thus, the requirement to provide prepaid postage on identification envelopes is mandated only on counties and cities.

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."[18] 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.[19]

Applying the decision in *Kern*, the Commission finds that if a state or local election is called on an election date established by state law or by the Governor, or the election must be held by a statutory deadline and cannot be accommodated at the next established election date, then the activity to provide prepaid postage on identification envelopes is mandated by the state.

However, some local elections are held entirely at the discretion of the local agency and are not mandated by the state. For example, if a local government calls for a special election on a date other than an established election date (which may be authorized for several reasons, including for the adoption of local propositions, ordinances, resolutions, and measures for increased taxes

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[15] 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 Sess.) as introduced January 24, 2017.)

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

[17] Education Code sections 5200 et seq., 5220.

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

[19] *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* (2009) 170 Cal.App.4th 1355, 1365-1366.

or bonds),[20] this is an extra election called at the discretion of local government, and under the reasoning of the *Kern* decision, the downstream requirement to provide prepaid postage on the identification envelope is not mandated by the state.

Staff further 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.[21] 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.[22]

Finally, staff finds that the test claim statute imposes costs mandated by the state on cities and counties. Although various statutes authorize cities and counties to charge fees and be reimbursed by other local governments to conduct their elections and to provide prepaid postage on vote-by-mail ballots,[23] the fee authority is not sufficient to pay for all costs mandated by the state within the meaning of Government Code section 17556(d). There is no authority to charge fees when counties administer statewide elections, when counties and cities administer their own required municipal elections, and when counties and cities administer school and community college district elections consolidated with non-educational issues or elective offices.[24]

Conclusion

Accordingly, staff 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 state or local elections called on an election date established by state law or by the Governor, or for elections that must be held by a statutory deadline and cannot be accommodated at the next established election date. If, however, a local government calls for other special local elections authorized by law, these are at the discretion of local government, and the downstream requirement to provide prepaid postage on the identification

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[20] 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).

[21] 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.)

[22] Exhibit X, Assembly Floor, Analysis of AB 216 (2017-2018 Reg. Sess.) as amended September 1, 2017, page 1.

[23] Elections Code sections 10002, 10517, 10520, and Education Code section 5227.

[24] Education Code section 3204.

envelope is not mandated by the state and thus, not eligible for reimbursement. Any fee revenue that county and city elections officials are authorized to collect from other local governments for their share of the costs to comply with the mandate in accordance with applicable statutes, shall be identified as offsetting revenue and deducted from the costs claimed.[25]

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision to approve the Test Claim and authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

[25] Elections Code sections 10002, 10517, 10520, and Education Code section 5227.

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*)

DECISION

The Commission in State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on July 24, 2020. [Witness list will be included in the adopted Decision.]

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

The Commission [adopted/modified] the Proposed Decision to [approve/partially approve/deny] the Test Claim by a vote of [vote will be included in the adopted Decision], as follows:

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

Summary of the Findings

This Test Claim was filed on Statutes 2018, chapter 120, which amended Elections Code section 3010, effective January 1, 2019, 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 and that the reimbursement period begins on January 1, 2019, based on the effective date of the statute.

The Commission also finds that the test claim statute imposes a new requirement on "elections officials" to provide prepaid postage on identification envelopes delivered with vote-by-mail ballots for all state and local elections. Although the legislative history of the test claim statute indicates that some counties were already providing prepaid postage on the identification envelopes, the requirement is now mandated by the state,[26] 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."

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. Thus, the requirement to provide prepaid postage on identification envelopes is mandated only on counties and cities.

The Commission finds that if a state or local election is called on an election date established by state law or by the Governor, or if the election must be held by a statutory deadline and cannot be accommodated at the next established election date, then the activity to provide prepaid postage on identification envelopes is mandated by the state.

However, some local elections are held entirely at the discretion of the local agency and are not mandated by the state. For example, if a local government calls for a special election on a date other than an established election date (which is authorized for several reasons, including for the adoption of local propositions, ordinances, resolutions, and measures for increased taxes or bonds),[27] this is at the discretion of local government, and under the reasoning of the *Kern* decision, the downstream requirement to provide prepaid postage on the identification envelope is not mandated by the state. 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."[28] Activities undertaken at the option or

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[26] 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 Sess.) as introduced January 24, 2017.)

[27] 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).

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

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.[29]

The Commission further 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.[30] 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.[31]

Finally, the Commission finds that the test claim statute imposes costs mandated by the state on cities and counties. Although various statutes authorize cities and counties to charge fees and be reimbursed by other local governments to conduct their elections and to provide prepaid postage on vote-by-mail ballots,[32] the fee authority is not sufficient to pay for all costs mandated by the state within the meaning of Government Code section 17556(d). There is no authority to charge fees when counties administer statewide elections, when counties and cities administer their own required municipal elections, and when counties and cities administer school and community college district elections consolidated with non-educational issues or elective offices.[33]

Therefore, the Commission 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, when a state or local election is called on an election date established by state law or by the Governor, or for elections that must be held by a statutory deadline and cannot be accommodated at the next established election date. If, however, a local government calls for a special local election authorized by law, this extra election is called at the discretion of local government, and the downstream requirement to provide prepaid postage on the identification envelope is not mandated by the state and thus, not eligible for reimbursement. Any fee revenue that county and city elections officials are authorized to collect from other local governments for their share of the costs to comply with the

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[29] *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* (2009) 170 Cal.App.4th 1355, 1365-1366.

[30] 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.)

[31] Exhibit X, Assembly Floor, Analysis of AB 216 (2017-2018 Reg. Sess.), as amended September 1, 2017, page 1.

[32] Elections Code sections 10002, 10517, 10520, and Education Code section 5227.

[33] Education Code section 3204, last amended by Statutes 2007, chapter 508.

mandate in accordance with applicable statutes, shall be identified as offsetting revenue and deducted from the costs claimed.[34]

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.[35]
01/02/2020	The Department of Finance (Finance) filed comments on the Test Claim.[36]
02/03/2020	The County of San Diego filed comments on the Test Claim.[37]
02/27/2020	The claimant filed late rebuttal comments on the Test Claim.[38]
05/06/2020	Commission staff issued the Draft Proposed Decision.[39]

II. Background

A. Vote-by-Mail Voting 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."[40]

Voting by mail has been authorized in California since 1923,[41] when 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.[42] 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

[34] Elections Code sections 10002, 10517, 10520, and Education Code section 5227.

[35] Exhibit A, Test Claim.

[36] Exhibit B, Finance's Comments on the Test Claim.

[37] Exhibit C, County of San Diego's Comments on the Test Claim.

[38] Exhibit D, Claimant's Late Rebuttal Comments.

[39] Exhibit E, Draft Proposed Decision.

[40] 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").

[41] Former Elections Code sections 1357-1364 (Stats. 1923, ch. 283).

[42] Former Elections Code section 1357(b) (Stats. 1923, ch. 283).

> 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 affidavit of registration of such voter as to the truth of the affidavit….[43]

Originally, 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.[44] In 1978, however, the Legislature declared that vote-by-mail ballots "shall be available to any registered voter."[45]

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).[46] 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.[47] The application for a vote-by-mail ballot is made in writing to the elections official having jurisdiction over the election "between the 29th and 7th day prior to the election," and "shall be signed by the applicant under penalty of perjury."[48] Any applications received by the elections official before the 29th day are kept and processed during the application period.[49]

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.[50]

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

[44] Former Elections Code section 1003 (Stats. 1976, ch. 1275).

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

[46] 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).

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

[48] 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).

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

[50] 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.

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 ballot together with a notice informing the voter how to correct the defect in order for the ballot to be counted.[51]

If the elections official deems the applicant entitled to a vote-by-mail ballot, then the ballot is delivered to the voter.[52] 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."[53] 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.[54]

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.[55] 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.[56] In addition, the identification envelope is not opened and the ballot is not counted unless the voter completes a signature verification process.[57] If the identification envelope is returned unsigned, the ballot is not counted unless the voter completes an unsigned ballot statement.[58] 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."[59] Vote by mail ballots are generally counted and canvassed in the same manner as ballots cast in a precinct polling place.[60]

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

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

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

[54] Elections Code section 3011 (as amended by Stats. 2015, ch. 278).

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

[56] Elections Code section 3019 (as amended by Stats. 2017, ch. 820).

[57] Elections Code section 3019(c) and (d).

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

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

[60] Elections Code section 15109.

Permanent vote-by-mail voting became available in California in 1982 for voters with specified conditions or disabilities.[61] In 2001, this law was expanded to allow any voter in California to apply for permanent vote-by-mail status regardless of condition or disability.[62] Permanent vote-by-mail applications are processed in the same manner as an application for a vote-by-mail ballot.[63]

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.[64]

County elections officials administer almost every aspect of voting in California including vote-by-mail voting.[65] 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.[66]

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.

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

[62] Statutes 2001, chapter 922, Elections Code sections 3201-3202,

[63] Elections Code section 3203 (Stats. 2013, ch. 560).

[64] Statutes 2016, chapter 832.

[65] Elections Code section 3000 et seq.

[66] Exhibit X, 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.

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 free for voters who vote by mail.[67] 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.[68]

C. Past Commission Decisions on Election Laws

The Commission has not received a prior Test Claim on Elections Code section 3010,[69] but has heard and decided the following Test Claims on election laws, most of which have been suspended by the Legislature for many years.[70]

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)[71] 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.[72] Thus, the costs associated with the increase in absentee ballot filings was

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[67] 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.)

[68] Exhibit X, Assembly Floor, Analysis of AB 216 (2017-2018 Reg. Sess.) as amended September 1, 2017, page 1.

[69] 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.

[70] Exhibit X, 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.

[71] 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.

[72] Former Elections Code section 1003 (Stats. 1976, ch. 1275).

determined to be reimbursable, based on specified formulas for counties administering the elections for other local agencies, and for local agencies and school districts administering their own elections.[73]

The *Absentee Ballots*, CSM-3713 mandate has been suspended every year since 2011-12.[74]

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.[75]

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.[76] Additionally, the *Permanent Absent Voter*, CSM-4358 mandate was suspended in the state budget in every year beginning 2011-12.[77]

Absentee Ballots, Tabulation by Precinct, 00-TC-08[78]

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

[73] Exhibit X, Commission on State Mandates, Parameters and Guidelines for *Absentee Ballots*, 02-PGA-02, adopted February 27, 2003.

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

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

[76] Exhibit X, Commission on State Mandates, Final Staff Analysis for Proposed Parameters and Guidelines for *Permanent Absentee Voters,* CSM-4358, amended December 1, 2011, page 2.

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

[78] 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.[79] 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.[80]

The *Absentee Ballots, Tabulation by Precinct,* 00-TC-08 mandate has been suspended every year since 2011-12.[81]

Permanent Absentee Voters II, 03-TC-11[82]

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.[83]

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[79] Exhibit X, 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.

[80] Exhibit X, 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.

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

[82] 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.

[83] Exhibit X, Commission on State Mandates, Statement of Decision, *Permanent Absent Voters II*, 03-TC-11, adopted July 28, 2006, pages 2, 15.

The *Permanent Absent Voters II*, 03-TC-11 mandate has been suspended each year beginning with the 2013-2014 budget.[84]

<u>*Voter Identification Procedures*, 03-TC-23</u>

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.[85]

The *Voter Identification Procedures*, 03-TC-23 mandate has been suspended each year beginning with the 2013-2014 budget.[86]

<u>*Post-Election Manual Tally*, 10-TC-08</u>

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.[87] 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.[88]

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

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

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

[87] 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.

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

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 "The supplies necessary for the use and return of the ballot, including an identification envelope with prepaid postage for return of the envelope by mail ballot."[89] 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.[90]
>
> 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.[91]

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.[92] 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.[93]

The claimant also quotes the Assembly Appropriations Committee estimate of statewide costs at $5.5 million.[94]

In its rebuttal comments, the claimant disagrees with Finance's argument 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."[95] The claimant also argues that the cases cited by Finance are distinguishable from

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[89] Exhibit A, Test Claim, page 12 (Declaration of Margaret Palacios).

[90] Exhibit A, Test Claim, page 6.

[91] 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."

[92] Exhibit A, Test Claim, page 18 (Declaration of Margaret Palacios).

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

[94] Exhibit A, Test Claim, page 18 (Declaration of Margaret Palacios).

[95] Exhibit D, Claimant's Late Rebuttal Comments, page 1.

the test claim statute. In *City of Anaheim v. State*,[96] the test claim statute did not require local governments to do anything. Regarding *San Diego Unified School Dist.*,[97] the claimant states:

> 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.[98]

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."[99]

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.[100]

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.[101]

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

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

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

[98] Exhibit D, Claimant's Late Rebuttal Comments, page 1.

[99] Exhibit D, Claimant's Late Rebuttal Comments, page 1.

[100] Exhibit B, Finance's Comments on the Test Claim, page 1.

[101] Exhibit B, Finance's Comments on the Test Claim, page 1.

vote by mail ("VBM") ballots; after the passage of AB 216, they are."[102] 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."[103] 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.[104] The County also argues that paying 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."[105] 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 prior to the enactment of the statute.[106]

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.[107]

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

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[102] Exhibit C, County of San Diego's Comments on the Test Claim, page 1.

[103] Exhibit C, County of San Diego's Comments on the Test Claim, page 2.

[104] Exhibit C, County of San Diego's Comments on the Test Claim, pages 4-5.

[105] Exhibit C, County of San Diego's Comments on the Test Claim, page 5.

[106] Exhibit C, County of San Diego's Comments on the Test Claim, pages 2-3.

[107] Exhibit C, County of San Diego's Comments on the Test Claim, page 6.

articles XIII A and XIII B impose."[108] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[109]

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.[110]
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.[111]
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.[112]
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.[113]

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.[114] The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[115] In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an

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

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

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

[111] *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).

[112] *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.

[113] *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.

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

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

"equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[116]

A. <u>The Test Claim Was Timely Filed with a Period of Reimbursement Beginning January 1, 2019.</u>

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."[117]

The effective date of Statutes 2018, chapter 12 is January 1, 2019. The Test Claim was filed on October 15, 2019,[118] 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.

B. <u>Elections Code Section 3010, as Amended by Statutes 2018, Chapter 120, Imposes a Reimbursable State-Mandated Program on County and City Elections Officials by Requiring Prepaid Postage on the Identification Envelopes Delivered to Vote-By-Mail Voters only when a State or Local Election Is Called on an Election Date Established by State Law or by the Governor, or for Elections That Must Be Held by a Statutory Deadline and Cannot Be Accommodated at the Next Established Election Date. If, However, a Local Government Calls for a Special Local Election Authorized by Law, the Downstream Requirement to Provide Prepaid Postage on the Identification Envelope Is Not Mandated by the State.</u>

1. Elections Code section 3010, as amended by Statutes 2018, chapter 120, imposes a new requirement on "elections officials" to include 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:

> <u>(a)</u> The elections official shall deliver <u>all of the following</u> to each qualified applicant [for a vote-by-mail ballot]:

[116] *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].

[117] Government Code section 17551(c).

[118] Exhibit A, Test Claim, page 1.

(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.[119] 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.[120]

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.'"[121] Also, section 3010 "should be

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[119] 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."

[120] 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 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."

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

construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect."[122]

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.
>
> (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.[123]

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

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

[123] 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."

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.[124] "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.[125, 126]

2. The new requirement to provide prepaid postage on the identification envelopes constitutes a state mandate on city and county election officials only when a state or local election is called on an election date established by state law or by the Governor, or for elections that must be held by a statutory deadline that cannot be accommodated at the next established election date. If, however, a local government calls for a special local election authorized by law, this is at the discretion of local government, and the downstream requirement to provide prepaid postage on the identification envelope is not mandated by the state.

The test claim statute, Elections Code section 3010(a), states that "[t]he elections official *shall* deliver all of the following to each qualified applicant . . . (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."[127] 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.[128] 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."

The scope of the mandate, however, requires further discussion.

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[124] 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.)

[125] Elections Code section 328.

[126] 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).

[127] Emphasis added.

[128]. 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.)

a. The requirement to provide prepaid postage on identification envelopes is mandated only on counties and cities.

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 and county and municipal elections.

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."[129] 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."[130] 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.[131] 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 . . . ."[132] The state has not

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[129] Elections Code sections 10200 et seq., and 10240.

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

[131] Education Code sections 5200 et seq., 5220.

[132] 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

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.[133] Thus, school districts, community college districts, and special districts are not mandated by state law to provide prepaid postage on the identification envelopes.

Moreover, beginning January 1, 2018, Elections Code section 14052 requires that local elections (except special elections) be held on a statewide election date if prior elections resulted in a significant decrease in voter turnout.[134] Beginning January 1, 2019, statewide elections may only occur on the first Tuesday after the first Monday in March in each even-numbered year (when the State holds its Primary Election) and the first Tuesday after the first Monday in November in each even-numbered year (when the State holds its General Election).[135] Elections Code section 10402.5 also provides:

> Any state, county, municipal, district, and school district election held on a statewide election date pursuant to Section 1002 shall be consolidated with the statewide election pursuant to this part except that, in counties of the first class, the board of supervisors may deny any request for consolidation if it finds that the ballot style, voting equipment, or computer capacity is such that additional elections or materials cannot be handled.

Thus, since counties are responsible for statewide elections, city, school district, and special district elections are increasingly likely to be consolidated with the statewide ballot and processed by the counties. Nevertheless, the requirement to provide prepaid postage on identification envelopes is mandated on counties and cities when they conduct an election.

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

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

[134] Elections Code section 14052 (Stats. 2015, Ch. 235, Sec. 1. SB 415) states:

> (a) Except as provided in subdivision (b), a political subdivision shall not hold an election other than on a statewide election date if holding an election on a nonconcurrent date has previously resulted in a significant decrease in voter turnout.
>
> (b) A political subdivision may hold an election other than on a statewide election date if, by January 1, 2018, the political subdivision has adopted a plan to consolidate a future election with a statewide election not later than the November 8, 2022, statewide general election.

Elections Code section 14056 states "This chapter does not apply to special elections." "Special election" is defined as "an election, the specific time for the holding of which is not prescribed by law." (Elec. Code, § 356.)

[135] Elections Code sections 1000, 1001.

b. Elections held at the discretion of the local government (such as non-required special elections) are not mandated by the state and thus subvention is not required.

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."[136] 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.[137]

As indicated above, counties are required by state law to conduct statewide elections.[138] In addition, there are many local elections required to be held by state law. For example, elections for superior court judges shall be held during the county general election.[139] Counties are also required to conduct elections for their county officers,[140] and elections on behalf of special districts, and school and community college districts that are not governed by a city charter.[141] Similarly, elections are required by state law to fill vacancies for city council and mayor.[142]

State law generally requires these local elections to be conducted on election dates established by state law. For example, Elections Code section 1300, et seq. provides the general election dates for local governments. 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. And Elections Code section 1303 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." As indicated above, beginning January 1, 2018, Elections Code section 14052 requires 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.[143] If a local prior election did *not* result in a significant

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

[137] *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* (2009) 170 Cal.App.4th 1355, 1365-1366.

[138] Elections Code section 13001.

[139] California Constitution, article 6, section 16(b).

[140] California Constitution, article 11, section 1. Government Code section 24200.

[141] Education Code sections 5300, 5303, and Elections Code section 10517.

[142] Government Code sections 36503, 36512, and 34906.

[143] Elections Code section 14052 (Stats. 2015, ch. 235, sec. 1. (SB 415)) states:

(a) Except as provided in subdivision (b), a political subdivision shall not hold an election other than on a statewide election date if holding an election on a nonconcurrent date has previously resulted in a significant decrease in voter turnout.

decrease in voter turnout, then the local election must still generally be held on an established election date. Elections Code section 1002 states that 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 (which includes special elections and elections relating to city or county charters).

The Governor also has the authority to call a special election, requiring the county to conduct an election.[144] This can occur when a petition for recall of a state elected officer is filed and certified. Recall is the power of the voters to remove an elective officer.[145] Upon receiving certification of the sufficiency of a recall petition for a state-elected officer from the Secretary of State, the Governor is required to publish a notice for the holding of the recall election.[146] The recall election of a state officer shall be held between 60 and 80 days from the date of certification of sufficient signatures.[147] However, the recall election may be conducted "within 180 days from the date of certification of sufficient signatures in order that the election may be consolidated with the next regularly scheduled election occurring wholly or partially within the same jurisdiction in which the recall election is held, if the number of voters eligible to vote at that next regularly scheduled election equal to at least fifty percent of all the voters eligible to vote at the recall election."[148]

Recall elections of local officers are also established by state law.[149] The recall election of a local officer shall be held between 88 and 125 days after the issuance of the 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.[150]

Thus, if a state or local election is called on an election date established by state law or by the Governor, or the election must be held by a statutory deadline that cannot be accommodated at

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(b) A political subdivision may hold an election other than on a statewide election date if, by January 1, 2018, the political subdivision has adopted a plan to consolidate a future election with a statewide election not later than the November 8, 2022, statewide general election.

Elections Code section 14056 states "This chapter does not apply to special elections." And a "'Special election' is an election, the specific time for the holding of which is not prescribed by law." (Elec. Code, § 356.)

[144] Elections Code sections 1003, 13001.

[145] California Constitution, article II, sections 13-19; Elections Code sections 11000 et seq.

[146] Elections Code section 11110.

[147] California Constitution, article II, section 15(a).

[148] California Constitution, article II, section 15(a).

[149] Elections Code sections 11200 et seq.

[150] Elections Code section 11242.

the next established election date, then the activity to provide prepaid postage on identification envelopes is mandated by the state.

However, some local elections are held entirely at the discretion of the local agency and are not mandated by the state. For example, if a local government calls for a special election at a time other than an established election, this is at the discretion of local government, and the downstream requirement to provide prepaid postage on the identification envelope is not mandated by the state.

A "special election" is "an election, the specific time for the holding of which is not prescribed by law."[151] The Elections Code provides several examples when special elections may be called at the option of local government. For example, Elections Code 9222 authorizes a city to call a special election to vote on a proposition, ordinance, or resolution:

> 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.*[152]

Elections Code sections 1405 and 1410 similarly provide that a county, city, or district may call a special election to submit an initiative measure or referendum to the voters. Initiative measures can be for the purpose of raising local taxes, to obtain voter approval of local revenue bonds, or to place voter initiative measures to a vote by the electorate.[153] Moreover, cities, counties, and districts are authorized, "at their discretion," to hold advisory special elections to allow voters to express their opinions on substantive issues.[154]

Accordingly, the Commission finds that providing prepaid postage on the identification envelopes is mandated by the state only when a state or local election is called on an election date established by state law or by the Governor, or for elections that must be held by a statutory deadline that cannot be accommodated at the next established election date (such as a recall election). If, however, a local government calls for a local special election authorized by law, but not required, this is at the discretion of local government, and the downstream requirement to provide prepaid postage on the identification envelope is not mandated by the state.

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[151] Elections Code section 356.

[152] Emphasis added. Elections Code section 354 states "'Shall' is mandatory and 'may' is permissive." See also, Elections Code 9140, which authorizes the county board of supervisors to submit to the voters, without a petition, an ordinance for the repeal, amendment, or enactment of any ordinance; and Elections Code section 9118, which provides that if a petition for a county ordinance is signed by ten percent of the voters, the county governing board must either adopt the ordinance or hold an election to adopt it.

[153] Government Code sections 53723, 54380. See also, Elections Code section 9118

[154] Elections Code section 9603. Government Code section 61008(d).

3. Elections Code section 3010, as amended by Statutes 2018, chapter 120, imposes a new program or higher level of service on counties and cities.

As indicated above, the mandate to provide prepaid postage on identification envelopes for state and local elections called on an election date established by state law or by the Governor, or for elections that must be held by a statutory deadline that cannot be accommodated at the next established election date, is new. For the mandate to 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.[155] The term "program," therefore, has "two alternative meanings," and "only one of these [alternatives] is necessary to trigger reimbursement."[156]

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

> The requirement to provide prepaid postage does not amount to a new program or higher level of service. Increased costs alone will not result in a reimbursable state mandate (*City of Anaheim* v. *State* (1987) 189 Cal.App.3d 1478). Reimbursement is not required if the test claim statute merely implements some change that increases the cost of providing a service. (*San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859). Accordingly, the Commission should deny the test claim because AB 216 does not impose a new program or higher level of service.[157]

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

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

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

[157] Exhibit B, Finance's Comments on the Test Claim, page 1.

> 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 $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.[158]

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.[159]

Furthermore, the 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.[160] 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.[161]

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.[162] 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

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158 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 as introduced January 24, 2017.) Ellipses in original.

159 Exhibit X, Assembly Floor, Analysis of AB 216 as amended September 1, 2017, page 1.

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

161 *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."

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

> exemption for local governments) merely placed local government employers on the same footing as most private employers.[163]

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.[164] The court found that the regulations were plainly not unique to government.[165] 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 . . . ."[166] 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."[167] 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.)[168]

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;[169] 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

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[163] *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.

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

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

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

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

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

[169] *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.

government, and the applicability of elevator safety regulations in public buildings).[170] The required costs and activities in this test claim statute are unlike any of those.

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.[171] It 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."[172]

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

4. Elections Code section 3010, as amended by Statutes 2018, chapter 120 imposes increased costs mandated by the state on counties and cities within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, and any potential offsetting revenues must be identified and reduced from claims for reimbursement.

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

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.
> [¶] . . . [¶]

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[170] *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.

[171] *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537–538.

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

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:

Registrar-Recorder/County Clerk Financial Services Section Fiscal Year 2019-20 Estimated Cost of AB 216				
		A	**B**	C
Election Date	Election Name	Vote-by-mail (1)	B=A x 0.38 (2)	C=B x $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.[173]

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.[174]

The claimant's declaration for fiscal year 2018-2019 states that it incurred costs from "7/1/18 through 6/30/19."[175] 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[176]) 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

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

[174] Exhibit B, Finance's Comments on the Test Claim, page 1.

[175] Exhibit A, Test Claim, page 17 (Declaration of Margaret Palacios).

[176] Exhibit A, Test Claim, page 17 (Declaration of Margaret Palacios).

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.[177]

The claimant also quoted the Assembly Appropriations Committee's estimate of statewide costs at $5.5 million.[178]

Thus, the record contains sufficient evidence that the claimant incurred increased costs to comply with the mandate, and the costs in fiscal year 2018-2019 exceeded $1,000 (because the $688,638.92 claimed minus ineligible costs of $584,908.55 is $103,730.37).

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.), and 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 thereof in conducting the general district election for that district. The county

[177] Exhibit A, Test Claim, page 18 (Declaration of Margaret Palacios).

[178] Exhibit A, Test Claim, page 18 (Declaration of Margaret Palacios).

> elections official of the affected county shall determine the amount due from each district and shall bill each district accordingly.[179]

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."[180] 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."[181] Thus, the costs for prepaid postage on vote-by-mail ballots are included as costs to conduct an election.

However, in 2002, Elections Code section 3024 was enacted to prohibit fees charged 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.[182]

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.[183] 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."[184] 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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[179] See also Education Code section 5420 et seq.

[180] Education Code section 5227.

[181] 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.

[182] Statutes 2002, chapter 1032, amended by Statutes 2007, chapter 508.

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

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

Similarly, 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.[185]

In sum, counties may impose fees 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.

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 required municipal elections, or when counties and cities administer school and community college district elections consolidated with non-educational issues or elective offices. Accordingly, 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.

V. Conclusion

Based on the foregoing analysis, the Commission 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, when a state or local election is called on an election date established by state law or by the Governor, or for elections that must be held by a statutory deadline that cannot be accommodated at the next established election date. If, however, a local government calls for a special local election authorized by law, but not required, this election is at the discretion of local government, and the downstream requirement to provide prepaid postage on the identification envelope is not mandated by the state and thus, not eligible for reimbursement. Any fee authority revenue that county and city elections officials are authorized to collect from other local governments for their share of the costs to comply with the mandate in accordance with applicable statutes, shall be identified as offsetting revenue and deducted from the costs claimed.[186]

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

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[185] 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.

[186] 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 May 6, 2020, I served the:

- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued May 6, 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 May 6, 2020 at Sacramento, California.

Jill Magee

Jill L. Magee
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/6/20

Claim Number: 19-TC-01

Matter: Vote by Mail Ballots: Prepaid Postage

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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EXHIBIT F

May 27, 2019

Via Drop Box

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Sacramento, CA 95814

RE: Comment and Legal Argument Relating to Draft Proposed Decision
***Vote by Mail Ballots: Prepaid Postage* 19-MT-01,**

Dear Ms. Halsey:

The County of Los Angeles, on behalf of the Los Angeles Office of Auditor-Controller and the Los Angeles Registrar-Recorder, (collectively referred to as the "County"), hereby submits the following in response to your request for comments as set forth in your letter dated May 6, 2020.

The County agrees with the Commission staff's conclusion to approve the Test Claim and find that Elections Code section 3010 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 for state and local elections.

However, the County respectfully disagrees with the Commission staff's conclusion to deny reimbursement for prepaid postage used in special local elections. In its Draft Proposed Decision, the Commission staff cites to the *Kern High School District* case as its legal authority for denying reimbursement to special elections. (*Department of Finance v. Commission on State Mandates; Kern High School District, 30 Cal.4th 727 (2003).* In *Kern*, the school district received state funding if they voluntarily participated in certain educational programs. The test claim statute in the Kern case required school site councils and advisory committees to provide notice of meetings and to post agendas for meetings related those programs. The CA Supreme court determined that there was no reimbursable state mandate for the notice and agenda requirements since the district was not legally compelled to participate in those programs. Moreover, the District was not compelled to incur costs associated with providing agenda and notice requirements for committee meetings that were optional and not compulsory. In the present Test Claim, the activity of providing pre-paid postage with VBM ballots is itself a mandate. The legislature did not specify what types of VBM elections required pre-paid postage on envelopes, because the nature of the election itself was not relevant. The objective of this statute is to ensure that voting itself was made easier and accessible to more Californians.

The County agrees with the Commission Staff's reliance on Kern for the proposition that "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." (See page 7 of Draft Proposed Decision, dated May 6, 2020.) However, the County respectfully disagrees with the Commission staff's application of Kern to extra elections conducted by the County. Here, the Los Angeles County Registrar is compelled to provide elections services to cities and districts because those cities and districts are not equipped to do so. If the Registrar were to decide not to provide election services, those cities and districts would face certain draconian consequences such as disenfranchisement.

I, Lucia Gonzalez, declare under penalty of perjury that the foregoing, signed on May 27, 2020, is true and correct to the best of my personal knowledge, information or belief.

Very truly yours,

MARY C. WICKHAM
County Counsel

By Lucia Gonzalez
LUCIA GONZALEZ
Senior Deputy County Counsel
Government Services Division

HOA.102512246.1

LG:lal

Attachments

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On May 28, 2020, I served the:

- **Claimant's Comments on the Draft Proposed Decision filed May 27, 2020**
- **County of San Diego's Comments on the Draft Proposed Decision filed May 27, 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 May 28, 2020 at Sacramento, California.

Lorenzo Duran

Lorenzo Duran
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/6/20

Claim Number: 19-TC-01

Matter: Vote by Mail Ballots: Prepaid Postage

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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EXHIBIT G

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Via Drop Box

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

Dear Ms. Halsey:

I represent interested party County of San Diego (the "County"). The County appreciates the proposed decision largely in the local agencies' favor.

However, the County respectfully requests the Commission reconsider its conclusion that the mandate does not require reimbursement of prepaid postage for special elections. Section 3010 of the Elections Code does not distinguish among the types of elections for which prepaid postage is required; thus on its face, the statute requires Counties to provide prepaid postage for special elections.

The Commission relies on *Kern High School District* to hold that when a local agency makes an affirmative choice to hold a special election, that is a voluntary choice on the local agency's part and therefore not a state mandate. *Dept. of Finance v. Commission on State Mandates (Kern High School District)*, 30 Cal. 4th 727, 743 (2003). But the holding of *Kern High School District* 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. This was clarified in subsequent cases interpreting *Kern High School District.*

In fact, the California Supreme Court had cause to reconsider that issue just over a year after it issued *Kern High School District*, in *San Diego Unified Sch. Dist. v. Comm'n* *on State Mandates (San Diego Unified School District)*, 33 Cal. 4th 859, 887–88 (2004). In that case, the Court held that a bright-line rule would violate the intent of Section 6:

> The District and amici curiae on its behalf (consistently with the opinion of the Court of Appeal below) argue that the holding of *City of Merced, supra,* 153 Cal.App.3d 777, 200 Cal.Rptr. 642, should not be extended to apply to situations beyond the context presented in that case and in *Kern High School Dist., supra,* 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203. The District and amici curiae note that although any particular expulsion recommendation may be discretionary, as a practical matter it is inevitable that some school expulsions will occur in the administration of any public school program.[22]
>
> **Upon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement under article XIII B, section 6 of the state Constitution and Government Code section 17514, whenever an entity makes an initial discretionary decision that in turn triggers mandated costs.** Indeed, it would appear that under a strict application of the language in *City of Merced,* public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514[23] and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, as explained above, in *Carmel Valley, supra,* 190 Cal.App.3d 521, 234 Cal.Rptr. 795, an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. (*Id.,* at pp. 537–538, 234 Cal.Rptr. 795.) The court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ—and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced, supra,* 153 Cal.App.3d 777, 200 Cal.Rptr. 642, such costs would not be reimbursable for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. **We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence we are reluctant to endorse, in**

> **this case, an application of the rule of *City of Merced* that might lead to such a result.**

San Diego Unified School District, 33 Cal. 4th at 887–88 (emphasis added).

The Court determined in that case that it "need not address…the problems posed by such an application of the rule articulated in *City of Merced*" (the same rule considered in *Kern High School District*) because the case could be resolved "on an alternative basis." *Id*. at 888. However, it is clear the Court disapproved of an expansive view of what constitutes a local agencies' voluntary choice.

The Third District Court of Appeal later considered the issue in *Dep't of Fin. v. Comm'n on State Mandates (City of Sacramento)*, 170 Cal. App. 4th 1355 (2009). The Court of Appeal acknowledged that the Supreme Court of California had rejected "extending [the rule regarding local agencies' 'voluntary' decisions] whenever some element of discretion in incurring the cost existed, e.g., in deciding how many firefighters to hire into a fire department." *City of Sacramento*, 170 Cal. App. 4th at 1364. The Court of Appeal stated in that case that state-mandated costs incurred by cities and counties as a result of cities and counties hiring peace officers would be reimbursable because proving for public safety was "an essential and basic function" of local governments, even if the number of peace officers hired was technically a voluntary choice. The Court held the same was not true for school districts, which did not have the same essential and basic function of providing for public safety. *Id.* at 1367-38.

The Third District Court of Appeal again considered this issue in *Coast Cmty. Coll. Dist. v. Comm'n on State Mandates* (*Coast Community College District*), 47 Cal. App. 5th 415, 433 (2020), *as modified on denial of reh'g* (May 1, 2020). There, the Court held that the state's requirement for community colleges to meet minimum conditions in order to receive state aid were reimbursable state mandates when the minimum conditions related to the "**underlying core functions** of the community colleges, functions compelled by state law." 47 Cal. App. 5th at 433 (emphasis added). The Court distinguished *Kern High School District* because the school district's decision to participate in the school programs in that case was not critical to its core functions and was truly voluntary. *Id.*

Considering these cases together, the 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[1]) or peace officers (as in the *City of Sacramento* 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.

Kern High School District is also distinguishable because the costs at issue in that case "appear[ed] rather modest"—around $10,000 per fiscal year. *Kern High School District*, 30 Cal. 4th 727 at 747; *id.* n.16. The Court expressly stated that with increased costs, the analysis might be different:

> It is conceivable, with regard to some programs, that increased compliance costs imposed by the state might become so great—or funded program grants might become so diminished—that funded program benefits would not cover the compliance costs, or that expenditure of granted program funds on administrative costs might violate a spending limitation set out in applicable regulations or statutes. In those circumstances, a compulsory program participant likely would be able to establish the existence of a reimbursable state mandate….

Id. at 747–48 (2003); *see also Coast Community College District*, 47 Cal. App. 5th at 433 ("*Kern* is also different because the costs associated with the requirements in that case were 'modest.' Here, however, the record does not establish that the costs to comply with the minimum conditions would be modest.") (internal citations omitted).

Here, costs to provide postage for a special election also will not be modest. Using publicly-available numbers from the November 2018 election, the number of vote by mail ballots sent to voters in San Diego County alone was 1,297,557.[2] Using the

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[1] *Carmel Valley Fire Prot. Dist. v. State of California*, 190 Cal. App. 3d 521 (1987), referenced in the *San Diego Unified School District* case, as quoted above.

[2] *See* "Absentee Issued" column of Exhibit F attached hereto, which is the first page of

"average cost of $0.65 per envelope" cited by the Legislature in the legislative history of Section 3010 of the Elections Code,[3] the cost of prepaid postage for every vote by mail voter in San Diego County for a special election called by the County would be $843,412.05. And the numbers in reality will be greater than that—a 2-card ballot weighing two ounces, for example, would cost $0.699 per ballot. These estimated costs are for San Diego County *alone*. Thus the anticipated cost throughout the state is a far cry from the modest $10,000 cited in the *Kern High School District* case.

Accordingly, the County respectfully requests the Commission reconsider its proposed conclusion regarding special elections and include special elections within the purview of the reimbursable state mandate.

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

THOMAS E. MONTGOMERY, County Counsel

By: Christina Snider

CHRISTINA SNIDER, Senior Deputy

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the report "County of San Diego Registered Voters and Vote by Mail Ballot Voter Turnout," also available at https://www.sdvote.com/content/dam/rov/en/reports/voter_turnouts.pdf.

[3] Exhibit C to San Diego County's comments on the test claim, page 1.

EXHIBIT F

County of San Diego Registered Voters and Vote by Mail Ballot Voter Turnout

Date		Election Title	Registered Voters	Total Voted Election	% of Turnout	Absentee Issued	Absentee Voted*	% of AV Voted	Absentee % of Total Votes Cast	Requested Absentee Issued*	Requested Absentee Voted*	% of Requested AV Voted*	Declared Absentee Issued	Declared Absentee Voted	% of Declared AV Voted	Perm Absentee Issued	Perm Absentee Voted	% of Perm AV Voted
	*	Mail Ballot Election (no polls)					*includes Failsafe/provisional-absentee			*includes permanent absentee voters prior to November 2, 2004								
6-Nov-18		Gubernatorial General Election	1,767,300	1,173,924	66.42%	1,297,557	804,269	61.98%	68.51%	36,591	22,888	62.55%	42,866	26,638	62.14%	1,218,100	733,280	60.20%
5-Jun-18		Gubernatorial Primary Election	1,693,774	673,640	39.77%	1,143,276	476,173	41.65%	70.69%	23,557	8,728	37.05%	45,609	19,109	41.90%	1,074,110	447,763	41.69%
24-Apr-18	*	Rancho Santa Fe School Dist. Special Vacancy	4,321	1,139	26.36%	4,354	1,139	26.16%	100.00%						Mail Ballot Election			
7-Nov-17		City of Poway Special Municipal Election	29,318	12,104	41.29%	19,517	9,121	46.73%	75.36%	389	151	38.82%	103	37	35.92%	19,025	8,931	46.94%
30-Jun-17	*	Permanent Rd Div. Zone No. 117-Legend Rock	103	77	74.76%	103	77	74.76%	100.00%						Mail Ballot Election			
2-May-17	*	County Retirement Board (2nd Seat General Member)	11,489	4,473	38.93%	11,489	4,473	38.93%	100.00%						Mail Ballot Election			
15-Nov-16	*	County Retirement Board Safety (7th & Alternate)	3,541	1,281	36.18%	3,541	1,281	36.18%	100.00%						Mail Ballot Election			
8-Nov-16		Presidential General	1,652,875	1,346,513	81.46%	1,118,788	856,937	76.60%	63.64%	51,787	43,438	83.88%	50,811	40,023	78.77%	1,016,190	772,363	76.01%
7-Jun-16		Presidential Primary	1,523,251	775,930	50.94%	972,021	490,560	50.47%	63.22%	21,590	12,690	58.78%	47,142	22,404	47.52%	903,289	454,915	50.36%
3-May-16	*	County Retirement Board (3rd)	14,186	4,569	32.21%	14,186	4,569	32.21%	100.00%						Mail Ballot Election			
23-Feb-16		City of Carlsbad Special Municipal Election	63,265	39,465	62.38%	42,038	27,632	65.73%	70.02%	947	634	66.95%	10	5	50.00%	41,081	26,989	65.70%
26-Jan-16	*	Yuima Municipal Water Dist.- No. 2	128	62	48.44%	128	62	48.44%	100.00%						Mail Ballot Election			
4-Nov-14		Governor General	1,546,924	692,434	44.76%	869,455	449,796	51.73%	64.96%	16,164	8,636	53.43%	40,678	19,386	47.66%	812,613	421,574	51.88%
3-Jun-14		Governor Primary	1,544,841	420,700	27.23%	858,745	306,986	35.75%	72.97%	12,750	4,259	33.40%	38,869	11,647	29.96%	807,126	291,033	36.06%
6-May-14	*	County Retirement Board (2nd Seat General Member)	13,896	4,845	34.87%	13,896	4,845	34.87%	100.00%						Mail Ballot Election			
11-Feb-14		Special Consolidated-City of San Diego/Solana Beach	675,793	294,491	43.58%	356,225	195,616	54.91%	66.43%	9,418	4,341	46.09%	5,787	2,491	43.04%	341,020	188,677	55.33%
19-Nov-13	*	County Retirement Board Safety (7th)	3,459	1,013	29.29%	3,459	1,013	29.29%	100.00%						Mail Ballot Election			
19-Nov-13		City of San Diego Special Municipal Election	683,370	242,747	35.52%	367,766	165,273	44.94%	68.08%	3,355	2,978	88.76%	6,223	2,088	33.55%	353,084	159,441	45.16%
18-Jun-13		City of Encinitas Special Municipal Election	39,858	12,888	32.33%	22,684	9,558	42.14%	74.16%	529	213	40.26%	154	58	37.66%	22,001	9,287	42.21%
21-May-13		Special Cons. - 80th Assembly Dist/SD City Council #4	225,675	35,486	15.72%	114,297	28,930	25.31%	81.53%	1,656	293	17.69%	591	64	10.83%	112,050	28,577	25.50%
21-May-13	*	County Retirement Board (3rd)	13,338	4,116	30.86%	13,338	4,116	30.86%	100.00%						Mail Ballot Election			
26-Mar-13		Municipal Special Election - SD City Council District 4	66,497	13,406	20.16%	34,595	9,817	28.38%	73.23%	574	121	21.08%	685	90	13.14%	33,336	9,606	28.82%
12-Mar-13		Special Primary Election - State Senate 40th District	244,150	36,664	15.02%	125,857	31,026	24.65%	84.62%	2,107	314	14.90%	1,267	259	20.44%	122,483	30,453	24.86%
6-Nov-12		Presidential General	1,563,093	1,203,265	76.98%	882,758	675,007	76.47%	56.10%	32,807	29,001	88.40%	41,958	30,945	73.75%	798,020	607,145	76.08%
5-Jun-12		Presidential Primary	1,465,269	548,462	37.43%	751,330	360,523	47.98%	65.73%	16,942	10,767	63.55%	44,108	17,776	40.30%	690,280	331,877	48.08%
24-Apr-12	*	County Retirement Board (3rd)	13,073	2,290	17.52%	13,073	2,290	17.52%	100.00%						Mail Ballot Election			
17-May-11	*	County Retirement Board (2nd & 8th Alternate)	26,147	9,156	35.02%	26,149	9,156	35.01%	100.00%						Mail Ballot Election			
23-Nov-10	*	County Retirement Board Safety (7th)	3,273	1,047	31.99%	3,273	1,047	31.99%	100.00%						Mail Ballot Election			
2-Nov-10		Governor General	1,442,161	926,363	64.23%	727,577	510,175	70.12%	55.07%	34,017	25,046	73.63%	40,042	25,680	64.13%	653,518	458,951	70.23%
8-Jun-10		Governor Primary	1,416,273	538,551	38.03%	685,873	349,925	51.02%	64.98%	17,222	8,331	48.37%	34,725	14,365	41.37%	633,926	327,097	51.60%
18-May-10	*	County Retirement Board (3rd)	13,809	5,036	36.47%	13,809	5,036	36.47%	100.00%						Mail Ballot Election			
8-Dec-09		City of Oceanside Special Municipal Recall	75,017	25,194	33.58%	34,125	18,390	53.89%	72.99%	1,312	862	65.70%	882	334	37.87%	31,931	17,196	53.85%
25-Aug-09	*	Rainbow Municipal Water Dist. Special Mail Ballot Election	11,604	4,773	41.13%	11,635	4,773	41.02%	100.00%						Mail Ballot Election			
19-May-09		Statewide Special Election	1,474,331	463,863	31.46%	628,303	308,146	49.04%	66.43%	21,214	11,387	53.68%	32,200	11,740	36.46%	574,889	285,122	49.60%
5-May-09	*	City of Chula Vista Special Mail Ballot Election	104,717	29,704	28.37%	105,060	29,704	28.27%	100.00%						Mail Ballot Election			
4-Nov-08		Presidential General	1,488,157	1,245,947	83.72%	668,377	573,169	85.76%	46.00%	66,093	57,103	86.40%	35,834	27,938	77.97%	566,450	486,422	85.87%
26-Aug-08	*	Special/Tri-City Healthcare District	141,001	52,965	37.56%	142,350	52,965	37.21%	100.00%						Mail Ballot Election			
3-Jun-08		Direct Primary	1,369,496	465,489	33.99%	516,738	281,513	54.48%	60.48%	19,891	12,215	61.41%	31,521	10,965	34.79%	465,326	258,028	55.45%
20-May-08	*	County Retirement Board (2nd & 8th Alternate)	27,453	9,704	35.35%	27,453	9,704	35.35%	100.00%						Mail Ballot Election			
6-May-08	*	Special/ County Service Area No.112-Campo	842	314	37.29%	869	314	36.13%	100.00%						Mail Ballot Election			
5-Feb-08		Presidential Primary	1,313,725	797,043	60.67%	509,722	360,371	70.70%	45.21%	36,406	26,190	71.94%	30,386	17,522	57.66%	442,930	315,748	71.29%
11-Dec-07	*	Potrero Com. Planning Area Mail Ballot Recall	507	299	58.97%	528	299	56.63%	100.00%						Mail Ballot Election			
25-Sep-07	*	Special / East County/Pine Valley FPD's	6,023	2,310	38.35%	6,062	2,310	38.11%	100.00%						Mail Ballot Election			

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On May 28, 2020, I served the:

- **Claimant's Comments on the Draft Proposed Decision filed May 27, 2020**
- **County of San Diego's Comments on the Draft Proposed Decision filed May 27, 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 May 28, 2020 at Sacramento, California.

Lorenzo Duran

Lorenzo Duran
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/6/20

Claim Number: 19-TC-01

Matter: Vote by Mail Ballots: Prepaid Postage

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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EXHIBIT H

Date of Hearing: July 1, 2015

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Sebastian Ridley-Thomas, Chair
SB 415 (Hueso) – As Amended June 23, 2015

SENATE VOTE: 24-13

SUBJECT: Voter participation.

SUMMARY: Prohibits a local government, beginning January 1, 2018, from holding an election on any date other than a statewide election date if doing so in the past has resulted in turnout that is at least 25 percent below the average turnout in that jurisdiction in the last four statewide general elections, as specified. Specifically, **this bill**:

1) Defines the following terms, for the purposes of this bill:

   a) "Political subdivision" to mean a geographic area of representation created for the provision of government services, including, but not limited to, a city, school district, community college district, or other district organized pursuant to state law;

   b) "Significant decrease in voter turnout" to mean the voter turnout for a regularly scheduled election in a political subdivision is at least 25 percent less than the average voter turnout within that political subdivision for the previous four statewide general elections;

   c) "Voter turnout" to mean the percentage of voters who are eligible to cast ballots within a given political subdivision who voted.

2) Prohibits a political subdivision from holding an election other than on a statewide election date if holding an election on a nonconcurrent date has previously resulted in a significant decrease in voter turnout. Permits a voter who resides in a political subdivision where a violation of this requirement is alleged to file an action in the superior court in the county in which the political subdivision is located.

3) Permits a political subdivision to continue to hold elections on dates other than statewide election dates after January 1, 2018, notwithstanding the provisions of this bill, if the political subdivision adopts a plan not later than January 1, 2018 to consolidate future elections with the statewide election not later than the November 8, 2022 statewide election.

4) Requires a court, upon finding a violation of the provisions of this bill, to implement appropriate remedies, including the imposition of concurrent election dates for future elections and the upgrade of voting equipment or systems to do so. Permits a court to require a county board of supervisors to approve the consolidation of elections, as specified, when imposing remedies.

5) Permits a prevailing plaintiff party in an action brought pursuant to this bill, other than the state or a political subdivision of the state, to recover reasonable attorney's fees and litigation expenses, including, but not limited to, expert witness fees and expenses as part of the costs,

as specified. Prohibits a prevailing defendant party from recovering any costs unless the court finds the action to be frivolous, unreasonable, or without foundation.

6) Provides that the provisions of this bill do not apply to special elections.

7) Provides that this bill shall become operative on January 1, 2018.

EXISTING LAW:

1) Provides that the following dates are "established election dates":

    a) The second Tuesday of April in each even-numbered year;

    b) The first Tuesday after the first Monday in March of each odd-numbered year;

    c) The first Tuesday after the first Monday in June in each year; and,

    d) The first Tuesday after the first Monday in November in each year.

2) Requires all state, county, municipal, district, and school district elections to be held on an established election date, except as specified. Provides that the following types of elections, among others, are not required to be held on an established election date:

    a) Any special election called by the Governor;

    b) Elections held in chartered cities or chartered counties in which the charter provisions are inconsistent with state election laws;

    c) School governing board elections conducted pursuant to specified provisions of law;

    d) Elections required or permitted to be held by a school district located in a charter city or county when the election is consolidated with a regular city or county election held in a jurisdiction that includes 95 percent or more of the school district's population;

    e) County, municipal, district, and school district initiative, referendum, or recall elections;

    f) Any election conducted solely by mailed ballot pursuant to specified provisions of law; and,

    g) Elections held pursuant to specified provisions of law on the question of whether to authorize school bonds.

3) Requires a general law city to hold its general municipal election on an established election date or on the second Tuesday in April of each odd-numbered year, except as specified.

4) Requires a school district, community college district, or county board of education to hold the regular election to select governing board members on the first Tuesday after the first

Monday of November in each odd-numbered year, or at the same time as the statewide direct primary election, the statewide general election, or the general municipal election, except as specified.

5) Requires the general district election held to elect members of the governing board of a special district to be held on the first Tuesday after the first Monday in November of each odd-numbered year, unless the principal act of the district provides for the general district election to be held on a different established election date, or on an established mailed ballot election date, as specified. Permits a special district to adopt a resolution requiring its general district election to be held on the same day as the statewide general election, upon approval of the county board of supervisors, as specified.

6) Permits a county or a city to provide for its own governance through the adoption of a charter by a majority vote of its electors voting on the question.

7) Permits a city charter to provide for the conduct of city elections. Grants plenary authority, subject to limited restrictions, for a city's charter to provide for the manner in which and the method by which municipal officers are elected.

8) Provides that a legally adopted city charter supersedes all laws inconsistent with that charter with respect to municipal affairs.

FISCAL EFFECT: Unknown. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

1) **Purpose of the Bill**: According to the author:

> Voter turnout in local elections held on odd-numbered years has been abysmal. On average, less than 30% of registered voters have come out to vote in local odd-year elections. As a result of low voter turnout, the voting population often does not look like the general public as a whole and neither does the city council. While there is no silver bullet, one way to increase voter turnout in local elections is to hold them concurrently with statewide and federal elections, where voter turnout is often twice as high.
>
> Elections held on the same date can help reduce voter fatigue and make voting more habit forming, while saving local government on administrative costs. For example, the City of San Diego in 2012 spent 42 cents per voter on elections and saw a 70% voter turnout. The City of Los Angeles in 2011 spent $39.35 per voter for a voter turnout of 14.1%.
>
> This bill will give citizens the right to challenge local government for holding costly elections with little voter turnout.

2) **History of Established Election Dates:** In 1973, the Legislature approved and Governor Reagan signed SB 230 (Biddle), Chapter 1146, Statutes of 1973, which created "regular

election dates" (which subsequently were renamed "established election dates"). The concept behind having a regular election schedule that governed when most elections would be held was that such a schedule would encourage election consolidations, thereby potentially reducing election costs, and could encourage greater voter participation because voters would become used to voting on these regular election dates. SB 230 created five established election dates in each two-year cycle—three in even-numbered years (in March, June, and November), and two in odd-numbered years (in March and November).

One year after established election dates were first created, AB 4180 (Keysor), Chapter 1386, Statutes of 1974, added an additional established election date in May of odd-numbered years. The rationale for adding an established election date was that the eight-month gap between established election dates in March and November of odd-numbered years delayed many special local elections from taking place in a timely manner, including elections to fill vacancies, annexation elections, bond elections, and tax rate elections. Since that time, the exact dates that are established election dates have fluctuated, often moving to reflect changes in the date of the statewide primary election held in even-numbered years, though generally there have been at least three established election dates in each year.

Having multiple established election dates in each year, but specifying that many types of elections must be held on an established election date, reflects an attempt to balance the desire to hold most elections on a predictable, regular schedule, while still providing the flexibility to ensure that elections can occur in a timely manner when necessary.

3) **On-Cycle vs. Off-Cycle Elections**: Although existing law generally requires that regularly scheduled county elections be held at the same time as statewide elections, other local jurisdictions (e.g., cities, school districts, and special districts) have greater flexibility when deciding when to hold regularly scheduled elections that are held to elect governing board members. Elections that are held at the same time as statewide elections are often referred to as "on-cycle" elections, while elections held at other times are often referred to as "off-cycle" elections.

   The degree to which local governments hold their elections on-cycle or off-cycle varies significantly throughout the state. Roughly 30 percent of the counties in California do not have regularly-scheduled off-cycle elections, because all the local jurisdictions in those counties hold their governing board elections at the same time as statewide elections. In other counties, large numbers of cities, school districts, and special districts hold their governing board elections off-cycle in November of odd-numbered years. A smaller number of local jurisdictions hold their regularly scheduled governing board elections on other permitted off-cycle dates.

4) **Charter Cities:** As noted above, the California Constitution gives cities and counties the ability to adopt charters, which give those jurisdictions greater autonomy over local affairs. Charter cities, in particular, are granted a great deal of autonomy over the rules governing the election of municipal officers. In fact, the Constitution grants "plenary authority," subject to limited restrictions, for a city charter to provide "the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees…shall be elected or appointed." The Constitution further provides that properly

adopted city charters "shall supersede all laws inconsistent" with the charter.

Notwithstanding the authority granted to charter cities with respect to municipal affairs, California courts have found that a charter city's authority over municipal affairs is not absolute. In determining whether a state law that affects municipal affairs may be made applicable to charter cities, however, the Supreme Court generally has held that a state law can be made applicable in charter cities only if the state law addresses a matter of statewide concern, is reasonably related to resolving the statewide concern, and is narrowly tailored to avoid unnecessary interference with municipal affairs. *State Building and Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547.

By potentially compelling charter cities to change the dates of their regularly scheduled municipal elections, this bill goes to the heart of the autonomy granted to charter cities in the California Constitution to determine the times at which municipal officers are elected. This bill does not explicitly address the question of whether it is intended to be applicable to charter cities, however, so it is unclear whether those cities would be subject to a lawsuit under this bill. (Counties are generally required to elect their public officials at the same time as statewide elections, so this bill generally would not affect counties, whether they are charter counties or general law counties. The only exception is San Francisco, which is a charter city and county, and thus has the autonomy of a charter city.)

Unlike general law cities, which conduct single-round elections in which the candidate who receives a plurality of the vote is deemed elected, many charter cities have chosen to conduct two-round elections, in which a runoff is held between the top two candidates if no candidate receives a majority of the vote in the first round. If this bill is found to be applicable to charter cities, it is unclear which election would be relevant for the purposes of determining whether the city has experienced a "substantial decrease in voter turnout" by holding its elections on a date other than a statewide election date. Would the first round election, the runoff election, or both be examined when determining whether a city experienced a substantial decrease in turnout?

5) **Substantial Limitation on Off-Cycle Elections:** Although this bill establishes a legal process for voters in a jurisdiction to challenge the timing of that jurisdiction's regularly scheduled elections if there is a "significant decrease in turnout" relative to turnout in statewide elections in that same jurisdiction, in practice, this bill may force almost all local jurisdictions to hold their regularly scheduled elections at the same time as statewide elections. Although the exact number of local governmental entities that would be affected by this bill is unknown, a review of recent election results by committee staff suggests that most local jurisdictions that hold regularly scheduled elections at a time other than at the same time as statewide elections would be forced to change the dates of their elections under this bill. Of more than five dozen cities whose election results were examined as part of this review, just two cities had turnout in their most recent regularly scheduled municipal election that was less than 25 percent lower than the average turnout in the city from the prior four statewide general elections. It is likely that turnout at off-cycle school district and special district elections also regularly falls below the threshold set by this bill under which local jurisdictions could be forced to move to conducting elections at the same time as statewide

elections.

6) **Canceled Elections & Logistical Issue**: Various provisions of existing law generally permit local elections to be canceled in situations where there are no contested races, if certain conditions are met. For example, if a district is scheduled to elect three governing board members at an upcoming election, and only three candidates file to run for those three seats on the governing board, state law generally allows for the election to be canceled, and for the three candidates who filed to be appointed to the district's governing board. Because of this policy, it is not uncommon for local jurisdictions to cancel their regularly scheduled elections to elect governing board members. In some cases, a local jurisdiction's election may be canceled for multiple consecutive election cycles. In such a situation, it is unclear how the provisions of this bill would apply. If a local government has not conducted an election for several years, will local election results from several years prior be used to determine whether a violation of this bill exists?

7) **Los Angeles County and Limitations on Election Consolidations:** Existing law requires all state, county, municipal, district, and school district elections that are held on a statewide election date to be consolidated with the statewide election, except that the Los Angeles County Board of Supervisors is allowed to deny a request for consolidation of an election with the statewide election if the voting system used by the county cannot accommodate the additional election. This unique provision allowing Los Angeles County to deny consolidation requests was created through the passage of SB 693 (Robbins), Chapter 897, Statutes of 1985, in response to attempts by a number of cities in Los Angeles to move their municipal elections to the same day as statewide elections. Los Angeles County sought the ability to deny consolidation requests because its voting system could accommodate only a limited number of contests at each election, and the county was concerned that the move by cities to hold their elections at the same time as the statewide election would exceed the capacity of that voting system. Los Angeles County still uses a variant of the voting system that it used in 1985, though the county is currently developing a new voting system. One of the principles that the county has articulated to guide the development of its new voting system is having a system that has "sufficient technical and physical capacity to accommodate…consolidation of elections with local districts and municipalities." That voting system, however, may not be available for use countywide before 2020.

   Some local jurisdictions have already taken steps to move the date of their elections in anticipation of Los Angeles County's new voting system. Earlier this year, voters in the city of Los Angeles and in the Los Angeles Unified School District approved ballot measures to move those jurisdictions' general elections so that they are held at the same time as statewide elections, beginning in 2020. Arguments in support of those measures indicated that such a timeline would allow local elections to be consolidated with federal and state elections.

   While this bill would go into effect on January 1, 2018, recent amendments taken by the author would allow a political subdivision to continue to hold its elections on dates other than statewide election dates after January 1, 2018, notwithstanding the provisions of this bill, if the political subdivision adopts a plan not later than January 1, 2018 to consolidate future elections with the statewide election beginning no later than November 2022. Based on Los Angeles County's current timeline for deploying its new voting system, these amendments should allow political subdivisions in that county to continue holding off-cycle elections until the county is able to accommodate additional election consolidations.

8) **Special Elections**: This bill explicitly provides that its provisions do not apply to special elections. As a result, special elections that are conducted by a political subdivision to fill a vacancy on that subdivision's governing board, or to vote on a local ballot measure, will not be required to occur at the same time as statewide elections, even if the turnout at special elections in the jurisdiction regularly is significantly lower than the turnout in that jurisdiction at statewide elections.

9) **Arguments in Support**: In support of this bill, California Common Cause writes:

> One of the greatest barometers for waning civic engagement in American politics is declining voter turnout in federal, state, and municipal elections. There are many potential contributing factors: general cynicism about government and elected officials, a decline in investment in civics education, and an increasingly transient society.
>
> Yet there is one major contributing factor to low voter turnout –the timing of elections –that could be addressed with a relatively simple policy change. The Public Policy Institute of California surveyed 350 California cities and found that simply moving an election to be synchronized with the even year state elections can result in a 21-36 percent boost in voter turnout for municipal and other local elections. Senate Bill 415 accomplishes this goal by prohibiting municipalities from holding off-cycle elections if doing so results in a significant (25% or more) decline in voter turnout.

10) **Arguments in Opposition**: The Desert Water Agency (DWA), which opposes this bill, writes:

> DWA holds an election for its governing board in November of odd-numbered years. The Agency was asked many years ago by the Riverside County Elections Department to change…its election schedule due to the large size of the ballot when all elections were consolidated on a statewide election date. The November 2013 election turnout for DWA was 32.32%; the November 2014 statewide turnout for Riverside County was 34.52%. In comparison, voter turnout in Riverside County in the 2012 presidential election was nearly 75%, which would significantly skew the comparative analysis called for by SB 415 (an average of the previous four statewide elections).
>
> Nevertheless, combining the DWA election with the statewide election would not likely result in greater voter participation….[A] review of voter analytics shows that voters are less likely to cast a vote as they move down the ballot, a phenomenon known as "roll-off." While this effect might be due to fatigue, it also might be due to the fact that contest saliency generally decreases with ballot positions. Voter fatigue would likely counteract any benefit of forcing local

agencies to change election dates as they would fall to the end of a crowded ballot.

11) **Related Legislation**: AB 254 (R. Hernández), which was scheduled to be heard in the Senate Elections and Constitutional Amendments Committee on June 30, 2015 (after this analysis was prepared, but before the scheduled hearing for this bill), requires general law cities, school districts, community college districts, and special districts to hold their general elections and certain special elections at the same time as the statewide primary or statewide general election, or in June or November of odd-numbered years, beginning in 2020. AB 254 was approved by this committee on a 5-2 vote, and was approved by the Assembly on a 44-31 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

California Common Cause

Opposition

Desert Water Agency

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094

CONCURRENCE IN SENATE AMENDMENTS
AB 216 (Gonzalez Fletcher and Low)
As Amended September 1, 2017
Majority vote

ASSEMBLY:	61-10	(May 31, 2017)	SENATE:	29-8	(June 21, 2018)

Original Committee Reference: **E. & R.**

SUMMARY: Requires an elections official, when delivering a vote by mail (VBM) ballot to a voter, to include a return envelope with postage prepaid.

The Senate amendments make a technical change and add a co-author.

EXISTING LAW requires an elections official to deliver all of the following to each qualified applicant for a VBM ballot:

1) The ballot for the precinct in which the voter resides and, in the case of a presidential primary election, the ballot for the central committee of the party for which the voter has declared a preference, if any; and,

2) All supplies necessary for the use and return of the ballot.

FISCAL EFFECT: According to the Senate Appropriations Committee, by requiring VBM ballots to have prepaid postage, this bill creates a state-mandated local program. To the extent the Commission on State Mandates determines the provisions of this bill create a new program or impose a higher level of service on local agencies, local agencies could claim reimbursement of those costs (General Fund). If 8.4 million voters (the number of VBM voters in the 2016 General Election) voted by mail at an average cost of $.65 per envelope, the cost of prepaid postage would be about $5.5 million. State mandate costs for future local elections would be unknown, also potentially in the millions of dollars.

COMMENTS: AB 1520 (Shelley), Chapter 922, Statutes of 2001, allowed any voter to become a permanent VBM voter. Since that time, the percentage of voters in California who choose to receive a VBM ballot has increased significantly. A majority of California voters now choose to vote using a VBM ballot, either by returning that ballot through the mail or by dropping off their VBM ballot in person. In 2016, about 58% of votes in the primary election and about 59% of votes in the general election were cast using VBM ballots.

Since existing law does not require the return postage on VBM ballots to be prepaid, in most counties, a VBM voter must affix the correct amount of postage on the return envelope of their ballot. The amount of postage required can vary depending on the size of the ballot, potentially causing confusion for voters.

AB 216 will standardize this process by requiring postage on mail ballots to be prepaid, ensuring that voting is free for all California voters. This bill, as amended in the Senate, is generally consistent with Assembly actions.

Analysis Prepared by: Bish Paul / E. & R. / (916) 319-2094 FN: 0001923

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MAXIMUS
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Clovis, CA 93611

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

Re: **Final Staff Analysis, Proposed Parameters and Guidelines and Amendment, and Hearing Date**
Proposed Parameters and Guidelines
Permanent Absent Voter II, 03-TC-11
Elections Code Sections 3201 and 3203(b)(2)
Statutes 2001, Chapters 922; Statutes 2002, Chapter 664;
and Statutes 2003, Chapter 347
And
Proposed Amendment to Parameters and Guidelines
Permanent Absent Voters, CSM-4358
Former Elections Code Sections 1450 through 1456
Statutes 1982, Chapter 1422
County of Sacramento, Claimant

Dear Ms. Gmur:

The final staff analysis, proposed parameters and guidelines, and amendment to existing parameters and guidelines for this matter are enclosed.

Hearing

This matter is set for hearing on **Thursday, December 1, 2011,** at 9:30 a.m., in the State Capitol, Room 447, Sacramento, California. This matter is proposed for the consent calendar. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2) of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Camille Shelton at (916) 323-3562 if you have any questions.

Sincerely,

Nancy Patton
Acting Executive Director

Hearing Date: December 1, 2011
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ITEM 5

FINAL STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES

Permanent Absent Voters II
03-TC-11

Elections Code Sections 3201 through 3206

Statutes 2001, Chapter 922
Statutes 2002, Chapter 664
Statutes 2003, Chapter 347

PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

Permanent Absent Voters
CSM-4358

Former Elections Code Sections 1450 through 1456

Statutes 1982, Chapter 1422

County of Sacramento, Claimant

EXECUTIVE SUMMARY

Background

The test claim on *Permanent Absent Voters II* (03-TC-11) was filed to reflect changes in the election law pertaining to Permanent Absent Voters. In 1989, the Commission originally determined that Elections Code sections 1450 through 1456 imposed a reimbursable state-mandated program in *Permanent Absent Voters* (CSM-4358). Elections Code sections 1450 through 1456 provided that only voters with specified disabilities could apply for permanent absent voter status.

Statutes 1994, chapter 920 reorganized the entire Elections Code, including the repeal of Elections Code sections 1450 through 1456, and reenactment of those provisions as Elections Code sections 3200 through 3206. The other statutes claimed in *Permanent Absent Voters II*, further amended the Elections Code, including substantive changes in 2001 allowing *all* registered voters to apply for permanent absent voter status, rather than limiting eligibility to those voters with specific disabilities or conditions, as was the case under prior law.

In *Permanent Absent Voters II*, the Commission concluded that Elections Code sections 3201 and 3203(b)(2) mandate a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- County elections officials shall make an application for permanent absent voter status available to any voter. (Elec. Code, § 3201, as amended by Stats. 2001, ch. 922, Stats. 2002, ch. 664, and Stats. 2003, ch. 347.)

The above activity replaces the activity in *Permanent Absent Voters I* which was limited to those voters who provided evidence of certain physical disabilities.

- Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206. (Elec. Code, § 3203(b)(2), as amended by Stats. 2001, ch. 922.)

The Commission further concluded that Elections Code sections 3200, 3202, 3203(a) and (b)(1) and (b)(3), 3204, 3205(a) and 3206, as renumbered and reenacted by Statutes 1994, chapter 920 do not mandate *new* reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514, but remain a part of the Permanent Absent Voter program as it now exists.

This item proposes that the Commission adopt parameters and guidelines for *Permanent Absent Voters II* (03-TC-11) for reimbursement beginning July 1, 2002. In addition, staff recommends that the parameters and guidelines for *Permanent Absent Voter I* (CSM-4358) be amended to end reimbursement under that program on June 30, 2010, so that the costs for all permanent absent voters, beginning with the 2010-2011 fiscal year costs, can be claimed under *Permanent Absent Voter II*.[1]

Claimant's Proposal and Responses from State Agencies

The claimant and the State Controller's Office filed comments agreeing with the draft staff analysis and proposed parameters and guidelines.

The Department of Finance filed comments expressing a concern with one of the activities proposed for reimbursement in *Permanent Absent Voter II* and further suggested language to clarify the issues.

Staff's Proposed Parameters and Guidelines for *Permanent Absent Voter II* (03-TC-11)

Staff recommends that the Commission deny the claimant's request for reimbursement for computer costs. The parameters and guidelines for *Permanent Absent Voter I* authorize reimbursement, on a one-time basis, for computer costs necessary to allow voters with specified disabilities or conditions to vote by absentee ballot. Although the program has been expanded by the test claim statutes in *Permanent Absent Voter II* to allow any voter to become a permanent absent voter, there is no evidence in the record to support a finding that additional computer costs are necessary to carry out the mandated program. Thus, staff recommends that the Commission deny this request.

Staff also recommends that the Commission deny the request to reimburse the activity of providing notice to non-partisan permanent absent voters before a primary election "advising as to their cross-over options and requesting they send back their choice of party's ballot." Elections Code section 3205(b) requires that before each primary election, county elections

[1] Costs incurred through and including the 2009-2010 fiscal year have already been filed with the State Controller's Office pursuant to Government Code section 17560(a). Reimbursement claims for the 2010-2011 fiscal year are due on February 15, 2012.

officials shall mail to every voter not affiliated with a political party whose name appears on the permanent absent voter list a notice and application regarding voting in the primary election. The notice shall inform the voter that he or she may request an absentee ballot for a particular political party for the primary election, if that political party adopted a party rule, duly noticed to the Secretary of State, authorizing these voters to vote in their primary. Section 3205 was addressed in *Permanent Absentee Voters II*, but the Commission determined that it was not properly pled in that test claim and did not reach any conclusions on that statute. Moreover, this activity implements the *Modified Primary Elections* program (01-TC-13) and, thus, goes beyond the scope of the mandate here.

Staff recommends that the Commission adopt parameters and guidelines that include all the activities approved by the Commission in the statement of decision, using language that conforms to the statutes. Thus, Section IV, Reimbursable Activities, would authorize reimbursement as follows:

A. One-Time Activity – add information to all absentee ballot mailings explaining the absentee voting procedure in Elections Code sections 3200 et seq. and the requirements of Elections Code section 3206 when a voter fails to return an executed absent voter ballot for any statewide direct primary or general election.

B. Ongoing Activities

   1. Make an application for permanent absent voter status available to any voter.

   2. Upon receipt of an application or request for permanent absent voter status:

      a) Determine: (1) whether the applicant is a registered voter; and (2) whether the signature of the applicant and residence address on the application or request appears to be the same as that on the original affidavit of registration.

      b) Mark the permanent absent voter affidavit for identification.

   3. For each application or request for permanent absent voter status received and verified for registration, place the voter's name on a list of those whom an absentee ballot is sent each time there is an election within the voter's precinct.

   4. Maintain a copy of the list on file open to public inspection for election and governmental purposes.

   5. Send a copy of the list of all voters who qualify as permanent absent voters to each city elections official or district elections official charged with the duty of conducting an election within the county on the sixth day before an election.

   6. Process and count ballots received from voters on the permanent absent voter list in the same manner as all other absent voter ballots.

   7. If the permanent absent voter fails to return an executed absent voter ballot for any statewide direct primary or general election, delete the voter's name from the list of permanent absent voters.

If costs to perform the activities identified above have been claimed under the Absentee Ballots program (CSM 3713), the Permanent Absent Voter I program

(CSM 4358), or any other program the costs are not eligible for reimbursement under these parameters and guidelines.

The Department of Finance questions the reimbursement of activity 6 (to process and count ballots received from voters on the permanent absent voter list in the same manner as all other absent voter ballots) and argues that the activity is not reasonably related to the mandate to make an application for permanent absent voter status available to any voter.

The Department of Finance, however, is misunderstanding the Commission's finding in the statement of decision for this claim. The Commission found that the requirement in Elections Code section 3205(a) is not new, but has been continually mandated since the Commission addressed the issue in the *Permanent Absent Voter I* program. The Commission further found that this activity continues to be eligible for reimbursement and, since the code section was renumbered to section 3205, adopted a staff recommendation that the renumbering be reflected in the parameters and guidelines.[2] Thus, staff finds that the activity to process and count ballots received from voters on the permanent absent voter list in the same manner as all other absent voter ballots continues to be eligible for reimbursement and is consistent with the Commission's statement of decision in *Permanent Absent Voter II*.

Section V of the proposed parameters and guidelines governing "Direct Costs" incorporates the boilerplate language most recently adopted by the Commission and deletes reimbursement for training. The claimant has not requested reimbursement for training, and there is no evidence in the record that counties incurred costs for training as a result of this mandate.

Proposed Amendment to the Parameters and Guidelines in *Permanent Absent Voter I* (CSM 4358) to End Reimbursement

The test claim statutes for *Permanent Absent Voter II* allow *all* registered voters to apply for permanent absent voter status, and removed the limitations on eligibility that were imposed by the statutes in the *Permanent Absent Voter I* program to allow only those voters with specific disabilities or conditions to vote by absentee ballot. Since the limitations have been removed on who can apply for permanent absentee voter status, staff recommends that the parameters and guidelines for *Permanent Absent Voter I* (CSM 4358) be amended to end reimbursement under that program on June 30, 2010. Costs incurred through and including the 2009-2010 fiscal year for *Permanent Absent Voter I* (CSM 4358) have already been filed with the State Controller's Office pursuant to Government Code section 17560(a). Reimbursement claims for the 2010-2011 fiscal year are due on February 15, 2012. Thus, under this proposal, the costs for all permanent absent voters, beginning with the 2010-2011 fiscal year costs, can be claimed under *Permanent Absent Voter II*.

Conclusion and Staff Recommendation

Staff recommends that the Commission:

- Adopt the proposed parameters and guidelines for *Permanent Absent Voter II* (03-TC-11), for costs incurred beginning July 1, 2002 (page 19);

[2] Statement of decision, *Permanent Absent Voter II* (03-TC-11), page 10.

- Amend the parameters and guidelines for *Permanent Absent Voter I* (CSM 4358) to end reimbursement on June 30, 2010 (page 25); and
- Authorize staff to make any non-substantive, technical corrections to these parameters and guidelines following the hearing.

STAFF ANALYSIS

Claimant

County of Sacramento

Chronology

07/28/2006	Commission adopts statement of decision
08/07/2006	Statement of decision issued
08/23/2006	Claimant files proposed parameters and guidelines (03-TC-11) and proposed consolidation with *Permanent Absent Voter I* (CSM 4328)
10/12/2006	Department of Finance files comments
11/02/2006	Claimant files reply
03/16/2007	Claimant files revised proposed parameters and guidelines consolidating *Permanent Absent Voter II* (03-TC-11) with *Permanent Absent Voter I* (CSM 4328)
05/04/2007	Department of Finance files comments on proposed amended parameters and guidelines
02/13/2008	State Controller's Office files comments on proposed amended parameters and guidelines
03/27/2008	Prehearing conference held
08/14/2008	Claimant requests that the Commission amend the existing parameters and guidelines for *Permanent Absent Voter I* (CSM 4328) to be consistent with the statement of decision adopted for *Permanent Absent Voter II* (03-TC-11)
08/06/2009	Claimant requests that proposed parameters and guidelines be placed on inactive status while claimant pursues joint reasonable reimbursement methodology with Department of Finance.
01/__/2010	Claimant informs Commission staff that it is no longer negotiating an RRM with Department of Finance, and parameters and guidelines may proceed
07/11/2011	Claimant files revised proposed parameters and guidelines for *Permanent Absent Voter II* (03-TC-11) only
08/04/2011	State Controller's Office files comments on the revised proposed parameters and guidelines

10/03/11	Draft staff analysis, proposed parameters and guidelines for *Permanent Absent Voter II* (03-TC-11), and proposed amendment to *Permanent Absent Voter 1* parameter and guidelines (CSM 4328) issued
10/18/11	Claimant files comments agreeing with draft staff analysis and proposed parameters and guidelines
10/21/11	State Controller's Office files comments agreeing with draft staff analysis and proposed parameters and guidelines
10/24/11	Department of Finance files comments on the draft staff analysis and proposed parameters and guidelines

I. Background and Summary of the Mandate

This test claim was filed to reflect changes in the election law pertaining to Permanent Absent Voters. In 1989, the Commission originally determined that Elections Code sections 1450 through 1456 imposed a reimbursable state-mandated program in *Permanent Absent Voters* (CSM-4358). Elections Code sections 1450 through 1456 provided that only voters with specified disabilities could apply for permanent absent voter status.

Statutes 1994, chapter 920 reorganized the entire Elections Code, including the repeal of Elections Code sections 1450 through 1456, and reenactment of those provisions as Elections Code sections 3200 through 3206. The other statutes claimed in *Permanent Absent Voters II*, further amended the Elections Code, including substantive changes in 2001 allowing *all* registered voters to apply for permanent absent voter status, rather than limiting eligibility to those voters with specific disabilities or conditions, as was the case under prior law.

The Commission concluded that Elections Code sections 3201 and 3203(b)(2) mandate a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- County elections officials shall make an application for permanent absent voter status available to any voter. (Elec. Code, § 3201, as amended by Stats. 2001, ch. 922, Stats. 2002, ch. 664, and Stats. 2003, ch. 347.)

The above activity replaces the activity in *Permanent Absent Voters I* which was limited to those voters who provided evidence of certain physical disabilities.

- Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206. (Elec. Code, § 3203(b)(2), as amended by Stats. 2001, ch. 922.)

The Commission further concluded that Elections Code sections 3200, 3202, 3203(a) and (b)(1) and (b)(3), 3204, 3205(a), and 3206, as renumbered and reenacted by Statutes 1994, chapter 920 do not mandate *new* reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514, but remain a part of the *Permanent Absent Voter* program, as it now exists.

In addition, the Commission concluded that Statutes 2003, chapter 347, as it amended Elections Code sections 3100, 3101 and 3103, does not mandate a new program or higher level of service.

II. Commission's Responsibility for Adopting Parameters and Guidelines

If the Commission approves a test claim, the Commission is required by Government Code section 17557 to adopt parameters and guidelines for the reimbursement of any claims. The successful test claimant is required to submit proposed parameters and guidelines to the Commission for review. The parameters and guidelines shall include the following information: a summary of the mandate; a description of the eligible claimants; a description of the period of reimbursement; a description of the specific costs and types of costs that are reimbursable, including activities that are not specified in the test claim statute or executive order, but are determined to be reasonably necessary for the performance of the state-mandated program; instructions on claim preparation, including instructions for the direct or indirect reporting of the actual costs of the program or the application of an RRM; and any offsetting revenue or savings that may apply.[3]

As of January 1, 2011, Commission hearings on the adoption of proposed parameters and guidelines are conducted under Article 7 of the Commission's regulations.[4] Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is based on substantial evidence in the record, and oral or written testimony is offered under oath or affirmation.[5] Each party has the right to present witnesses, introduce exhibits, and submit declarations. However, the hearing is not conducted according to the technical rules of evidence. Any relevant non-repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence may be used to supplement or explain, but is not sufficient in itself to support a finding unless the hearsay evidence would be admissible in civil actions.[6]

Should the Commission adopt this analysis and proposed parameters and guidelines, a cover sheet would be attached indicating that the Commission adopted the analysis as its decision. The decision and adopted parameters and guidelines are then submitted to the State Controller's Office to issue claiming instructions to local governments, and to pay and audit reimbursement claims. Issuance of the claiming instructions constitutes the notice of the right of local governments to file reimbursement claims with the State Controller's Office based on the parameters and guidelines.

III. Party Positions

Proposed Parameters and Guidelines filed by the Claimant

The claimant has filed several proposed parameters and guidelines for the *Permanent Absent Voter II* program, and has requested that the parameters and guidelines be consolidated with *Permanent Absent Voter I* for future claiming. On July 11, 2011, the claimant filed revised proposed parameters and guidelines for *Permanent Absent Voter II*, requesting reimbursement for the following activities:

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[3] Government Code section 17557; California Code of Regulations, Title 2, section 1183.1.

[4] California Code of Regulations, Title 2, section 1187.

[5] Government Code section 17559(b); California Code of Regulations, Title 2, section 1187.5.

[6] California Code of Regulations, Title 2, section 1187.5.

A. One-Time Activities
    - Computer costs as necessary to perform the mandated activities

B. Ongoing Activities
    - Maintenance of permanent absentee file which includes cancelling and reinstating voters
    - Increased postage for:
        - Notice to Non-partisan permanent absent voters before a primary election advising as to their cross-over options and requesting they send back their choice of party's ballot.
        - Prior to purging, notice to permanent absentee voters who have not returned the permanent absentee ballot in the required time-frame needed to remain in the permanent absentee voter file.
    - Cancellation of voters who do not vote.
    - Reinstatement of cancelled voters upon request.
    - Marking of permanent absentee voter affidavit for identification.

These activities can be claimed only to the extent that they are not claimable under any other mandated program.

The requested activities are similar to those approved by the Commission in *Permanent Absent Voter I,* which authorizes reimbursement for the following activities:

Election Planning and Preparation Costs

Increased costs associated with preparation costs, to include, but not limited to:

Initial one-time costs:

-Computer costs
-Sample Ballots (change format)
-Creating initial absentee file

Ongoing costs:

-Cancellation of voters who do not vote; then reinstatement upon request
-Marking of permanent absentee voter affidavit for identification

On October 18, 2011, the claimant filed comments agreeing with the draft staff analysis and staff's proposed parameters and guidelines.

<u>Comments from the State Controller's Office</u>

The State Controller's Office filed comments on the revised proposed parameters and guidelines for *Permanent Absent Voter II* as follows:

- The Period of Reimbursement section should be amended to add the boilerplate language typically included in parameters and guidelines.
- The one-time cost for computers should be deleted. The State Controller's Office "does not feel that additional computer costs are eligible for reimbursement."

- The following proposed language should be amended by adding the following underlined language: "These activities can be claimed only to the extent that they are not claimable under any other mandated program. <u>This would mean that activities claimed in the *Permanent Absent Voter II* program are not claimable under the existing *Permanent Absent Voters* program</u>."
- Revise Section V, Claim Preparation and Submission, for "Contracted Services" to reflect recently adopted boilerplate as follows:

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

- Section V, Claim Preparation and Submission, should be amended to delete eligibility for reimbursement of equipment costs.

On October 21, 2011, the State Controller's Office filed comments agreeing with the draft staff analysis and staff's proposed parameters and guidelines.

<u>Department of Finance</u>

The Department of Finance has not filed comments on the revised proposed parameters and guidelines submitted in July 2011. However, the Department of Finance filed comments in May 2007 on an earlier proposed version submitted by the claimant, and some of those comments are applicable to the revised proposal as follows:

- Notifying non-partisan absent voters about primary voting options should not be reimbursed under these parameters and guidelines, but should be considered for reimbursement through *Modified Primary Election* (01-TC-13).
- Delete "travel" from the list of direct costs since there is no travel required for this mandate.

On October 24, 2011, the Department of Finance filed comments on the draft staff analysis and staff's proposed parameters and guidelines, stating the following:

> Finance has a concern about the inclusion of ongoing activity six in the proposed Ps & Gs for the Permanent Absent Voter II mandate. "Process and count ballots received from voters on the permanent absent voter list in the same manner as all other absent voter ballots." It is not clear that this activity is reasonably necessary for the performance of the state-mandated program, which is limited to making an application for permanent absent voter status available to any voter. In addition, it would be in appropriate to include this activity because permanent absent voters

are a subset of the absent voter population, which already allows them to file reimbursement claims under the Absentee Ballots program.

IV. Discussion

Staff reviewed the claimant's revised proposed parameters and guidelines, and comments from the parties. As described below, staff recommends that the Commission adopt parameters and guidelines for *Permanent Absent Voters II* (03-TC-11) for reimbursement beginning July 1, 2002.

Staff further recommends that the parameters and guidelines for *Permanent Absent Voter I* (CSM 4358) be amended to end reimbursement under that program on June 30, 2010, so that the costs for all permanent absent voters, beginning with the 2010-2011 fiscal year costs, can be claimed under *Permanent Absent Voter II*.[7] The test claim statutes for *Permanent Absent Voter II* allow *all* registered voters to apply for permanent absent voter status, and removed the limitations on eligibility that were imposed by the statutes in the *Permanent Absent Voter I* program to allow only those voters with specific disabilities or conditions to vote by absentee ballot.

A. <u>Adoption of Parameters and Guidelines for *Permanent Absent Voters II*</u>

1. Reimbursable Activities

The Commission approved this test claim for the following activities:

- County elections officials shall make an application for permanent absent voter status available to any voter. (Elec. Code, § 3201, as amended by Stats. 2001, ch. 922, Stats. 2002, ch. 664, and Stats. 2003, ch. 347.)
- Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206. (Elec. Code, § 3203, subd. (b)(2), as amended by Stats. 2001, ch. 922.)

Although the claimant did not include these activities in its revised proposed parameters and guidelines, the Commission is required to identify all costs mandated by the state in the parameters and guidelines.[8] The second activity to include in all absentee ballot mailings an explanation of the absentee voting procedure and an explanation of Elections Code section 3206 is proposed as a one-time activity to add boilerplate language to the mailings.

The Commission also found that Elections Code sections 3200, 3202, 3203(a) and (b)(1) and (b)(3), 3204, 3205(a) and 3206, as renumbered and reenacted by Statutes 1994, chapter 920 do not mandate *new* reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514, but remain a part of the *Permanent Absent Voter* program, as it now exists and continue to be eligible for reimbursement. Most of the activities required by these code sections have been requested by the claimant and are discussed further below.

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[7] Costs incurred through and including the 2009-2010 fiscal year have already been filed with the State Controller's Office pursuant to Government Code section 17560(a). Reimbursement claims for the 2010-2011 fiscal year are due on February 15, 2012.

[8] Government Code sections 17514 and 17557.

However, Elections Code section 3205(a), which requires that "[a]bsent voter ballots mailed to, and received from, voters on the permanent absent voter list are subject to the same deadlines and shall be processed and counted in the same manner as all other absent voter ballots," was not identified by the claimant in its proposed parameters and guidelines as a reimbursable activity. Staff recommends that the activity be identified in these parameters and guidelines as determined in the statement of decision as follows:

- Process and count ballots received from voters on the permanent absent voter list in the same manner as all other absent voter ballots.

In comments to the draft staff analysis, the Department of Finance states it has a concern with the reimbursement of this activity and argues that the activity is not reasonably necessary to comply with the mandate to make the application for permanent absent voter status available. The Department of Finance, however, is misunderstanding the Commission's finding in the statement of decision for this claim. On page 10 of the statement of decision, the Commission finds that the requirement in Elections Code section 3205(a) is not new, but has been continually mandated since the Commission addressed the issue in the *Permanent Absent Voter I* program. The Commission further found that this activity continues to be eligible for reimbursement and, since the code section was renumbered to section 3205, recommended that the renumbering be reflected in the parameters and guidelines. The statement of decision states the following:

> Subdivision (a) [of Elections Code section 3205] is substantively identical to prior law, which was already determined in *Permanent Absent Voters I*. The Commission finds that when a statute is renumbered or reenacted, only substantive changes to the law creating new duties or activities meets the criteria for finding a reimbursable state mandate. Thus, the Commission finds that Elections Code section 3205, subdivision (a), as reenacted and renumbered by Statutes 1994, chapter 920, does not mandate a new program or higher level of service. However, any references to former Elections Code section 1455 in the *Permanent Absent Voters I* parameters and guidelines should be designated by the new numbers when the parameters and guidelines are amended.

Thus, staff finds that the activity to process and count ballots received from voters on the permanent absent voter list in the same manner as all other absent voter ballots continues to be eligible for reimbursement and is consistent with the Commission's statement of decision in *Permanent Absent Voter II*.

Reimbursement for this activity, however, needs clarification. Counties are currently eligible for reimbursement for counting and processing absentee voter ballots under the *Absentee Ballots* program (CSM 3713), a legislatively determined mandate based on Elections Code sections 3000 et seq. Under the *Absentee Ballots* program, any voter can request to vote absentee for any particular election, but not on a permanent basis, as long as a request or application is received by the county within a specified number of days before the election. The parameters and guidelines, originally adopted by the Board of Control and later amended by the Commission, authorize reimbursement based on several formulas for the costs associated with increased filings of absentee ballots. Such costs would include processing and counting the absentee ballots for the election. The *Absentee Ballots* program, however, does not expressly authorize reimbursement for ballots received from *permanent* absent voters under Elections Code sections 3200 et seq. Thus, to the extent counties have been claiming reimbursement to process and count ballots from permanent absentee voters under the *Absentee Ballots* program (CSM 3713), they would not be eligible to claim those same costs under the *Permanent Absent Voter II* program.

Similarly, to the extent counties have been claiming reimbursement for the costs of the *Permanent Absent Voter II* program under the parameters and guidelines for *Permanent Absent Voter I* (CSM 4358), they would not be eligible to claim those same costs under *Permanent Absent Voter II*.

The following clarifying language is proposed for inclusion in the parameters and guidelines for *Permanent Absent Voter II*. This language has been amended to address the concerns of the Department of Finance.

> If costs to perform the activities identified above have been claimed under ~~either~~ the *Absentee Ballots* program (CSM 3713), ~~or~~ the *Permanent Absent Voter I* program (CSM 4358), or any other program, the costs are not eligible for reimbursement under these parameters and guidelines.

The remaining activities requested by the claimant are analyzed below.

One-time computer costs necessary to perform the mandated activities

The claimant requests reimbursement for "computer costs as necessary to perform the mandated activities." The State Controller's Office contends that additional computer costs are not eligible for reimbursement.

The Commission may authorize reimbursement for activities that are "the most reasonable methods of complying with the mandate" pursuant to section 1183.1(a)(4) of the Commission's regulations. Section 1183.1(a)(4) states the following:

> Reimbursable Activities. A description of the specific costs and types of costs that are reimbursable, including one-time costs and on-going costs, and a description of the most reasonable methods of complying with the mandate. "The most reasonable methods of complying with the mandate" are those methods not specified in statute or executive order that are necessary to carry out the mandated program.

Approval of the most reasonable methods of complying with the mandate requires substantial evidence in the record, provided through oral or written testimony offered under oath or affirmation, to support the finding that the requested activity is necessary to carry out the mandated program.[9]

The parameters and guidelines for *Permanent Absent Voter I* authorize reimbursement, on a one-time basis, for computer costs necessary to allow voters with specified disabilities or conditions to vote by absentee ballot. Although the program has been expanded by the test claim statutes in *Permanent Absent Voter II* to allow any voter to become a permanent absent voter, there is no evidence in the record to support a finding that additional computer costs are necessary to carry out the mandated program. Thus, staff recommends that the Commission deny this request.

[9] Government Code section 17559(b); California Code of Regulations, Title 2, section 1187.5.

Marking the permanent absentee voter affidavit for identification

The claimant requests reimbursement for "marking of permanent absentee voter affidavit for identification." This activity was included in the parameters and guidelines for *Permanent Absent Voter I*, and the claimant requests that reimbursement continue for the expanded program.

Elections Code section 3203 requires counties to process the application or request[10] for permanent absent voter status in the same manner as an application for regular absent voter's ballot (commencing with Elections Code section 3000). Under this process, the application for permanent absent voter status shall contain the applicant's name, residence address, the address where ballots are to be mailed, and the signature of the applicant.[11] Upon receipt, the county is required to determine whether the applicant is a registered voter and determines if the signature and residence address on the application for permanent absent voter status appears to be the same as that on the original affidavit of registration.[12] Once it is determined that the applicant is a registered voter, the voter's name goes on a list of those to whom an absentee ballot is sent each time there is an election in their precinct.[13]

Although the Commission determined that this portion of Elections Code section 3203 did not mandate a new program or higher level of service, the Commission found that the process still remained a part of the Permanent Absent Voter program as it now exists and continues to be eligible for reimbursement.

Thus, staff recommends that the Commission approve the activity for ongoing reimbursement, but also adopt language that conforms to the statutes as follows:

- Upon receipt of an application or request for permanent absent voter status:
    a. Determine: (1) whether the applicant is a registered voter ;and (2) whether the signature of the applicant and residence address on the application or request appears to be the same as that on the original affidavit of registration.
    b. Mark the permanent absent voter affidavit for identification.

Maintenance of permanent absentee file which includes cancelling and reinstating voters

The claimant requests reimbursement for:

- Maintenance of permanent absentee file which includes cancelling and reinstating voters;
- Cancellation of voters who do not vote;

[10] Elections Code section 3202 allows any voter, in lieu of executing an application, to execute a request for permanent absent voter status by making a written request to the county elections official requesting the status. If a written request is received and it contains the information set forth in section 3201 (the applicant's name, residence address, the address where ballots are to be mailed, and a signature of the voter), then the county processes the request in the same manner as an application.

[11] Elections Code sections 3001 and 3201(a).

[12] Elections Code sections 3009 and 3201(b).

[13] Elections Code section 3203(b)(1).

- Reinstatement of cancelled voters upon request; and
- Prior to purging, providing notice to permanent absentee voters who have not returned the permanent absentee ballot in the required time-frame needed to remain in the permanent absentee voter file.

Once it is determined that an applicant for permanent absent voter status is a registered voter, the county is required by Elections Code section 3203 to place the voter's name on a list of those to whom an absentee ballot is sent each time there is an election within their precinct, and maintain a copy of the list on file open to the public inspection for election and governmental purposes. Elections Code section 3204 requires the county elections official, on the sixth day before an election, to send a copy of the list of all voters who qualify as permanent absent voters to each city elections official or district elections official charged with the duty of conducting an election within the county. Elections Code section 3206 then provides that a voter whose name appears on the permanent absent voter list shall remain on the list and be mailed an absentee ballot for each election conducted within his or her precinct. If the voter fails to return an executed absent voter ballot for any statewide direct primary or general election, however, the voter's name shall be deleted from the list.

Although the Commission determined that Elections Code sections 3203, 3204, and 3206 did not mandate a new program or higher level of service, the Commission found that the process still remained a part of the Permanent Absent Voter program as it now exists and continues to be eligible for reimbursement.

Thus, staff recommends that the Commission approve these activities required by Elections Code sections 3203, 3204, and 3206 for reimbursement, but adopt language that conforms to the statutes as follows:

- For each application or request for permanent absent voter status received and verified for registration, place the voter's name on a list of those whom an absentee ballot is sent each time there is an election within the voter's precinct.
- Maintain a copy of the list on file open to the public inspection for election and governmental purposes.
- Send a copy of the list of all voters who qualify as permanent absent voters to each city elections official or district elections official charged with the duty of conducting an election within the county on the sixth day before an election.
- If the permanent absent voter fails to return an executed absent voter ballot for any statewide direct primary or general election, delete the voter's name from the list of permanent absent voters.

Staff further recommends that the Commission deny the claimant's request for reimbursement to provide individual notice to voters who fail to return an absent voter ballot prior to deleting their names from the list of permanent absent voters. The Elections Code does not require this activity. The only notice requirement in statute is to include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206, and that activity is included in the proposed parameters and guidelines.[14] Thus, the

[14] Elections Code section 3203(b)(2).

claimant's request for reimbursement of providing individual notice goes beyond the scope of the mandate.

Providing notice to non-partisan permanent absent voters before a primary election advising as to their cross-over options (under the *Modified Primary* program) and requesting they send back their choice of party's ballot.

The claimant requests reimbursement for the increased postage for providing notice to non-partisan permanent absent voters before a primary election "advising as to their cross-over options and requesting they send back their choice of party's ballot."

Staff recommends that the claimant's request be denied. Elections Code section 3205(b) requires that before each primary election, county elections officials shall mail to every voter not affiliated with a political party whose name appears on the permanent absent voter list a notice and application regarding voting in the primary election. The notice shall inform the voter that he or she may request an absentee ballot for a particular political party for the primary election, if that political party adopted a party rule, duly noticed to the Secretary of State, authorizing these voters to vote in their primary. Elections Code section 3205(b) provides notice of the *Modified Primary Elections* program (01-TC-13). The Commission denied the proposed activity in Modified Primary Elections because the claimant did not properly plead section 3205 and the activity went beyond the scope of the mandate determined by the Commission.

Section 3205 was also addressed in this claim, *Permanent Absentee Voters II*, but the Commission determined that it was not properly pled in that test claim and did not reach any conclusions on that statute.[15]

Staff further finds that the proposed activity to provide notice to absentee voters about the *Modified Primary* program goes beyond the scope of the mandate here. The only notice provision determined by the Commission to be reimbursable in *Permanent Absent Voter II* is the activity to "include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206. (Elec. Code, § 3203(b)(2), as amended by Stats. 2001, ch. 922.) That activity is recommended for reimbursement on a one-time basis.

Accordingly, staff recommends that the Commission deny the request to include the activity of providing notice to nonpartisan permanent absentee voters the rules under the Modified Primary program.

Summary of proposed reimbursable activities

Based on the above analysis, staff recommends that Section IV of the parameters and guidelines state the following:

A. One-Time Activity – add information to all absentee ballot mailings explaining the absentee voting procedure in Elections Code sections 3200 et seq. and the requirements of Elections Code section 3206 when a voter fails to return an executed absent voter ballot for any statewide direct primary or general election.

[15] Statement of decision, pages 10-11.

B. Ongoing Activities

1. Make an application for permanent absent voter status available to any voter.
2. Upon receipt of an application or request for permanent absent voter status:
   a. Determine (1) whether the applicant is a registered voter and, (2) whether the signature of the applicant and residence address on the application or request appears to be the same as that on the original affidavit of registration.
   b. Mark the permanent absent voter affidavit for identification.
3. For each application or request for permanent absent voter status received and verified for registration, place the voter's name on a list of those whom an absentee ballot is sent each time there is an election within the voter's precinct.
4. Maintain a copy of the list on file open to public inspection for election and governmental purposes.
5. Send a copy of the list of all voters who qualify as permanent absent voters to each city elections official or district elections official charged with the duty of conducting an election within the county on the sixth day before an election.
6. Process and count ballots received from voters on the permanent absent voter list in the same manner as all other absent voter ballots.
7. If the permanent absent voter fails to return an executed absent voter ballot for any statewide direct primary or general election, delete the voter's name from the list of permanent absent voters.

If costs to perform the activities identified above have been claimed under the Absentee Ballots program (CSM 3713), the Permanent Absent Voter I program (CSM 4358), or any other program, the costs are not eligible for reimbursement under these parameters and guidelines.

2. Boilerplate Language and Section V, Direct Costs

The State Controller's Office requests that the proposed parameters and guidelines be revised to reflect current boilerplate language in the "Period of Reimbursement" and "Direct Costs, Contract Services" sections. Staff agrees and has incorporated current boilerplate language in these sections.

In addition, the State Controller's Office and the Department of Finance request that the "Direct Costs" section be revised to delete reimbursement for equipment and travel. There is no evidence in the record that counties have incurred increased costs for equipment or travel as a result of the *Permanent Absent Voter II* program, and thus these costs have been deleted from the proposed parameters and guidelines.

Finally, staff has deleted training from Section V, Direct Costs. The claimant has not requested reimbursement for training, and there is no evidence in the record that counties incurred costs for training as a result of this mandate.

Thus, Section V of the proposed parameters and guidelines states the following:

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

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

4. Fixed Assets

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

B. Amend the Parameters and Guidelines in Permanent Absent Voter I (CSM 4358) to End Reimbursement

The test claim statutes for *Permanent Absent Voter II* allowed *all* registered voters to apply for permanent absent voter status, and removed the limitations on eligibility that were imposed by the statutes in the *Permanent Absent Voter I* program to allow only those voters with specific disabilities or conditions to vote by absentee ballot. Since the limitations have been removed on who can apply for permanent absentee voter status, staff recommends that the parameters and guidelines for *Permanent Absent Voter I* (CSM 4358) be amended to end reimbursement under that program on June 30, 2010. Costs incurred through and including the 2009-2010 fiscal year for *Permanent Absent Voter I* (CSM 4358) have already been filed with the State Controller's

Office pursuant to Government Code section 17560(a). Reimbursement claims for the 2010-2011 fiscal year are due on February 15, 2012. Thus, under this proposal, the costs for all permanent absent voters, beginning with the 2010-2011 fiscal year costs, can be claimed under *Permanent Absent Voter II*.

V. Conclusion and Staff Recommendation

Staff recommends that the Commission:

- Adopt the proposed parameters and guidelines for *Permanent Absent Voter II* (03-TC-11), for costs incurred beginning July 1, 2002 (page 19);
- Amend the parameters and guidelines for *Permanent Absent Voter I* (CSM 4358) to end reimbursement on June 30, 2010 (page 25); and
- Authorize staff to make any non-substantive, technical corrections to these parameters and guidelines following the hearing.

STAFF'S PROPOSED PARAMETERS AND GUIDELINES

Elections Code Sections 3201 through 3206

Statutes 2001, Chapter 922
Statutes 2002, Chapter 664
Statutes 2003, Chapter 347

Permanent Absent Voters II
03-TC-11

I. SUMMARY OF THE MANDATE

The test claim on *Permanent Absent Voters II* (03-TC-11) was filed to reflect changes in the election law pertaining to Permanent Absent Voters. In 1989, the Commission originally determined that Elections Code sections 1450 through 1456 imposed a reimbursable state-mandated program in *Permanent Absent Voters* (CSM-4358). Elections Code sections 1450 through 1456 provided that only voters with specified disabilities could apply for permanent absent voter status.

Statutes 1994, chapter 920 reorganized the entire Elections Code, including the repeal of Elections Code sections 1450 through 1456, and reenactment of those provisions as Elections Code sections 3200 through 3206. The other statutes claimed in *Permanent Absent Voters II*, further amended the Elections Code, including substantive changes in 2001 allowing *all* registered voters to apply for permanent absent voter status, rather than limiting eligibility to those voters with specific disabilities or conditions, as was the case under prior law.

In *Permanent Absent Voters II*, the Commission concluded that Elections Code sections 3201 and 3203, subdivision (b)(2) mandate a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- County elections officials shall make an application for permanent absent voter status available to any voter. (Elec. Code, § 3201, as amended by Stats. 2001, ch. 922, Stats. 2002, ch. 664, and Stats. 2003, ch. 347.)

The above activity replaces the activity in *Permanent Absent Voters I* which was limited to those voters who provided evidence of certain physical disabilities.

- Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206. (Elec. Code, § 3203(b)(2), as amended by Stats. 2001, ch. 922.)

The Commission further concluded that Elections Code sections 3200, 3202, 3203(a) and (b)(1) and (b)(3), 3204, 3205(a) and 3206, as renumbered and reenacted by Statutes 1994, chapter 920 do not mandate *new* reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514, but remain a part of the Permanent Absent Voter program as it now exists.

II. ELIGIBLE CLAIMANTS

Any county, or city and county, that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The County of Sacramento filed the test claim on September 26, 2003, establishing eligibility for reimbursement beginning July 1, 2002.

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

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. In the event revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)
5. If the total costs for a given fiscal year do not exceed $1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

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

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

The claimant is only allowed to claim and be reimbursed for the increased costs of the reimbursable activities identified below.

A. One-Time Activity – add information to all absentee ballot mailings explaining the absentee voting procedure in Elections Code sections 3200 et seq. and the requirements of Elections Code section 3206 when a voter fails to return an executed absent voter ballot for any statewide direct primary or general election.

B. Ongoing Activities

1. Make an application for permanent absent voter status available to any voter.

2. Upon receipt of an application or request for permanent absent voter status:

    a. Determine (1) whether the applicant is a registered voter and, (2) whether the signature of the applicant and residence address on the application or request appears to be the same as that on the original affidavit of registration.

    b. Mark the permanent absent voter affidavit for identification.

3. For each application or request for permanent absent voter status received and verified for registration, place the voter's name on a list of those whom an absentee ballot is sent each time there is an election within the voter's precinct.

4. Maintain a copy of the list on file open to public inspection for election and governmental purposes.

5. Send a copy of the list of all voters who qualify as permanent absent voters to each city elections official or district elections official charged with the duty of conducting an election within the county on the sixth day before an election.

6. Process and count ballots received from voters on the permanent absent voter list in the same manner as all other absent voter ballots.

7. If the permanent absent voter fails to return an executed absent voter ballot for any statewide direct primary or general election, delete the voter's name from the list of permanent absent voters.

If costs to perform the activities identified above have been claimed under the Absentee Ballots program (CSM 3713), the Permanent Absent Voter I program (CSM 4358), or any other program, the costs are not eligible for reimbursement under these parameters and guidelines.

V. CLAIM PREPARATION AND SUBMISSION

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

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

4. Fixed Assets

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

B. Indirect Cost Rates

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

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

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

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

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

1. the allocation of allowable indirect costs (as defined and described in 2 CRF Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected; or
2. the allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[16] is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

[16] This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenues the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

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

IX. REMEDIES BEFORE THE COMMISSION

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

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d)(1), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The statement of decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the statement of decision, is on file with the Commission.

Adopted: 3/27/90
WPO549s
Proposed Amendment: December 1, 2011

PARAMETERS AND GUIDELINES

Election Code Sections 1450 through 1456

Chapter 1422, Statutes of 1982

Permanent Absent Voters
CSM-4358

Reimbursement for this program ends June 30, 2010

I. SUMMARY OF MANDATES

Chapter 1422, Statutes of 1982, added Chapter 7, commencing with Section 1450 to the Elections Code, to establish a permanent absent voter program. Prior to the enactment of Chapter 1422, an absent voter ballot was not mailed to a voter unless a written request for an absent voter ballot was received before each election. With the enactment of Chapter 1422, counties were required to establish and maintain a list of permanent absent voters and delete from the list if that person fails to return an executed absent voter ballot for any statewide primary or general election.

II. COMMISSION ON STATE MANDATES DECISION

On September 21, 1989 the Commission determined that Chapter 1422, Statutes of 1982, in adding Sections 1450 through 1456 to the Elections Code resulted in reimbursable costs mandated by the state.

III. ELIGIBLE CLAIMANTS

All counties that incurred increased costs as the result of the mandate.

IV. PERIOD OF CLAIM

Chapter 1422, Statutes of 1982 became effective January 1, 1983. The test claim was filed with the Commission on May 11, 1989. Section 17557 of the Government Code (GC) states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that fiscal year. Therefore, all costs incurred on or after July 1,1988 are reimbursable. Reimbursement for this program ends on June 30, 2010.

~~One fiscal year shall be included in each claim. Pursuant to section 17561(d)(3) of the Government Code, all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of enactment of the claims bill. If the total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564~~.

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

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

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

V. REIMBURSABLE COSTS

A. Scope of Mandate

Elections Code sections 1450 through 1456, as added by Chapter 1422/82, require county clerks to implement a new program by performing the following:

(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.

(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.

B. Reimbursable Activities

Counties shall be reimbursed for the increased costs associated with complying with Elections Code sections 1450 through 1456 in the following cost categories:

Election Planning and Preparation Costs

Increased costs associated with preparation costs, to include, but not limited to:

Initial one-time costs:

-Computer costs
-Sample Ballot (change format)
-Creating initial absentee file

Ongoing costs:

-Maintenance of permanent absentee file
-Increased postage
-Cancellation of voters who do not vote; then reinstatement upon request
-Marking of permanent absentee voter affidavit for identification

C. Justification of Purchases

If an entity claims for increased costs resulting from the purchase or modification of voting equipment or additional secrecy envelopes, an explanation of how these costs are a direct result of the mandate must be provided with the claim. The increase for these costs during the fiscal year being claimed must be shown separately. Also, documents which indicate the cost and purchase dates of the above items, must be submitted with ,the claim.

VI. CLAIM PREPARATION

A. Description of Activity

B. Supporting Documentation

Claimed costs should be supported by the following information

1. Employee Salaries and Benefits

Identify the employee(s), show the classification of the employee(s) involved, describe the mandated functions performed and specify the actual number of hours devoted to each function, the productive hourly rate, and the related benefits. The average number of hours devoted to each function may be claimed if supported by a documented time study.

2 . Services and Supplies

Only expenditures which can be identified as a direct cost as a result of the mandate can be claimed. List cost of materials acquired which have been consumed or expended specifically for the purposes of this mandate.

3 Allowable Overhead Costs

Indirect costs may be claimed in the manner prescribed by the State Controller in his claiming instruction.

VII. SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence of and the validity of such costs. These documents must be kept on file by the agency submitting the claim for a period of no less than three years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller or his agent.

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimants experience as a direct result of this statute must be deducted from the costs claims. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

Original List Date:	10/1/2003
Last Updated:	11/3/2011
List Print Date:	11/14/2011
Claim Number:	03-TC-11
Issue:	Permanent Absent Voters II

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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, § 1181.2.)

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE AMENDMENT TO PARAMETERS AND GUIDELINES ON:	No. 02-PGA-02 *Absentee Ballots*
Elections Code Sections 3003 and 3024; Statutes 1978, Chapter 77, and Statutes 2002, Chapter 1032 (AB 3005); Filed on September 28, 2002;	ADOPTION OF AMENDMENT TO PARAMETERS AND GUIDELINES PURSUANT TO GOVERNMENT CODE SECTION 17557 AND TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTIONS 1183.2 AND 1185.3.
By the Legislature, Requestor.	*(Adopted on February 27, 2003)*

AMENDED PARAMETERS AND GUIDELINES

On February 27, 2003, the Commission on State Mandates adopted the attached Amended Parameters and Guidelines.

This Decision shall become effective on March 5, 2003.

PAULA HIGASHI, Executive Director

PARAMETERS AND GUIDELINES AMENDMENT

Elections Code Sections 3003 and 3024

Statutes 1978, Chapter 77
Statutes 2002, Chapter 1032

Absentee Ballots

I. SUMMARY OF THE MANDATE

Elections Code section 3003, as added by Statutes 1978, chapter 77, and amended by Statutes 1994, chapter 920, requires that absentee ballots be available to any registered voter.[1] The Board of Control, predecessor agency to the Commission on State Mandates, determined at its hearing of June 17, 1981, that a reimbursable state mandate requiring an "increased level of service" exists in Statutes 1978, chapter 77. Under prior law, absentee ballots were provided only when the following conditions were met:

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

Elections Code section 3024, as added by Statutes 2002, chapter 1032[2] requires the Commission on State Mandates to amend these parameters and guidelines to "delete school districts, county boards of education, and community college districts from the list of eligible claimants." AB 3005 specifies that the cost to administer absentee ballots when issues and elective offices related to school districts, as defined by Government Code section 17519, are included on a ballot election with non-education issues and elective offices shall not be fully or partially prorated to a school district.

II. ELIGIBLE CLAIMANTS

"Local agencies," as defined in Government Code section 17518, that have incurred increased costs as a direct result of this mandate are eligible to claim reimbursement of those costs. "School districts," as defined in Government Code section 17519, that have incurred increased costs as a direct result of administering their own election program are eligible to claim reimbursement of those costs. School districts cannot claim reimbursement when the county election official administers a school district election.

III. PERIOD OF REIMBURSEMENT

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government

[1] Statutes 1994, chapter 920 only renumbered Elections Code section 3003.
[2] Assembly Bill No. 3005 (2001-2002 Reg. Sess.), hereafter referred to as AB 3005.

Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years costs shall be submitted within 120 days of issuance of the claiming instructions by the State Controller.

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

A. Local Agencies

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

Statutes 1978, chapter 77 became effective on January 1, 1979. The test claim was filed on January 2, 1981. Therefore, in accordance with Section 17557, as in effect on the date of the filing of the test claim, all costs incurred by local agencies in compliance with Statutes 1978, chapter 77 are eligible for reimbursement on or after July 1, 1980. The first claim submitted will report costs incurred from July 1, 1980 through June 30, 1981.

B. School Districts

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

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

IV. REIMBURSABLE ACTIVITIES

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

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

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

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

A. <u>Elections Done by the County Election Official and Billed to the Local Agency</u>

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

<u>Method 1</u>

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

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

<u>Method 2</u>

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

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

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

3. Calculate the Reimbursable Costs

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

Method 3

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

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

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

4. Calculation of Reimbursable Cost Percentage

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

5. Calculation of Reimbursable Costs

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

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

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

Method 4

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

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

   y) Number of ballots cast in the district or local agency area in fiscal year claimed (y)

   z) Number of absentee ballots cast in the district or local agency area in fiscal year claimed (z)

3. Formula for Calculating Number of Reimbursable Absentee Ballots Filed

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

4. Calculation of Cost Per Absentee Ballot Filing (See section V. Claim Preparation and Submission)

   a. Material $____________

   b. Postage $____________

   c. Labor $____________

   d. Overhead $____________

   e. Cost per Absentee Ballot (a+b+c+d) $____________

5. Computation of Reimbursement

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

   B. Cost per Absentee Ballot filing (Item 4)(e) $____________

   Total Reimbursement (A • B) $____________

V. CLAIM PREPARATION AND SUBMISSION

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

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

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

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

Local Agencies

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

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and

B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

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

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

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

<u>School Districts</u>

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[3] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment

[3] This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

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

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

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

IX. REMEDIES BEFORE THE COMMISSION

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

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (a), and California Code of Regulations, title 2, section 1183.2.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Elections Code Sections 15111, 15321, and 21000; Statutes 1999, Chapter 697 Filed on March 12, 2001, By County of Orange, Claimant.	No. 00-TC-08 *Absentee Ballots II* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. *(Adopted on April 24, 2003)*

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on April 25, 2003.

PAULA HIGASHI, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON:	No. 00-TC-08
Elections Code Sections 15111, 15321, and 21000; Statutes 1999, Chapter 697 Filed on March 12, 2001, By County of Orange, Claimant.	*Absentee Ballots II* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. *(Adopted on April 24, 2003)*

STATEMENT OF DECISION

The Commission heard and decided this test claim on April 24, 2003, during a regularly scheduled hearing. Pam Stone, Steve Rodermund, and Rosalyn Lever appeared for claimants, County of Orange. Susan Geanacou and Thomas Lutzenberger, appeared on behalf of the Department of Finance (DOF).

At the hearing, testimony was given, the test claim was submitted, and the vote was taken.

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 section 17500 et seq., and related case law.

The Commission approved this test claim by a 5-0 vote.

BACKGROUND

The Legislature is required by the state Constitution to "provide for registration and free elections."[1] Accordingly, the law requires an absentee ballot be made available to any registered voter.[2] Absentee ballots account for 20 to 30 percent of all ballots cast.[3]

The test claim legislation[4] (Stats. 1999, ch. 697) requires county elections officials, for statewide elections or certain special elections conducted between June 1, 2000, and January 1, 2001, to

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[1] California Constitution, article II, section 3.

[2] Elections Code section 3003. All further statutory references are to the Elections Code unless otherwise indicated.

[3] Senate Committee on Elections and Reapportionment, analysis of Assembly Bill No. 1530 (1999-2000 Reg. Sess.) June 16, 1999.

[4] An earlier test claim entitled Absentee Ballots (02-PGA-02), approved by the Board of Control in 1981, concerned test claim legislation (Stats. 1978, ch. 77) that required local agencies to

tabulate, by precinct, votes cast by absentee ballot and votes cast at the polling place.[5] The test claim legislation also requires the county elections official to make each precinct's election results available to the Legislature and appropriate legislative committees for use in district reapportionment.[6] Finally, the test claim legislation requires the elections official's list of absentee voters to include the voter's election precinct.[7]

Under preexisting law, elections officials[8] are required to keep an accurate list of all voters who have received and voted an absentee ballot at each election and compare the list with the roster of voters.[9] Elections officials are also required to compile and make available to the Legislature any information and statistics that may be necessary for use in reapportioning legislative districts.[10]

Claimant's Position

Claimant contends that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514. Claimant seeks reimbursement for the following activities:

- Tabulating ballots by precinct;
- Compiling and making available to the Legislature any statistics and information necessary for reapportionment.

Claimant states that the test claim legislation only applies to statewide or special elections to fill congressional and legislative vacancies held between June 1, 2000, and January 1, 2001, so as to specifically include the presidential general election.

Claimant states that prior to the test claim legislation, absentee ballots were tabulated by "ballot style" determined by the combination of assembly, congressional, supervisorial, judicial, and other districts in which a voter resides. Claimant has 273 active ballot styles. By contrast, claimant has 1,677 polling place precincts. Thus, claimant asserts that instead of tabulating absentee ballots by 273 categories, they had to be sorted into 1,677 categories.

Claimant responded to the observation of the Secretary of State (SOS) stated below regarding a county's authority to bill local governments for the cost of elections, stating that it does not bill its 93 consolidating districts for costs incurred with absentee ballots. Regarding SOS's comment

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make absentee ballots available on request to all registered voters. That test claim legislation amended Elections Code section 3003.

[5] Election Code section 15321, subdivision (a).

[6] Election Code section 15321, subdivision (b).

[7] Election Code section 15111.

[8] An "elections official" is defined as a clerk or any person charged with the duty of conducting an election, or 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. (Elec. Code, § 320.)

[9] Elections Code section 15111.

[10] Elections Code section 21000.

that "expenses for absentee voting are already reimbursed by the state, so it may be appropriate to include this requirement in the existing reimbursement," claimant states it would be simpler to keep the test claims separate since this one covers only one fiscal year.

Claimant did not provide written comments on the draft staff analysis.

Department of Finance's Position

In its comments on the test claim, the DOF states that the test claim statute may have resulted in costs mandated by the state, but notes that:

> [T]hose costs are reimbursable only to the extent that they are incurred as a result of sorting the absentee ballots by precinct and presenting the specific information to the Legislature, since counting and compiling voting data for the Legislature is already a county responsibility.[11]

DOF did not provide written comments on the draft staff analysis.

Secretary of State's Position

In its comments on the test claim, the SOS commented that its analysis of Assembly Bill No. 1530 (before it became Stats. 1999, ch. 697), indicated the legislation would create a state mandate and it continues to believe so. The SOS notes that prior to enactment of the test claim legislation, some counties sorted absentee ballots by precinct, although they were not required to do so.[12] The SOS states that some counties out-source the precinct sorting, while others set up systems for it within their own offices.

The SOS observed, "expenses for absentee voting are already reimbursed by the state, so it may be appropriate to include this requirement in the existing reimbursement." Finally, the SOS said that counties bill other local jurisdictions for the costs of elections, including the apportioned costs associated with absentee ballots, so some of the costs of apportioning absentee ballots in the November 2000 presidential general election may or may not have been included in the billing to those local jurisdictions.

The SOS did not provide written comments on the draft staff analysis.

COMMISSION FINDINGS

In order for the test claim legislation to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514, the statutory language must mandate a new program or create an increased or higher level of service over the former required level of service. "Mandates" as used in article XIII B, section 6, is defined to mean "orders" or "commands."[13] The California Supreme Court has defined "program" subject to article XIII B, section 6 of the California Constitution as a program that

[11] Elections Code section 21000.

[12] If counties perform an activity that later becomes mandated, it does not preclude reimbursement. "If a local agency … at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency …for those costs incurred after the operative date of the mandate." (Gov. Code, § 17565.)

[13] *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 174.

carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.[14] To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.[15] Finally, the new program or increased level of service must impose "costs mandated by the state."[16]

This test claim presents the following issues:

- Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose a new program or higher level of service on county elections officials within the meaning of article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

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

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program," defined as a program that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.[17] Only one of these findings is necessary to trigger article XIII B, section 6.[18]

The test claim legislation concerns duties of elections officials in tabulating ballots and providing voter information to the Legislature, which are programs that carry out the governmental function of providing election and redistricting services to the public. The administration of an election is a basic governmental function.[19] Moreover, the test claim legislation imposes unique requirements on county elections officials that do not apply generally to all residents and entities in the state. Therefore, the Commission finds that the test claim activities of tabulating ballots by precinct and compiling statistical information for the Legislature and legislative committees constitute a "program" within the meaning of article XIII B, section 6 of the California Constitution.

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

[15] *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

[16] Government Code section 17514.

[17] *County of Los Angeles, supra,* 43 Cal.3d 46, 56.

[18] *Carmel Valley Fire Protection Dist.* (1987) 190 Cal.App.3d 521, 537.

[19] California Constitution, article II, section 1.

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

Article XIII B, section 6 of the California Constitution states, "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 determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.[20]

List modification: Elections Code section 15111 requires the elections official to "keep an accurate list of all voters who have received and voted an absentee ballot at each election and compare the list with the roster of voters as provided in Section 15278."[21] The test claim legislation added a requirement that the list "include the election precinct of the voter."

Prior law did not require the elections official's absentee ballot list to include the precinct of each voter.

Therefore, the Commission finds that because it is a new requirement, the activity of including the precinct of each absentee voter on the elections official's absentee ballot list constitutes a new program or higher level of service within the meaning of article XIII B, section 6. Section 15111, as amended by chapter 697, has not been repealed. Therefore, the Commission finds that this requirement -- to include on the list of absentee voters the precinct of each voter -- is ongoing.

Tabulation by precinct: The test claim legislation temporarily added section 15321 to the Elections Code. Subdivision (a) creates a new requirement that in statewide elections or special elections to fill a congressional or legislative vacancy conducted on or after June 1, 2000, votes cast by absentee ballot or at the polling place must be tabulated by precinct. This requirement was in effect from June 1, 2000, until January 1, 2001.[22]

Prior law did not require tabulating votes by precinct in statewide elections or special elections to fill a vacant congressional or legislative office, conducted from June 1, 2000, to January 1, 2001.

Therefore, the Commission finds that because this is a new requirement, the activity of tabulating votes by precinct 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, constitutes a new program or higher level of service.

Returns available to the Legislature: The test claim legislation also temporarily[23] added subdivision (b) in section 15321 of the Elections Code. Subdivision (b) states that the elections returns tabulated by precinct pursuant to subdivision (a) "shall be made available to the

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[20] *Lucia Mar Unified School Dist. v. Honig, supra,* 44 Cal.3d 830, 835.

[21] The comparison with section 15278 is to determine if any voter cast more than one ballot in the election.

[22] Elections Code section 15321, subdivision (c).

[23] Prior to its repeal, Elections Code section 15321, subdivision (c), stated it was to remain in effect until January 1, 2001.

Legislature or any appropriate committee of the Legislature for use in connection with reapportionment of legislative districts pursuant to Section 21000."

The test claim legislation also added a nearly identical requirement to section 21000. The amendment to section 21000 adds to the list of information the county elections official must compile and make available to the Legislature or any appropriate committee of the Legislature "…election returns for each precinct reflecting the vote total for all ballots cast, including both absentee ballots and ballots cast at polling places, compiled pursuant to subdivision (a) of Section 15321." The Commission finds that sections 21000 and 15321, subdivision (b), as amended, contain the same requirement, so they are analyzed together here.

Prior law (Elec. Code, § 21000) required county elections officials to compile and make available to the Legislature "any information and statistics that may be necessary for use in connection with the reapportionment of legislative districts including, but not limited to, precinct maps…[and] …lists showing the elections returns for each precinct." Prior law did not require that the election returns reports to the Legislature include "election returns for each precinct reflecting the total for all ballots cast, including both absentee ballots and ballots cast at polling places, compiled pursuant to subdivision (a) of Section 15321."

DOF commented that the costs of this activity "are reimbursable only to the extent that they are incurred as a result of sorting the absentee ballots by precinct and presenting the specific information to the Legislature, since counting and compiling voting data for the Legislature is already a county responsibility."

The Commission agrees. Only the new activity not previously required is considered the new program or higher level of service.

Therefore, because it is a new requirement, the Commission finds that 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, is a new program or higher level of service.

The final issue regarding making precinct tabulations available to the Legislature is whether the duty is imposed only between June 1, 2000, and January 1, 2001, or is ongoing. Section 15321, which requires votes to be tabulated by precinct, was repealed effective January 1, 2001. However, section 21000, which has not been repealed, still contains the reference to section 15321, as follows:

> The county elections official in each county shall compile and make available to the Legislature or any appropriate committee of the Legislature any information and statistics that may be necessary for use in connection with the reapportionment of legislative districts, including, but not limited to, …lists showing the election returns for each precinct, *and election returns for each precinct reflecting the vote total for all ballots cast, including both absentee ballots and ballots cast at polling places, compiled pursuant to subdivision (a) of Section 15321* in the county at each statewide election. [Emphasis indicates text added by the test claim legislation.]

Based on rules of statutory construction, the Commission finds that the activity of making precinct tabulations available to the Legislature was required only until January 1, 2001. Regarding incorporation by reference, the California Supreme Court, in *Palermo v. Stockton*

Theatres, held that "where a statute adopts by specific reference the provisions of another statute, regulation, or ordinance, such provisions are incorporated in the form in which they exist at the time of the reference and not as subsequently modified."[24] At the time of its incorporation into section 21000, section 15321 by its express terms was to sunset January 1, 2001. This supports interpreting section 21000's reference to section 15321 to be without effect because of section 15321's repeal.

Some courts have distinguished the *Palermo* rule and have held that the statutory interpretation "turns on legislative intent in light of all relevant evidence."[25]

In this case, the legislative history of the test claim legislation (Assem. Bill No. 1530) further supports the conclusion that the activity of making precinct tabulations available to the Legislature was meant to be temporary. Two legislative committee reports describe the relevant portion of the bill as follows: "Requires returns for these elections to be made available to the Legislature for use in connection with reapportionment of legislative districts. Repeals these provisions on January 1, 2001."[26]

Moreover, the Senate Elections Committee report stated of the April 28, 1999 version of Assembly Bill No. 1530, "Barring a legislative or congressional vacancy, this bill will apply only to the 2000 General Election. … The Committee may wish to consider whether to make reporting absentee results by precinct permanent."[27] The bill was not amended after that analysis. Also, the Assembly Appropriations Committee characterized the cost of the Assembly Bill No. 1530 as "one-time."[28] Thus, the legislative history of the test claim legislation indicates that the Legislature intended for the duty to provide tabulations by precinct of absentee and non-absentee ballots to apply only to elections conducted between June 1, 2000 and January 1, 2001.

In summary, the Commission finds the following activities constitute new programs or higher levels of service on elections officials within the meaning of article XIII B, section 6:

- **List modifications:** Including the precinct of each absentee voter on the elections official's absentee ballot list. (Elec. Code, § 15111.) This activity is ongoing.
- **Tabulation by precinct:** 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 conducted between June 1, 2000, and January 1, 2001. (Elec. Code, § 15321, subd. (a).)

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[24] *Palermo v. Stockton Theatres, Inc.* (1948) 32 Cal.2d 53, 58-59.

[25] *People v. Frawley* (2000) 82 Cal.App.4th 784, 794.

[26] Senate Rules Committee, Office of Senate Floor Analyses, 3d reading analysis of Assembly Bill No. 1530 (1999-2000 Reg. Sess.) as amended April 28, 1999, page 2. Also see the Assembly floor analysis, which summarized the bill the same way.

[27] Senate Committee on Elections and Reapportionment, analysis of Assembly Bill No. 1530 (1999-2000 Reg. Sess.) as amended April 28, 1999, page 2.

[28] Assembly Committee on Appropriations, analysis of Assembly Bill No. 1530 (1999-2000 Reg. Sess.) as amended April 28, 1999, page 1.

- **Returns available to the Legislature:** 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. (Elec. Code, § 15321, subd. (b), and Elec. Code, § 21000.)

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

In order for the activities listed above to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, the activities must also impose costs mandated by the state.[29] Further, no statutory exceptions as listed in Government Code section 17556 can apply. Government Code section 17514 defines "costs mandated by the state" as follows:

> [A]ny 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.

In its test claim, the claimant stated that it would incur approximately $55,000 in increased costs as a result of the test claim legislation.

Fee authority: In its comments on the test claim, the SOS noted that counties bill local agencies for the costs of elections, including absentee ballot costs. According to the SOS, "some of the costs of apportioning absentees [ballots] may or may not have been included in the billing to those local election jurisdictions."

Government Code section 17556, subdivision (d), reads:

> 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 services charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

County elections officials have authority to bill a city or district for election services if the governing bodies have effected procedural requirements. Elections Code section 10002 provides:

> The governing body of any city or district[30] 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

[29] *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 835. Government Code section 17514.

[30] "District," for purposes of initiative and referendum under Chapter 4 (commencing with Section 9300) of Division 9, includes any regional agency that has the power to tax, to regulate land use, or to condemn and purchase land. (Elec. Code, § 317.)

> 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.** [emphasis added].

In addition, Elections Code section 13001 requires a city to pay the costs of elections called by its governing board.

Likewise, section 10416 provides:

> Except as otherwise provided in this part, when elections are consolidated, the governing body ordering consolidation may, in the territory affected thereby, provide for: [¶]…[¶] (c) The **expenses of the election.** [emphasis added].

The authority to contract with county elections officials also extends to county superintendents of education.[31] Election costs of school district and community college district elections are generally borne by those districts,[32] except costs already reimbursed by the state pursuant to the Absentee Ballots mandate (02-PGA-02), for which the county does not have fee authority. Election costs of special district elections are borne by the special district.[33]

These statutes provide counties with authority to bill cities, districts, or school or community college districts for the city or school or community college district's share of local elections expenses. The test claim legislation primarily applies to "any statewide election or special election to fill a vacancy in a congressional or legislative office, conducted on or after June 1, 2000…"[34] Thus, because the activities of (1) tabulation by precinct and (2) making returns available to the Legislature only apply to statewide or special elections, those activities would not be subject to the county's fee authority, because they do not pertain to any local candidates.

Therefore, the Commission finds that the fee authority does not preclude reimbursement for the activities of (1) tabulation by precinct and (2) making returns available to the Legislature.

However, the activity of including the precinct of each absentee voter on the elections official's absentee ballot list pursuant to section 15111 is not limited to statewide or special elections. Therefore, the Commission finds that counties have fee authority to bill other local agencies for the cost of modifying absentee ballot lists to include the precinct only for those ballots that include city, school district, community college district, or special district issues or candidates. However, the fee authority does not extend to county, statewide, or federal elections.

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[31] Education Code section 1258.

[32] Education Code sections 5421 to 5424 and 5227. The costs of administering absentee ballots pursuant to the Absentee Ballots mandate (02-PGA-02) are not prorated to school districts. (Elec. Code, § 3024). Those costs are already reimbursed by the state and the county has no fee authority for administering absentee ballots for school districts.

[33] Government Code section 53072. Also see 32 Ops. Atty. Gen. 224 regarding municipal utility district elections.

[34] Statutes 1999, chapter 697, section 2.

Therefore, the Commission finds that there are costs mandated by the state, and Government Code section 17556, subdivision (d), does not apply to deny the test claim because the fee authority is not "sufficient to pay for the mandated program or increased level of service."

The county fee authority identified in Elections Code sections 10002, 13001 and 10416, in addition to fee authority in the Education and Government Code sections cited above, would be properly identified as an offset[35] in the parameters and guidelines for the activity required by the test claim statute (Elec. Code, § 15100).

Claimant stated that it does not bill its jurisdictions for absentee ballots. However, the exercise of the fee authority is not required for it to be an offset.[36]

In summary, the Commission finds that the test claim legislation imposes costs mandated by the state pursuant to Government Code section 17514.

CONCLUSION

Based on the foregoing analysis, the Commission finds that the test claim legislation imposes a reimbursable state-mandated program on elections officials within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

- **List modifications:** Including the precinct of each absentee voter on the elections official's absentee ballot list. (Elec. Code, § 15111.) This activity is ongoing.
- **Tabulation by precinct:** 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 conducted between June 1, 2000, and January 1, 2001. (Elec. Code, § 15321, subd. (a).)
- **Returns available to the Legislature:** 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. (Elec. Code, § 15321, subd. (b), and Elec. Code, § 21000.)

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[35] California Code of Regulations, title 2, section 1183.1, subdivision (a), paragraphs (8) and (9).

[36] In *Connell v. Santa Margarita Water District* (1997) 59 Cal. App. 4th 382, 401, the court found that a water district with authority to charge fees could not be reimbursed due to the fee authority, even though it was economically impractical to charge the full cost of service. If the authority to charge fees could bar reimbursement for a new program or higher level of service, such authority could also offset reimbursement for county elections officials.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of: County of Stanislaus Claimant	CSM-4358 Chapter 1422, Statutes of 1982 Election Code Sections 1450 through 1456 Permanent Absent Voters

DECISION

The attached Proposed Statement of Decision of the Commission on State Mandates is hereby adopted by the Commission on State Mandates as its decision in the above-entitled matter.

This Decision shall become effective on September 21, 1989.

IT IS SO ORDERED September 21, 1989.

Russell Gould, Chairperson
Commission on State Mandates

WP0081h

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of: County of Stanislaus Claimant	)	No. CSM-4358 Chapter 1422, Statutes of 1982 Election Code Sections 1450 through 1456 Permanent Absent Voters

PROPOSED-DECISION

This claim was heard by the Commission on State Mandates (Commission) on August 24, 1989, in Sacramento, California, during a regularly scheduled hearing.

Ms. Joy Goth appeared on behalf of the Stanislaus County Auditor/Controller's Office, and Ms. Karen Mathews appeared on behalf of the Stanislaus County Elections Division. There were no other appearances.

Evidence both oral and documentary having been introduced, the matter submitted, and vote taken, the Commission finds:

ISSUE

Do Election Code sections 1450 through 1456, as added by Chapter 1422, Statutes of 1982 (Chapter 1422/82), require counties to implement a new program or provide a higher level of service in an existing program, within the meaning of section 6, article XIIIB of the California Constitution?

FINDINGS OF FACT

The test claim was filed with the Commission on May 11, 1989, by the County of Stanislaus. The elements for filing a test claim were satisfied, and none of the requisites for denying a claim specified in Government Code section 17556 were applicable.

Chapter 1422, Statutes of 1982 (Chapter 1422/82), added Chapter 7, commencing with section 1450 to the Elections Code, to establish a permanent absent voter program. It was found that this program enables certain voters, who provide evidence of physical disability, to apply for permanent absent voter status. The county clerk shall establish and maintain a list of permanent absent voters and mail absent voter ballots to such voters for each election in which they are eligible to vote. Moreover, these statutes provide that a person on the permanent voter list shall be deleted from the list if that person fails to return an executed absent voter ballot for any statewide direct primary or general election.

Prior to the enactment of Chapter 1422/82, an absent voter ballot was not mailed to a voter unless a written request for an absent voter ballot was received before each election.

Both the Department of Finance and the Office of the Secretary of State noted that Chapter 1422/82 contains a legislative statement that the chapter provides both costs and savings, and therefore no appropriation is required.

The Department of Finance recommended that the permanent absent voter program, as enacted by Chapter 1422/82, is a reimbursable state mandated program, and that the issue of potential cost savings should be addressed during the preparation of parameters and guidelines.

The Office of the Secretary of State recommended that Chapter 1422/82 results in a new program as defined in Government Code section 17514 and section 6 of article XIIIB of the California Constitution. However, without specific data, it is not possible to determine whether savings have been realized in an amount sufficient to offset any costs.

APPLICABLE LAW

Government Code section 17551, subdivision (a) provides:

> "The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution."

Government Code section 17514 provides:

> "'Costs mandated by the state' means any increased costs which a local agency or school district is required to incur after July 7, 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."

Section 6, article XIII6 of the California Constitution reads:

> "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 program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:
>
> (a) Legislative mandates requested by the local agency affected;
> (b) Legislation defining a new crime or changing an existing definition of a crime; or
> (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

CONCLUSION

The Commission determines that it has the authority to decide this claim under the provisions of Government Code section 17551, subdivision (a).

The Commission concludes that sections 1450 through 1456, as added by Chapter 1422/82, require counties to implement a new program because the county clerk must now: (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.

Furthermore, the Commission directs staff and the involved parties to consider any offsetting savings during the development of the parameters and guidelines.

Accordingly, such costs related to the aforementioned new program are costs mandated by the state and are subject to reimbursement within the meaning of section 6, article XIIIB of the California Constitution. Therefore, the *claimant is directed to submit parameters and guidelines, pursuant to Government Code section 17557 and Title 2, California Code of Regulations section 1183.1, to the Commission for its consideration.

The foregoing is subject to the following conditions:

> The determination of a reimbursable state mandate does not mean that all increased costs claimed will be reimbursed. Reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program; approval of a statewide cost estimate; a specific legislative appropriation for such purpose; a timely-filed claim for reimbursement; and subsequent review of the claim by the State Controller's Office.

DECLARATION OF SERVICE BY MAIL

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 and business address is 1414 K Street, Suite 315, Sacramento, California 95814.

On September 29, 1989, I served the attached Statement of Decision by placing a true copy thereof in an envelope addressed to the person named below at the address set out immediately below her name, and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully prepaid.

Ms. Karen Mathews
County of Stanislaus
1100 I Street, Room 300
Modesto, CA 95354

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on September 29, 1989, at Sacramento, California.

Dale DiGirolamo

Dale DiGirolamo

WP0174h

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM: 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; Filed on September 26, 2003, and amended on January 27, 2004, by County of Sacramento, Claimant.	Case No.: 03-TC-11 *Permanent Absent Voters II* PROPOSED STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (Adopted on July 28, 2006)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on July 28, 2006. Pamela Stone of Maximus, and Alice Jarboe, Assistant Registrar of Voters, appeared on behalf of claimant, County of Sacramento. Susan Geanacou appeared on behalf of the Department of Finance.

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

The Commission adopted the staff analysis to partially approve this test claim at the hearing by a vote of 7-0.

Summary of Findings

Claimant, County of Sacramento, filed this test claim on September 26, 2003, and an amendment on January 27, 2004, "to reflect changes in the election law pertaining to Permanent Absent Voters since the first test claim was filed." The Commission previously determined Elections Code sections 1450 through 1456 imposed a reimbursable state-mandated program in an earlier test claim *Permanent Absent Voters* (CSM-4358) decision, effective September 21, 1989. Prior to the enactment of the current test claim legislation, Elections Code sections 1450 through 1456 provided that only voters with specified disabilities could apply for permanent absent voter status.

Statutes 1994, chapter 920 reorganized the entire Elections Code, including the repeal of Elections Code sections 1450 through 1456, and reenactment of those provisions as Elections Code sections 3200 through 3206. The other statutes claimed in *Permanent Absent Voters II*, further amended the Elections Code, including substantive changes in 2001 allowing *all* registered voters to apply for permanent absent voter status, rather than limiting eligibility to those voters with specific disabilities or conditions, as was the case under prior law.

The Commission concludes that Elections Code sections 3201 and 3203, subdivision (b)(2) mandates a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- County elections officials shall make an application for permanent absent voter status available to any voter. (Elec. Code, § 3201, as amended by Stats. 2001, ch. 922, Stats. 2002, ch. 664, and Stats. 2003, ch. 347.)

The above activity replaces the activity in *Permanent Absent Voters I* which was limited to those voters who provided evidence of certain physical disabilities.

- Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206. (Elec. Code, § 3203, subd. (b)(2), as amended by Stats. 2001, ch. 922.)

The Commission concludes that Elections Code sections 3200, 3202, 3203, subdivisions (a) and (b)(1) and (b)(3), 3204, 3205, subdivision (a) and 3206, as renumbered and reenacted by Statutes 1994, chapter 920 do not mandate *new* reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514, but remain a part of the *Permanent Absent Voter* program, as it now exists. Any references to former Elections Code sections 1450, 1452, 1454, 1455 and 1456 in the *Permanent Absent Voters I* parameters and guidelines should be designated by their new numbers when the parameters and guidelines are amended.

In addition, the Commission concludes that Statutes 2003, chapter 347, as it amended Elections Code sections 3100, 3101 and 3103, does not mandate a new program or higher level of service.

BACKGROUND

Prior to the enactment of the test claim legislation, Elections Code sections 1450 through 1456 provided that only voters with specified disabilities could apply for permanent absent voter status. The Commission previously determined these sections to constitute a reimbursable state-mandated program in the test claim *Permanent Absent Voters* (CSM-4358) [hereafter *Permanent Absent Voters I*].

In the *Permanent Absent Voters I* Statement of Decision, effective September 21, 1989, the Commission concluded

> that sections 1450 through 1456, as added by Chapter 1422/82, require counties to implement a new program because the county clerk must now: (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.
>
> Furthermore, the Commission directs staff and the involved parties to consider any offsetting savings during the development of the parameters and guidelines.

Thus, the Commission determined that prior to the operation of Statutes 1982, chapter 1422, there was no permanent absent voters program. Statutes 1994, chapter 920 reorganized the entire Elections Code, including the repeal of Elections Code sections 1450 through 1456, and reenactment of those provisions as Elections Code sections 3200 through 3206. The other statutes claimed in *Permanent Absent Voters II*, further amended the Elections Code, making both technical changes in wording, as well as substantive changes. The substantive changes made in 2001 allow *all* registered voters to apply for permanent absent voter status, rather than limiting eligibility to those voters with specific disabilities or conditions, as was the case under prior law.

Claimant's Position

Claimant, County of Sacramento, filed this test claim on September 26, 2003, and an amendment on January 27, 2004,[1] "to reflect changes in the election law pertaining to Permanent Absent Voters since the first test claim was filed." Claimant contends that Elections Code sections 3100, 3101,[2] 3103, 3104, 3106, 3108, 3110, and 3200 through 3206 constitutes a reimbursable state-mandated program. Following are some of the reimbursable activities asserted by the claimant:

- Providing permanent absent ballot applications.
- Receiving and processing permanent absent ballot applications.
- Sending a copy of the list of all voters who qualify as permanent absent voters to city or district elections officials.
- Preparing, printing, and sending sample ballots.
- Providing the permanent absent voter roll to city and district election officials.
- Making the roll available for public inspection.
- Maintaining the roll, including purging voters from the permanent absent voter list, when the voter fails to vote in any statewide direct primary or general election, and reinstating a voter's name on the roll upon the voter's request.
- Paying for increased postage of mailing out ballots to a larger permanent absent voter roll.

Claimant also requests that the parameters and guidelines for *Permanent Absent Voters I* be amended to include the findings for the present test claim.

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[1] Potential reimbursement period for this claim begins no earlier than July 1, 2002. (Gov. Code, § 17557, subd. (c).)

[2] Page 5 of the Amended Test Claim Filing actually names section "31<u>9</u>1," but as the rest of the numbers are in sequence, this is presumed to be a typographical error.

In a response to Department of Finance's December 2003 comments on the test claim filing, claimant further alleges activities for: dealing with additional provisional voters "who have permanent absent voter status, … but appear to vote in person;" answering additional phone calls at election time from voters who "forget they are on the permanent absentee voter roll;" and comparing the signature on absentee ballots with those on file, "to make sure that it was the voter who completed and signed the absentee ballot."

No comments were received on the draft staff analysis from the claimant or interested parties.

Department of Finance's Position

DOF filed comments on December 4, 2003, and May 27, 2004, addressing the allegations stated in the test claim and subsequent amendment. DOF ultimately concluded that the test claim statutes "expanded the scope of the permanent absent voter program to include all voters," which "could represent a higher level of service..."

No comments were received on the draft staff analysis from DOF or any other state agencies.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6, of the California Constitution[3] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[4] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[5] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[6] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[7]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a

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

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

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

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

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

law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[8] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[9] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[10]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[11]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[12] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[13]

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

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program." In *County of Los Angeles v. State of California*, the California Supreme Court defined the word "program" within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.[14] The court has held that only one of these findings is necessary.[15]

The Commission finds that requiring a permanent absent voter process imposes a program within the meaning of article XIII B, section 6 of the California Constitution under both tests. County

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

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

[10] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

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

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

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

[14] *County of Los Angeles, supra,* 43 Cal.3d at page 56.

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

elections officials provide a service to the members of the public who want to become permanent absent voters. The test claim legislation also requires local elections officials to engage in administrative activities solely applicable to local government, thereby imposing unique requirements upon counties that do not apply generally to all residents and entities of the state.

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

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

In order to be subject to article XIII B, section 6, of the California Constitution, test claim legislation must mandate a state-mandated activity on a local agency or school district.[16] Courts have adopted a "strict construction" interpretation of article XIII B, section 6.[17] Consistent with this narrow interpretation, the term "mandate" has been construed according to its commonly understood meaning as an "order" or "command."[18] Thus, the test claim legislation must require a local government entity to perform an activity in order to fall within the scope of article XIII B, section 6.

According to the well-settled rules of statutory construction, an examination of a statute claimed to constitute a reimbursable state mandate begins with the plain language of the statute, and "where the language is clear there is no room for interpretation."[19] Where the Legislature has not found it appropriate to include express requirements in a statute, it is inappropriate for a court to write such requirements into the statute.[20] The California Supreme Court has noted that "[w]e cannot… read a mandate into language which is plainly discretionary."[21]

Test claim legislation mandates a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not previously required.[22] The courts have defined a "higher level of service" in conjunction with the phrase "new program" to give the subvention requirement of article XIII B, section 6 meaning. Accordingly, "it is apparent that the subvention requirement for increased or higher level of service is directed to state-mandated increases in the services provided by local agencies in existing programs."[23] A statute or executive order mandates a reimbursable "higher level of

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[16] *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 740.

[17] *City of San Jose*, *supra*, 45 Cal.App.4th 1802, 1816-17.

[18] *Long Beach Unified School Dist.*, *supra*, 225 Cal.App.3d 155, 174.

[19] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777.

[20] *Whitcomb Hotel, Inc. v. California Employment Commission* (1944) 24 Cal.App.2d 753, 757.

[21] *City of San Jose*, *supra*, 45 Cal.App.4th 1802, 1816.

[22] *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 836.

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

service" when the statute or executive order, as compared to the legal requirements in effect immediately before the enactment of the test claim legislation, increases the actual level of governmental service provided in the existing program.[24]

Reenactment and Renumbering by Statutes 1994, Chapter 920:

Elections Code Sections 3200, 3202 and 3204:

As reenacted and renumbered by Statutes 1994, chapter 920, Elections Code section 3200 states:

> A voter who qualifies under this chapter shall be entitled to become a permanent absent voter.

As reenacted and renumbered by Statutes 1994, chapter 920, Elections Code section 3202 states:

> In lieu of executing the application set forth in Section 3201, any voter may execute a request for permanent absent voter status by making a written request to the county elections official requesting the status. If a written request is received by the county elections official and it contains the information set forth in Section 3201, the elections official shall process that application in the manner provided in Section 3203.

As reenacted and renumbered by Statutes 1994, chapter 920, Elections Code section 3204 states:

> The county elections official shall send a copy of the list of all voters who qualify as permanent absent voters to each city elections official or district elections official charged with the duty of conducting an election within the county. The list shall be sent by the sixth day before an election.

These sections are identical to prior law, which was already determined in *Permanent Absent Voters I*. An uncodified portion of Statutes 1994, chapter 920 states the following legislative intent:

> SEC. 3. It is the intent of the Legislature in enacting this act to reorganize and clarify the Elections Code and thereby facilitate its administration. The Legislature intends that the changes made to the Elections Code, as reorganized by this act, have only technical and nonsubstantive effect. Hence, no change made by this act shall be construed to create any new right, duty, or other obligation that did not exist on the effective date of this act, or result in the limitation or termination of any right, duty, or other obligation that existed on the effective date of this act.
>
> SEC. 4. The Legislature finds that the reorganization of the Elections Code pursuant to this act, in view of the nonsubstantive statutory changes made, will not result in new or additional costs to local agencies responsible for the conduct of elections or charged with any duties or responsibilities in connection therewith.

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

The Commission makes a general finding, in accordance with the legislative intent stated in the uncodified portion of Statutes 1994, chapter 920, that a renumbered or restated statute is not a newly enacted provision. In addition, Elections Code section 2 provides:

> The provisions of this code, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments.

The rationale behind Elections Code section 2 is in accordance with the holding of *In re Martin's Estate* (1908) 153 Cal. 225, 229, which explains the general rule of statutory construction for repeal, replacement and renumbering, as follows:

> Where there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the re-enactment takes effect at the same time.[25]

The Commission finds that when a statute is renumbered or reenacted, only substantive changes to the law creating new duties or activities meets the criteria for finding a reimbursable state mandate. Thus, the Commission finds that Elections Code sections 3200, 3202, and 3204, as reenacted and renumbered by Statutes 1994, chapter 920, do not mandate a new program or higher level of service. However, any references to former Elections Code sections 1450, 1452, and 1454 in the *Permanent Absent Voters I* parameters and guidelines should be designated by the new numbers when the parameters and guidelines are amended.

Further Changes to *Permanent Absent Voters I* Test Claim Legislation:

Elections Code Section 3201:

As reenacted and renumbered by Statutes 1994, chapter 920, and subsequently amended by Statutes 2001, chapter 918,[26] Statutes 2001, chapter 922, Statutes 2002, chapter 664,[27] and Statutes 2003, chapter 347,[28] Elections Code section 3201 provides:

> Any voter may apply for permanent absent voter status. Application for permanent absent voter status shall be made in accordance with Section 3001, 3100, or 3304. The voter shall complete an application, which shall be available from the county elections official, and which shall contain all of the following:
>
> (a) The applicant's name at length.
> (b) The applicant's residence address.
> (c) The address where ballot is to be mailed, if different from the place of

[25] *In re Martin's Estate* (1908) 153 Cal. 225, 229. See also 15 Ops.Cal.Atty.Gen. 49 (1950).

[26] This amendment was never operative upon the subsequent adoption of Statutes 2001, chapter 922. (Affected by two or more acts at the same session of the legislature, see Gov. Code, § 9605.)

[27] Code maintenance bill, non-substantive changes.

[28] Added references to Elections Code sections 3100 and 3304.

residence.

(d) The signature of the applicant.

Prior to Statutes 1982, chapter 1422, no permanent absent voter program existed. Statutes 1982, chapter 1422, approved as a reimbursable state-mandated program in *Permanent Absent Voters I* provided a list of specific conditions or disabilities required to qualify for permanent absent voter status. The 2001 amendment substantively changed the law to expand eligibility to all voters. This amendment goes beyond creating a higher level of service in an existing program, but rather creates an entirely different program. Instead of a permanent absent voter program created for a select group of voters who provide proof of certain disabling conditions, the Legislature now allows any registered voter to file with county elections officials for permanent absent voter status. Operative January 1, 2002 a new permanent absent voter program was substituted for the previous reimbursable state mandate.

Therefore, the Commission finds that Elections Code section 3201, mandates a new program or higher level of service on counties for the following activity:

- County elections officials shall make an application for permanent absent voter status available to any voter.

The above activity replaces the activity in *Permanent Absent Voters I* which was limited to those voters who provided evidence of certain physical disabilities.

Elections Code Section 3203:

As reenacted and renumbered by Statutes 1994, chapter 920, and subsequently amended by Statutes 1996, chapter 724,[29] Statutes 2001, chapter 922, and Statutes 2003, chapter 347, Elections Code section 3203 provides:

> (a) Upon receipt of an application for permanent absent voter status, the county elections official shall process the application in the same manner as an application for a regular absent voter's ballot, or, in the case of an application made pursuant to Section 3100 or 3304, in the same manner as an application for a special absent voter ballot or overseas ballot.
>
> (b) In addition to processing applications in accordance with Chapter 1 (commencing with Section 3000), if it is determined that the applicant is a registered voter, the county elections official shall do the following:
>
> (1) Place the voter's name upon a list of those to whom an absentee ballot is sent each time there is an election within their precinct.
>
> (2) Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Section 3206.
>
> (3) Maintain a copy of the absentee ballot voter list on file open to the public inspection for election and governmental purposes.

Statutes 2001, chapter 922 added subdivision (b)(2) requiring the inclusion of an explanation of absentee voting procedures and of Elections Code section 3206 in all absentee ballot mailings.

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[29] Made non-substantive changes.

Statutes 2003, chapter 347 added the clause in subdivision (a) referencing Elections Code sections 3100 and 3304.

Prior to the amendment by Statutes 2001, chapter 922, county elections officials did not have a statutory duty to "Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Section 3206." Elections Code section 3206 is the provision that requires counties to purge names from the permanent absent voter rolls when a voter fails to return an absentee ballot for specified elections. Providing this information to voters mandates a new program or higher level of service upon counties for the following activity:

- Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206.

The remainder of Elections Code section 3203 is substantively identical to prior law, which was already decided by the Commission in *Permanent Absent Voters I*, and remains a reimbursable state-mandated program.

<u>Elections Code Section 3205:</u>

As reenacted and renumbered by Statutes 1994, chapter 920, and subsequently amended by Statutes 2001, chapter 925, Elections Code section 3205 provides:

> (a) Absent voter ballots mailed to, and received from, voters on the permanent absent voter list are subject to the same deadlines and shall be processed and counted in the same manner as all other absent voter ballots.
>
> (b) Prior to each primary election, county elections officials shall mail to every voter not affiliated with a political party whose name appears on the permanent absent voter list a notice and application regarding voting in the primary election. The notice shall inform the voter that he or she may request an absentee ballot for a particular political party for the primary election, if that political party adopted a party rule, duly noticed to the Secretary of State, authorizing these voters to vote in their primary. The notice shall also contain a toll-free telephone number, established by the Secretary of State, that the voter may call to access information regarding which political parties have adopted such a rule. The application shall contain a check-off box with a conspicuously printed statement that reads as follows: "I am not presently affiliated with any political party. However, for this primary election only, I request an absentee ballot for the ____ Party." The name of the political party shall be personally affixed by the voter.

Subdivision (a) is substantively identical to prior law, which was already determined in *Permanent Absent Voters I*. The Commission finds that when a statute is renumbered or reenacted, only substantive changes to the law creating new duties or activities meets the criteria for finding a reimbursable state mandate. Thus, the Commission finds that Elections Code section 3205, subdivision (a), as reenacted and renumbered by Statutes 1994, chapter 920, does not mandate a new program or higher level of service. However, any references to former Elections Code section 1455 in the *Permanent Absent Voters I* parameters and guidelines should be designated by the new numbers when the parameters and guidelines are amended.

Subdivision (b) was added by Statutes 2001, chapter 925, however this statute was not pled as part of this test claim. Claimant instead states on page 3, footnote 3, of the test claim filing: "Please note that a test claim has been filed regarding this provision, which is commonly referred to as Modified Primary. That test claim, and all filings pertaining thereto, is incorporated herein by reference as though set forth in its entirety." Statutes 2001, chapter 925 was not included in the *Permanent Absent Voters II* test claim filing, and another test claim cannot be incorporated by reference due to requirements that all test claims be pled with specificity (former Cal. Code Regs., tit. 2, section 1183, subd. (d)(1), now codified as Gov. Code, § 17553.) Therefore the Commission cannot reach the merits on Elections Code section 3205, subdivision (b) as part of the present test claim decision.

Elections Code Section 3206:

Elections Code section 3206 was reenacted and renumbered by Statutes 1994, chapter 920, as discussed above. The *Permanent Absent Voters I* parameters and guidelines already includes an activity for deleting from the permanent absent voter list any person who fails to return an executed absent voter ballot for any statewide primary or general election. The section was later amended to remove the reference to "primary," and then again to require that a person be removed only after failing to vote in two consecutive general elections. However, those statutes have not been pled by the claimant, therefore the Commission does not have jurisdiction to make any findings on any this section.[30] However, the basic activity of deleting permanent absent voters from the list when they do not vote in an election remains a reimbursable activity.

Thus, the Commission finds that Elections Code section 3206, as reenacted and renumbered by Statutes 1994, chapter 920, does not mandate a new program or higher level of service. However, any references to former Elections Code sections 1456 in the *Permanent Absent Voters I* parameters and guidelines should be designated by the new number when the parameters and guidelines are amended.

Special Absentee Voters: New Program Alleged Mandated by Statutes 2003, Chapter 347:

In the test claim amendment filed on January 27, 2004, claimant contends that Election Code sections 3100, 3101,[31] and 3103, as amended by Statutes 2003, chapter 347,[32] constitute a

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[30] The claimant pled Statutes 2003, chapter 347, but the section was amended by the later-enacted Statutes 2003, chapter 819 (see Gov. Code, § 9605), and then again by Statutes 2005, chapter 113.

[31] Page 5 of the Amended Test Claim Filing actually lists section "3191," but as the rest of the numbers are in sequence, this is presumed to be a typographical error.

[32] Although on page 5 of the Amended Test Claim Filing, claimant states: "The mandated activities are contained in Elections Code, Sections ... 3104, 3106, 3108, 3110,..." claimant does not make any allegations regarding these sections in the narrative. The Commission's process requires that all test claims be pled with specificity (former Cal. Code Regs., tit. 2, section 1183, subd. (d)(1), now codified as Gov. Code, § 17553. Gov. Code, § 17553, subd. (b)(2)(C) requires: "Declarations *describing new activities performed to implement specified provisions of the new statute* or executive order alleged to impose a reimbursable state-mandated program. Specific references shall be made to chapters, articles, sections, or page numbers alleged to

reimbursable state-mandated program. These code sections are not directly related to the *Permanent Absent Voters I* test claim. Claimant's allegations regarding this statute follow:

> Additionally, with the passage of AB 188, Chapter 347, Statutes of 2003, there is a new absent voter, the "special absentee voter" under Section 3100. Pursuant to section 3103(e), [sic, reference is to subd. *(f)*] said person may register to vote by fax, and elections materials may be sent via e-mail, fax or other electronic transmission. However, if the person requests permanent absentee status, the application is to be transmitted pursuant to Section 3101.

For background, a "special absentee voter" is defined in Elections Code section 300, as "an elector who is any of the following: (1) A member of the armed forces of the United States or any auxiliary branch thereof. (2) A citizen of the United States temporarily living outside of the territorial limits of the United States or the District of Columbia. (3) Serving on a merchant vessel documented under the laws of the United States. (4) A spouse or dependent of a member of the armed forces or any auxiliary branch thereof."

<u>Elections Code Section 3100:</u>

Prior to amendment by Statutes 2003, chapter 347, Elections Code section 3100 provided:

> When a special absentee voter applies for an absent voter's ballot and the elections official determines that he or she is not registered to vote, the elections official shall send the affidavit of registration card with the ballot. The affidavit of registration must be completed by the voter and returned with the voted ballot or the ballot shall not be counted.
>
> If the application has been made upon a federal form for absentee ballots the form shall be deemed an affidavit of registration and the applicant shall be considered registered for that election only. If the special absentee voter requests an absentee ballot for the ensuing primary election, the elections official shall also consider the request valid for the ensuing general election.
>
> If the applicant is not a resident of the county to which he or she has applied, the elections official receiving the application shall forward it immediately to the proper county.

Elections Code section 3100, as amended, removes the second paragraph, but leaves the third paragraph unchanged. The first paragraph now reads:

> When a voter who qualifies as a special absentee voter pursuant to subdivision (b) of Section 300 applies for an absent voter's ballot, the application shall be deemed to be an affidavit of registration and an application for permanent absentee voter status, pursuant to Chapter 3 (commencing with Section 3200). The application must be completed by the voter and must contain the voter's name, residence

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impose a reimbursable state-mandated program.") Therefore, the Commission will not address Elections Code sections 3104, 3106, 3108, and 3110 in this decision.

> address for voting purposes, the address to which the ballot is to be sent, the voter’s political party for a primary election, and the voter’s signature.

Thus, there is no *new* type of absent voter established by Statutes 2003, chapter 347 – the law has long established a category of “special absentee voter.” The amended section allows an application for an absentee ballot to be considered both a permanent absentee ballot request and a registration to vote, eliminating the requirement to send a registration card with the absent voter’s ballot if the requestor was not properly registered. In addition, since the request for an absent voter’s ballot under this section is “deemed to be ... an application for permanent absentee voter status, pursuant to Chapter 3 (commencing with Section 3200)” any activities associated with new permanent absent voters are reimbursable under Elections Code section 3200 through 3206, as discussed above. Thus, the Commission finds that amendment to Elections Code section 3100 by Statutes 2003, chapter 347, does not in and of itself mandate a new program or higher level of service.

Elections Code Section 3101:

Amendment by Statutes 2003, chapter 347 to Elections Code section 3101, is indicated by underline and strikethrough:

> Upon timely receipt of the ~~affidavit of registration and the voted~~ application for an absentee ballot, the elections official shall examine the ~~affidavit~~ application to ascertain that it is properly executed in accordance with this code ~~and that the applicant is a qualified elector of the county.~~ If the elections official is satisfied of ~~these~~ this fact~~s~~, the applicant shall be deemed a duly registered voter as of the date appearing on the ~~affidavit~~ application to the same extent and with the same effect as though he or she had registered in proper time prior to the election.

These amendments reflect the fact that section 3100, as discussed above, no longer requires elections officials to send a registration card with the special absent voter’s ballot if the requestor was not properly registered, but rather may consider the absent ballot request alone to be an executed voter registration. The Commission finds that the changes to Elections Code section 3101 by Statutes 2003, chapter 347 does not mandate a new program or higher level of service; in fact, it may reduce the burden on elections officials.

Elections Code Section 3103, Subdivision (f):

Amendment by Statutes 2003, chapter 347 to Elections Code section 3103, subdivision (f), is indicated by underline and strikethrough:

> (f) Notwithstanding any other provision of law, a special absentee voter who qualifies pursuant to this section may, by facsimile transmission, register to vote and apply for an absent voter’s ballot. Upon request, the elections official ~~shall~~ may send to the qualified special absentee voter either by mail, ~~or~~ facsimile, or electronic transmission the special absentee ballot or, if available, an absent~~’s~~ voter’s ballot pursuant to Chapter 1 (commencing with Section 3000).

The primary amendment by Statutes 2003, chapter 347 changes the word “shall” to “may” regarding available formats for transmitting the absent ballot. The Commission finds that such changes to Elections Code section 3103 by Statutes 2003, chapter 347 does not mandate a new program or higher level of service; but again may reduce the burden on elections officials.

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

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

CONCLUSION

The Commission concludes that Elections Code sections 3201 and 3203, subdivision (b)(2) mandates a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- County elections officials shall make an application for permanent absent voter status available to any voter. (Elec. Code, § 3201.)[33]

The above activity replaces the activity in *Permanent Absent Voters I* which was limited to those voters who provided evidence of certain physical disabilities.

- Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Elections Code section 3206. (Elec. Code, § 3203, subd. (b)(2).)[34]

The Commission concludes that Elections Code sections 3200, 3202, 3203, subdivisions (a) and (b)(1) and (b)(3), 3204, 3205, subdivision (a) and 3206, as renumbered and reenacted by Statutes 1994, chapter 920 do not mandate *new* reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514, but remain a part of the *Permanent Absent Voter* program, as it now exists. Any references to former Elections Code sections 1450, 1452, 1454, 1455 and 1456 in the *Permanent Absent Voters I* parameters and guidelines should be designated by their new numbers when the parameters and guidelines are amended as described above.

In addition, the Commission concludes that Statutes 2003, chapter 347, as it amended Elections Code sections 3100, 3101 and 3103, does not mandate a new program or higher level of service.[35]

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[33] As amended by Statutes 2001, chapter 922, Statutes 2002, chapter 664, and Statutes 2003, chapter 347. The reimbursement period for this claim begins no earlier than July 1, 2002, based on the initial test claim filing date of September 26, 2003. (Gov. Code, § 17557, subd. (c).)

[34] As amended by Statutes 2001, chapter 922. The reimbursement period for this claim begins no earlier than July 1, 2002, based on the initial test claim filing date of September 26, 2003. (Gov. Code, § 17557, subd. (c).)

[35] Allegations regarding Elections Code sections 3104, 3106, 3108, and 3110 were not pled with specificity and thus were not addressed in this decision.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES FOR: Former California Code of Regulations, Title 2, Sections 20121, 20122, 20123, 20124, 20125, and 20126[1] Register 2008, No. 43 Period of reimbursement is from October 20, 2008 through November 28, 2008.	Case No.: 10-TC-08 *Post Election Manual Tally (PEMT)* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted September 26, 2014*) (*Served September 29, 2014*) (*Corrected December 19, 2014*)

CORRECTED PARAMETERS AND GUIDELINES DECISION

On September 26, 2014, the Commission on State Mandates (Commission) adopted the attached decision and parameters and guidelines in the above-entitled matter. Pursuant to California Code of Regulations, title 2, section 1187.11(b), the attached corrected caption for the decision of the Commission is hereby issued to accurately reflect the approved code sections 20121, 20122, 20123, 20124, 20125, and 20126 instead of 20120 through 20127.

Heather Halsey, Executive Director

[1] The regulations were adopted as emergency regulations by Register 2008, No. 43, operative from October 20, 2008 to April 12, 2009. The Commission does not have jurisdiction over their re-adoption and renumbering by Register 2009, No. 16, operative April 13, 2009.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES FOR: Former California Code of Regulations, Title 2, Sections 20121, 20122, 20123, 20124, 20125, and 20126 [1] Register 2008, No. 43 Period of reimbursement is from October 20, 2008 through November 28, 2008.	Case No.: 10-TC-08 *Post Election Manual Tally (PEMT)* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted September 26, 2014*) (*Served September 29, 2014*) (*Corrected December 19, 2014*)

CORRECTED DECISION

The Commission on State Mandates (Commission) adopted this decision and parameters and guidelines during a regularly scheduled hearing on September 26, 2014. Anne Rierson and Renee Bischof appeared on behalf of claimant, County of Santa Barbara. Donna Ferebee and Lee P. Scott appeared on behalf of the Department of Finance.

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

The Commission adopted the decision and parameters and guidelines by a vote of 6-0.

On December 19, 2014, the caption for the parameters and guidelines decision was corrected to accurately reflect the approved code sections 20121, 20122, 20123, 20124, 20125, and 20126 instead of 20120 through 20127.

I. SUMMARY OF THE MANDATE

These parameters and guidelines address regulations requiring new standards and procedures to conduct post election manual tallies (PEMT) 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. The activities include determining the margin of victory and whether a ten percent manual tally is required for each contest. For races with less than a one-half percent margin of victory, counties select and manually tally nine percent of the precincts in the contest, and perform related duties.

[1] The regulations were adopted as emergency regulations by Register 2008, No. 43, operative from October 20, 2008 to April 12, 2009. The Commission does not have jurisdiction over the re-adoption and renumbering in Register 2009, No. 16, operative April 13, 2009.

On July 25, 2014, the Commission on State Mandates (Commission) adopted a decision on the test claim finding that test claim regulations (former Cal. Code Regs., tit. 2, §§ 20120 – 20127) impose a partially reimbursable state-mandated program on county election agencies within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514. The Commission approved the test claim for the reimbursable activities found under Section IV. Reimbursable Activities.

II. PROCEDURAL HISTORY

The test claim decision was adopted on July 25, 2014.[2] Commission staff issued draft expedited parameters and guidelines on July 30, 2014.[3] The State Controller's Office (Controller) submitted comments on the draft expedited parameters and guidelines on August 20, 2014, recommending changes to the test claim filing date and reimbursement eligibility dates, and to citations.[4] Cost Recovery Systems, Inc. (CRS) filed late comments on August 29, 2014, requesting that cities be added as eligible claimants.[5]

III. COMMISSION FINDINGS

A. Section II, Eligible Claimants

The draft expedited parameters and guidelines state that eligible claimants are: "Any county and city and county that incurs increased costs as a result of this mandate are eligible to claim reimbursement."

On August 29, 2014, CRS filed comments requesting that cities be included as eligible claimants. CRS states that because cities also administer elections, they are subject to the same requirements under the PEMT regulations.

The Commission disagrees. It is true that the regulations expressly apply to "elections officials,"[6] which are defined by statute to include both county as well as city elections officials,[7] and that city officials conduct municipal elections.[8]

The regulations in this case, however, apply only to the November 2008 Presidential General Election, which, as a November election held in an even-numbered year, was a statewide election.[9] Statewide elections are generally required to be consolidated with municipal elections held on the same date,[10] and the canvassing rules that govern statewide elections apply to

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[2] Exhibit A.

[3] Exhibit B.

[4] Exhibit C.

[5] Exhibit D.

[6] See former California Code of Regulations, title 2, section 20120(b).

[7] Elections Code section 320.

[8] Elections Code section 10262(a). According to Elections Code section 330: "'Municipal election' means elections in general law cities and where applicable in chartered cities."

[9] Elections Code 1001.

[10] Elections Code section 10402.5.

consolidated elections.[11] In consolidated elections, county elections officials canvass the election.[12] That is why the regulations were promulgated from the Secretary of State to county clerks/registrars of voters,[13] and why the Economic Impact Statement filed with the March 2009 reauthorization of the regulations lists only counties as entities that had incurred costs.[14]

Because any municipal elections held during the November 2008 Presidential General Election would have been consolidated with the statewide election, cities are not eligible claimants because city elections officials were not required to comply with the test claim regulations. Moreover, no evidence has been submitted into the record of any costs incurred by a city under the test claim regulations.

Therefore, the Commission finds that any county or city and county that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

B. Section III, Period of Reimbursement

Government Code section 17557(c) requires the Commission to specify in the parameters and guidelines the fiscal years for which local agencies shall be reimbursed for costs incurred as a result of the mandated program. The period of reimbursement is established as the fiscal year before the fiscal year the test claim is submitted. Government Code section 17557(e) states that "[a] test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year." Government Code section 17551(c) establishes a statute of limitations for submitting test claims with the Commission as follows: "Local agency and school district test claims shall be filed not later than 12 month 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."

The PEMT regulations were adopted and became operative on October 20, 2008.[15] The claimant first incurred actual costs as a result of the regulations less than one month later, beginning November 10, 2008.[16] The test claim was filed on March 28, 2011. However, although the test claim was filed nearly two and a half years after the effective date of the regulations and the date actual costs were incurred, the Commission found that it had jurisdiction to hear and determine the test claim since the statute of limitations for filing this test claim was properly tolled.

The claimant first incurred costs in this case on November 10, 2008, and under section 17551(c) and 1183.1(b) of the Commission's regulations, the deadline for filing the claim was June 30,

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[11] Elections Code section 10418.

[12] Government Code section 25201. Elections Code sections 10413 and 10262 (b).

[13] Exhibit D. California Secretary of State, memo to County Clerk/Registrar of Voters, October 21, 2008. See <http://www.sos.ca.gov/elections/ccrov/pdf/2008/october/08304jh.pdf> accessed on September 2, 2014.

[14] Exhibit D. California Secretary of State, memo to County Clerk/Registrar of Voters, March 24, 2009. See <https://www.sos.ca.gov/elections/ccrov/pdf/2009/march/09048jb.pdf> accessed on September 2, 2014.

[15] Register 2008, No. 43, operative October 20, 2008.

[16] Exhibit A, page 23.

2010. However, 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 (LDM) for the PEMT emergency regulations.[17] On November 12, 2009, the Commission notified CSAC and the Department of Finance of their receipt of the letter of intent and advising that the statute of limitation for filing a test claim shall be tolled as of October 22, 2009, pursuant to Government Code section 17573(b).[18]

Thus, the parties initially attempted to negotiate and jointly request an LDM pursuant to Government Code sections 17573 and 17574 for the reimbursement of costs to comply with the PEMT regulations. Under Government Code section 17573(b), the statute of limitations in section 17551(c) for filing a test claim is tolled during those negotiations *from* the date a local agency contacts the Department of Finance or responds to a Finance request to initiate a joint request for an LDM - *to* the date that the Budget Act for the subsequent fiscal year is adopted if a joint request is submitted to the Legislature, *or to* the date on which one of the parties notifies the other of its decision to not submit a joint request to the Legislature for an LDM. The Commission determined that since the notice of intent to develop an LDM was filed with the Commission on November 2, 2009, *before* the June 30, 2010 deadline for filing the test claim under Government Code section 17551(c) (based on when costs were first incurred by the claimant),[19] the notice was timely and the statute of limitations required by section 17551(c) was properly tolled until April 5, 2011, when the parties filed notice that they were not submitting a joint request for an LDM to the Legislature. Under the law, whatever period of time that remained to file a test claim when the clock was stopped on November 2, 2009, here 240 days, was available when the clock was restarted after the tolling period ended.[20] The statute of limitations is suspended during the time the limitation period is tolled.[21] In this case, the claimant timely filed the test claim on March 28, 2011, 8 days before the clock restarted on April 5, 2011, when notice of the failure of negotiations was received by Commission staff, and well before the tolled statute of limitations would have expired on November 15, 2011.

The Controller, in comments on the draft expedited parameters and guidelines, requests clarification of the period of reimbursement and suggests that it should begin June 30, 2009 based on Government Code section 17557(e), which as explained above, establishes the period of reimbursement as the fiscal year before the fiscal year the test claim is submitted with the

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[17] California State Association of Counties, letter notifying Commission staff of intent to develop a legislatively determined mandate (LDM), filed November 2, 2009 (although the letter was dated October 22, 2009).

[18] Commission on State Mandates, letter notifying CSAC and the Department of Finance that the statute of limitations for filing a test claim would be tolled as of October 22, 2009, November 12, 2009.

[19] Government Code section 17574(d) provides that a test claim shall not be filed if the statute of limitations specified in Government Code section 17551(c) expired before the date an LDM was adopted.

[20] *Don Johnson Productions, Inc. v. Rysher Entertainment* (2012) 209 Cal.App.4th 919, 929.

[21] *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 370.

Commission. However, the Controller's interpretation would ignore that the statute of limitations for filing this claim was properly tolled under Government Code section 17573(b), stopping the clock and providing additional time to file the claim in order to negotiate an LDM to a date *after* the regulations were repealed. The Commission was required by the statutes to take jurisdiction and make findings on the test claim. Moreover, the regulations were only effective from October 20, 2008 until April 12, 2009, and costs were only incurred under the program for a few weeks in fiscal year 2008-2009 until November 28, 2008, coinciding with the November 2008 Presidential General Election and canvass period. A finding that establishes the period of reimbursement in a year when test claim regulations were not in effect defeats the claimants' right to reimbursement and ignores the effect of the tolling, which expressly gives the parties additional time to negotiate an LDM and then file a test claim if negotiations fail. Such a conclusion would lead to an absurd result.[22]

The Legislature expressly considered the effect of the period of reimbursement when an LDM is approved by the Legislature. Government Code sections 17573 and 17574 do establish periods of reimbursement for programs approved as an LDM, "notwithstanding [the period of reimbursement provisions in] Government Code section 17557(e)."[23] However, sections 17573 and 17574 are silent on the period of reimbursement when LDM negotiations fail and a test claim is later filed within the tolled time.

Nevertheless, in order to carry out the Legislature's intent when enacting the tolling provision in Government Code section 17573(b), the reimbursement period in Government Code section 17557(e) must be applied as if the claim were timely filed. As discussed above, the clock stops when the statute of limitations is tolled and thus, it is as if the claim were actually filed by the June 30, 2010 deadline for a 2008-2009 period of reimbursement. Since the PEMT regulations did not become effective until October 20, 2008, and costs were only incurred until November 28, 2008 (the end of the canvass period of the November 2008 Presidential General Election),

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[22] *People v. Gonzalez* (1990) 51 Cal.3d 1179, 1221.

[23] For example, section 17573(d) provides that a joint request for an LDM may be submitted to the Legislature at any time after the enactment of a statute or executive order, regardless of whether a test claim is pending with the Commission. Section 17573(d) further states that *"[i]f a test claim is pending before the commission, the period of reimbursement established by that filing shall apply to a joint request filed pursuant to this section*." If the Legislature adopts the LDM and the claimant to the pending test claim agrees to the reimbursement terms of the LDM, then section 17574(a)(4) requires the claimant to withdraw the test claim. In addition, if an LDM is adopted by the Legislature, Government Code section 17574(c) also allows filing a subsequent test claim when the Legislature amends the reimbursement methodology of the LDM, the term of the LDM is amended and the local agency rejects reimbursement under the new term, and when the Legislature fails to appropriate funds or does not repeal or suspend the mandate. Under these limited circumstances, a test claim may be filed on the same statute or executive order as the LDM within six months, and a period of reimbursement is established by section 17574(e) beginning with the fiscal year of the Legislature's subsequent action or inaction on the LDM. Government Code section 17574(e) states: "Notwithstanding the period of reimbursement specified in subdivision (e) of Section 17557, a test claim filed pursuant to this section *shall establish eligibility for reimbursement beginning with the fiscal year of an actio*n described in subparagraph (A), (B), (C), or (D) of paragraph (1) of subdivision (c)."

the period of reimbursement for this program is from October 20, 2008 through November 28, 2008.

Therefore, the following paragraph was added to Section III of the parameters and guidelines explaining the tolling of the statute of limitations for an LDM and the resulting period of reimbursement:

> Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year.
>
> The test claim regulations were adopted and became operative on October 20, 2008. The claimant incurred actual costs as a result of the regulations beginning November 10, 2008. The test claim was filed on March 28, 2011. Although the test claim was filed nearly two and a half years after the effective date of the regulations and the date actual costs were incurred, the statute of limitations was tolled pursuant to Government Code sections 17573 and 17574 and the claim was thus timely filed.
>
> In cases where the statute of limitations is properly tolled pursuant to Government Code section 17573(b), the reimbursement period in Government Code section 17557(e) must be applied as if the claim were filed absent the tolling and within the original time limitations required by Government Code section 17551(c). Pursuant to Government Code section 17551(c) and section 1183.1(b) of the Commission's regulations, the deadline for filing this test claim was June 30, 2010, based on the date when costs were first incurred by the claimant, establishing a period of reimbursement in fiscal year 2008-2009. Since the test claim regulations did not become effective until October 20, 2008, and costs were only incurred until November 28, 2008 (the end of the canvass period of the November 2008 Presidential General Election), ***the period of reimbursement for this program is from October 20, 2008 through November 28, 2008***.

C. <u>Section IV, Reimbursable Activities</u>

The Commission's regulations require the parameters and guidelines to identify the activities found to be mandated by the state and any activities determined to be reasonably necessary.[24] No reasonably necessary activities were requested, so the parameters and guidelines simply identify the activities listed in the test claim decision, which directly quote the test claim regulations, except where needed to be consistent with the Commission's findings (e.g., a nine-percent tally is reimbursable instead of the ten-percent tally required under the regulations) and for purposes of clarification.

The Controller requests adding the word "former" to a citation of the repealed test claim regulation (§ 20121(b)). This change was made.

The Controller also requests changes to the regulatory citations for Activities 2(a) and (b), addressing contests voted upon in more than one jurisdiction to "be consistent with footnotes 2

[24] California Code of Regulations, title 2, section 1183.7(d).

and 3, respectively." The Controller's proposed change to Activity 2(a) is in strikeout and underline as follows:

> 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 10 percent manual tally is required by former California Code of Regulations, title 2, section ~~20121(b)~~ 20122(a) by calculating the overall margin of victory in all jurisdictions in which votes were cast in the contest.[25]

The Commission denies this request. The language in Activity 2(a) is taken directly from former section 20122(a) of the test claim regulations. Changing the citation incorporated in that paragraph would misquote the plain language of the regulation.

The Controller also requests the following change to Activity 2(b), marked in strikeout and underline:

> b) For a legislative or statewide contest, the elections official shall determine whether a ten percent manual tally is required by former California Code of Regulations, title 2, section ~~2012l (b)~~ 20122(b) 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.[26]

The Commission also denies this request. Although the citation to former section 20121(b) is not in the plain language of section 20122(b), it is the correct citation to the first part of the language in section 20122(b) requiring that the "the elections official shall determine whether a ten percent manual tally is required." Former section 20121(b) states:

> (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%).

The remaining language then instructs the elections official, in contests voted upon in more than one jurisdiction, to base that determination "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."

In short, the activities identified in the parameters and guidelines are taken directly from the Commission's decision on the test claim.

D. Section IX, Remedies Before the Commission

Section IX of the proposed parameters and guidelines includes the following boilerplate paragraph:

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25 Former California Code of Regulations, title 2, section 20122(a).

26 Former California Code of Regulations, title 2, section 20122(b).

> Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.
>
> In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.17.

The Controller requests that the citation in the second paragraph be changed from section 1183.17 to 1183.2 of the Commission's regulations. The Commission denies this request. The Commission's regulations were amended and renumbered effective July 1, 2014, so the citation is correct.

IV. CONCLUSION

Based on the foregoing analysis, the Commission hereby adopts the proposed decision and parameters and guidelines.

Adopted September 26, 2014

PARAMETERS AND GUIDELINES

Former California Code of Regulations, Title 2, Division 7, Chapter 3,
Sections 20121, 20122, 20123, 20124, 20125, 20126

Register 2008, No. 43

Post Election Manual Tally (PEMT)

10-TC-08

The period of reimbursement is from October 20, 2008 (the effective date of the test claim regulations) through November 28, 2008 (the end of the canvass period).

I. SUMMARY OF THE MANDATE

These parameters and guidelines address activities associated with regulations requiring new standards and procedures 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. The activities include determining the margin of victory and whether a ten percent manual tally is required for each contest. For races with less than a one-half percent margin of victory, counties select and manually tally nine percent of the precincts in the contest and perform related duties.

On July 25, 2014, the Commission on State Mandates (Commission) adopted a decision on the test claim finding that test claim regulations impose a partially reimbursable state-mandated program on county election agencies within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514. The Commission approved the test claim for the reimbursable activities found under Section IV. Reimbursable Activities.

II. ELIGIBLE CLAIMANTS

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

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year.

The test claim regulations were adopted and became operative on October 20, 2008. The claimant incurred actual costs as a result of the regulations beginning November 10, 2008. The test claim was filed on March 28, 2011. Although the test claim was filed nearly two and a half years after the effective date of the regulations and the date actual costs were incurred, the statute of limitations was tolled pursuant to Government Code sections 17573 and 17574 and the claim was thus timely filed.

In cases where the statute of limitations is properly tolled pursuant to Government Code section 17573(b), the reimbursement period in Government Code section 17557(e) must be applied as if the claim were filed absent the tolling and within the original time limitations required by Government Code section 17551(c). Pursuant to Government Code section 17551(c) and section 1183.1(b) of the Commission's regulations, the deadline for filing this test claim was June 30, 2010, based on the date when costs were first incurred by the claimant, establishing a period of reimbursement in fiscal year 2008-2009. Since the test claim regulations did not become effective until October 20, 2008, and costs were only incurred until November 28, 2008 (the end of the canvass period of the November 2008 Presidential General Election), ***the period of reimbursement for this program is from October 20, 2008 through November 28, 2008***.

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

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller (Controller) within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)
5. If the total costs for a given fiscal year do not exceed $1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a)
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

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

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

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

For each eligible claimant that incurs increased costs, the following activities are reimbursable from October 20, 2008, through November 28, 2008:

1. After each election, determine the margin of victory as defined for single winner elections, multi-winner elections, and ballot measure contests in each contest based upon the semifinal official canvass results.[1]
2. For 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 10 percent manual tally is required by former California Code of Regulations, title 2, section 20121(b), by calculating the overall margin of victory in all jurisdictions in which votes were cast in the contest.[2]
   b) For a legislative or statewide contest, the elections official shall determine whether a ten percent manual tally is required by former California Code of Regulations, title 2, section 20121(b), 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.[3]
3. For any contest in which the margin of victory is *less than* one-half of one percent,
   a) Randomly select precincts, using a random number generator, until *nine percent* of the precincts in the contest have been selected.
   b) Manually tally the results for that contest from the precincts selected for the *nine percent* sample. The manual tally shall begin as soon as practicable after the random selection of precincts for the manual tally. The manual tally shall be conducted in public view by hand without the use of electronic scanning equipment.[4]
   c) When manually tallying the results, take appropriate measures to ensure that direct recording electronic ballots that were cancelled before being cast and ballots that are damaged or defective are not inadvertently tallied as valid ballots in the manual tally process.[5]
4. Document and disclose to the public any variances between the semifinal official canvass results and the manual tally results for *nine percent* of the precincts.[6]
5. For any contest with one or more variances, calculate the variance percentage 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

[1] Former California Code of Regulations, title 2, section 20121(a).

[2] Former California Code of Regulations, title 2, section 20122(a).

[3] Former California Code of Regulations, title 2, section 20122(b).

[4] Former California Code of Regulations, title 2, section 20121(b)(e)(f).

[5] Former California Code of Regulations, title 2, section 20121(i)(j).

[6] Former California Code of Regulations, title 2, section 20123(b).

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.[7]

6. If the variance percentage represents at least one-tenth 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.[8] Additional precincts shall be tallied in randomly selected blocks of five percent until the total number of variances presumed to exist – re-calculated pursuant to California Code of Regulations, title 2, section 20124(a) – is smaller than 10 percent 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.[9]

7. Preserve the voter verifiable paper audit trail (VVPAT) records, memory cards and devices, and direct recording electronic voting machines and notify the Secretary of State if any variance is found between the manually tallied VVPAT and corresponding electronic vote results that cannot be accounted for by some obvious mechanical problem.[10]

8. Keep and make available to the public a log to record the manual tally process for all precincts selected, 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 California Code of Regulations, title 2, sections 20120 et seq.[11]

9. Track, record in the log, and report to the public by each precinct, the number of undervotes and overvotes discovered in the manual tally of a contest.[12]

10. Revise the notice prepared pursuant to Elections Code section 15360(d), to include the time and place of the initial selection of precincts for the additional *nine percen*t manual tally and any additional random selection of precincts which may become necessary to comply with escalation requirements.[13]

    The costs to prepare the notice for the one percent manual tally required by Elections Code section 15360(d), and to issue and post the combined notice are not new and are not reimbursable.

11. Permit the public to observe all parts of the manual tally process, including the random selection of precincts, in a manner that allows the public to verify the tally.

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[7] Former California Code of Regulations, title 2, section 20124(a).

[8] Former California Code of Regulations, title 2, section 20124(a).

[9] Former California Code of Regulations, title 2, section 20124(b).

[10] Former California Code of Regulations, title 2, section 20124(c).

[11] Former California Code of Regulations, title 2, section 20125(a).

[12] Former California Code of Regulations, title 2, section 20125(b).

[13] Former California Code of Regulations, title 2, section 20126(b).

V. CLAIM PREPARATION AND SUBMISSION

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

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

4. Fixed Assets

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

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

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

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

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR part 225, appendix A and B (OMB Circular A-87 attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR part 225, appendix A and B (OMB Circular A-87 attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable. The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

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

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

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[14] is subject to the initiation of an

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

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

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

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

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

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

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

IX. REMEDIES BEFORE THE COMMISSION

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

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

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

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

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Elections Code Section 14310 as amended by Statutes 2000, Chapter 260 (SB 414); Filed on October 1, 2003, By County of San Bernardino, Claimant.	No. 03-TC-23 *Voter Identification Procedures* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (Adopted on October 4, 2006)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

______________________________ ______________

PAULA HIGASHI, Executive Director Date

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM: Elections Code Section 14310 as amended by Statutes 2000, Chapter 260 (SB 414); Filed on October 1, 2003, By County of San Bernardino, Claimant.	Case No.: 03-TC-23 *Voter Identification Procedures* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (Adopted on October 4, 2006)

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on October 4, 2006. Bonnie Ter Keurst, appeared for the claimant, County of San Bernardino. Carla Castañeda and Susan Geanacou appeared on behalf of the Department of Finance (DOF).

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 section 17500 et seq., and related case law.

The Commission adopted the staff analysis to partially approve this test claim at the hearing by a vote of 6-0.

Summary of Findings

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

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

Claimant alleges that prior to this amendment: "the county elections official was not legally required to perform provisional ballot signature comparison for voter identification purposes. ...

Enactment of this statute has increased the duties of the county elections official, and requires the official to provide a higher-level of service for an existing program."

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

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

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

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

The Commission concludes that in a case where a local government calls a special election that could have otherwise been legally consolidated with the next local or statewide election, holding the special election is a voluntary decision on the part of the local government, and the downstream costs for checking signatures on provisional ballots are not reimbursable.

BACKGROUND

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

> A voter is asked to vote a provisional ballot at the polls due to one of the following reasons:
>
> - **The voter's name is not on the official roster of voters and the election officer cannot verify the voter's voting eligibility on Election Day.** The Elections Official's Office will check the registration records. If further research determines that the voter is eligible to vote in the election, the provisional ballot will be counted.
> - **A voter has moved within the county, but did not re-register to vote.** The Elections Official will verify the voter's prior registration before the provisional ballot will be counted. The voter's registration will then be updated with the voter's current address.

[1] At < http://www.ss.ca.gov/elections/elections_provisional.htm> (as of Oct. 4, 2006.)

- **Records indicate that the voter requested an absentee ballot and the voter fails to turn in the absentee ballot at the polls on Election Day.** The Elections Official's Office will check the records, and if the voter did not vote an absentee ballot, the voter's provisional ballot will be counted.
- **The voter is a first- time Federal Election voter in the county and was unable to provide the required proof of identification.** The Elections Official's Office will verify the voter's eligibility to vote by comparing the signature on the voter's registration with the signature on the provisional ballot envelope.

> Provisional ballots are counted during the official canvass[2] when:
>
> Prior to the completion of the official canvass (the vote tally), the Elections Official's Office establishes, from voter registration records, the claimant's right to vote the ballot.

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

Claimant's Position

Claimant, County of San Bernardino, filed this test claim on October 1, 2003.[3] Claimant contends that Elections Code section 14310, as amended by Statutes 2000, chapter 260, constitutes a reimbursable state-mandated program, "by requiring the elections official to compare signatures on provisional ballot envelopes with the signatures on the voter's affidavit of registration for voter identification purposes."

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

Department of Finance's Position

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

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

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

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

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

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

COMMISSION FINDINGS

The courts have found that article XIII B, section 6, of the California Constitution[4] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[5] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[6] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[7] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[8]

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

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

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

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

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

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

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

legislation.[10] A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”[11]

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

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[13] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”[14]

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

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

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

Accordingly, the Commission finds that the test claim statute constitutes a “program” and, thus, may be subject to subvention pursuant to article XIII B, section 6 of the California Constitution *if*

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

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

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

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

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

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

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

the statute also mandates a new program or higher level of service, and costs mandated by the state.

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

Elections Code Section 14310:

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

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

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

> (c)(1) During the official canvass, the elections official[18] shall examine the records with respect to all provisional ballots cast. Using the procedures that apply to the comparison of signatures on absentee ballots, the elections official shall compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration. If the signatures do not compare, the ballot shall be rejected. A variation of the signature caused by the substitution of initials for the first or middle name, or both, shall not invalidate the ballot.

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

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

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

[18] Elections Code section 320 provides the following definition:

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

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

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

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

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

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

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

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

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

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

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

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

Thus, the Court held as follows:

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

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

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

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

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[22] *Id.* at page 731.

[23] *Ibid.*

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

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

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

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

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

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

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

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

Elections Code section 1300 et seq contain the general elections date provisions for local agencies and school districts. Elections Code section 1303, for example, requires that "the regular election to select governing board members in any school district, community college district, or county board of education shall be held on the first Tuesday after the first Monday in November of each odd-numbered year." The Commission finds that eligible costs from the

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

Voter Identification Procedures program are reimbursable, for this type of regular, statutorily-required local election.

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

> The legislative body of *the city may submit to the voters*, *without a petition therefor, a proposition* for the repeal, amendment, or enactment of any ordinance, to be voted upon at any succeeding regular or special city election, and if the proposition submitted receives a majority of the votes cast on it at the election, the ordinance shall be repealed, amended, or enacted accordingly. A proposition may be submitted, or *a special election may be called for the purpose of voting on a proposition*, by ordinance or resolution. The election shall be held not less than 88 days after the date of the order of election.

Using this example, if city officials call for a special municipal election for a vote on such a proposition, at a time other than a scheduled statewide election, this is a voluntary election on the part of the city. There are many such examples found in the Elections Code, where special elections may be called at the option of a local government, or they can be held and consolidated with other elections.[26] In broad terms, the Commission finds that in a case where a local government calls a special election that could have otherwise been legally consolidated with the next local or statewide election, holding the special election is a voluntary decision on the part of the local government, and the downstream costs for checking signatures on provisional ballots are not reimbursable under the *Kern* decision.

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

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

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

CONCLUSION

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

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

The Commission concludes that in a case where a local government calls a special election that could have otherwise been legally consolidated with the next local or statewide election, holding the special election is a voluntary decision on the part of the local government, and the downstream costs for checking signatures on provisional ballots are not reimbursable.

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

Back to 2013 Issues

2013

Other Budget Issues

Last Updated:	3/13/2013
Budget Issue:	Reject Governor's proposal to suspend elections mandates
Program:	CSM
Finding or Recommendation:	Reject Governor's January budget proposal to suspend all elections mandates because doing so would put elections uniformity at risk. Instead, we recommend that the Legislature (1) fund the elections mandates at a cost of about $60 million in 2013 14 and (2) direct the administration to work with counties to explore alternative funding mechanisms for election mandates.

Further Detail

Background

Three Newly Identified Elections Mandates. Over the last year, the Commission on State Mandates has identified three mandates relating to the procedures local governments follow in administering elections.

- ***Voter Identification Procedures.***A provisional ballot is a regular ballot that has been sealed in a special envelope, signed by the voter, and then deposited in the ballot box. Provisional ballots may be required to prevent (1) unregistered individuals from voting or (2) registered voters from voting twice. Chapter 260, Statutes of 2000 (SB 414, Knight), requires local elections officials to compare signatures on provisional ballot envelopes with signatures on voter registration materials and, if the signatures do not match, reject the provisional ballot. The commission found that these voter identification requirements constitute a reimbursable mandate and estimated the statewide cost of this mandate to be about $6.4 million.
- ***Permanent Absent Voters II.***In the early 2000s, a series of legislation (Chapter 922, Statutes of 2001 [AB 1520, Shelley]; Chapter 664, Statutes of 2002 [AB 3034, Committee on Judiciary]; and Chapter 347 Statutes of 2003 [AB 188, Maze]) made all voters eligible for permanent absent voter status, instead of limiting eligibility to voters with specific disabilities or conditions. The commission ruled that local government costs to maintain lists of permanent absent voters is a reimbursable mandate and estimated its statewide cost to be about $2.3 million.
- ***Modified Primary Election.***Before 1996, California had a closed primary system that allowed only those voters affiliated with political parties to vote in party primaries. Proposition 198 (1996) created the blanket primary system that allowed voters not affiliated with political parties to vote in party primaries. After the U.S. Supreme Court determined in 2000 that the state's blanket primary system was unconstitutional, the Legislature approved Chapter 898, Statutes of 2000 (SB 28, Peace). Chapter 898 generally restored the law in

place before 1996, but also allows voters not affiliated with political parties to participate in party primaries at the party's discretion. The commission ruled that local costs to comply with Chapter 898 was a reimbursable mandate, but that the scope of this mandate was reduced in 2010 when voters approved Proposition 14, establishing the open primary system in use today. Under the commission's ruling, local costs to comply with Chapter 898's requirements are reimbursable for all elections through 2010. In subsequent years, however, the only local costs that are reimbursable are those related to primary elections for President and elections for party officials (elections not affected by Proposition 14). The commission estimated the statewide cost of this mandate to be slightly over $1 million.

Six Long-Standing Election Mandates. Over the three decades that the state's mandate laws have been in effect, the commission has identified many mandates relating to election procedures. Some of these earlier mandates have been repealed, but six remain. These long-standing mandates include the requirement that counties provide absentee ballots (the Absentee Ballots mandate) and hold a special election in cases when a candidate dies shortly before an election (the Brendon Maguire Act mandate). To achieve General Fund savings, the state suspended these six mandates every year since 2011-12—making local agency implementation of these election requirements optional. Despite the implementation of these elections mandates being optional since their suspension, local governments have continued performing the mandated functions.

Budget Proposal

The Governor's 2013-14 budget proposes to suspend the three newly identified elections mandates and continue suspending the six long-standing elections mandates. (Because the requirements of one new mandate and a similar long-standing mandate have been consolidated, the budget bill identifies eight elections mandates as proposed for suspension.) When a mandate is suspended, state statutes are not changed in any way, but each local government may choose whether or not to comply with the statutory requirements. Local governments are not required to notify the state if they decide not to implement a suspended mandate.

Analysis and Recommendations

State Has Interest in Election Uniformity. The state has a significant interest in maintaining uniformity in its elections. Many of the state's elected officials serve districts that span multiple counties. Variation in election policies among those counties would result in voters in the same district having access to different voter programs. In a single state Senate district, for example, voters in one county might be allowed to vote absentee while voters with identical circumstances in an adjacent county may be denied an absentee ballot. Thus, suspending elections mandates could lead to inconsistencies in elections, voter confusion, and possibly lower turnout.

Recommend Legislature Fund or Repeal All Elections Mandates. Suspending elections mandates poses a significant risk to state elections. Specifically, the longer the state suspends these mandates and the more elections mandates the state chooses to suspend, the greater the risk that at least one county will decide not to perform the previously mandated activities. Accordingly, we recommend that the Legislature fund these mandates in the budget bill. Based on prior claims and cost estimates from the commission, the cost of funding all the elections mandates would be about $60 million for 2013-14, with ongoing costs of about $30 million thereafter. If the Legislature determines that some or all of the mandates are no longer in the state's interest, we recommend that the Legislature repeal the underlying statutes, as doing so would preserve elections uniformity while eliminating the need to reimburse local governments for the costs of the mandate. We believe that the administration's proposal to suspend the mandates represents the worst option as it carries with it the largest risk for inconsistencies in California elections.

Administration Should Explore Funding Alternatives. Our office has previously noted that the existing process for reimbursing mandates can ignore efficiency, impose significant administrative burdens, and provide different amounts of reimbursements to similar local governments. In addition, for various reasons, state policies funded as reimbursable mandates often receive less thorough annual policy review than state policies implemented by state departments. For these reasons, we recommend the administration work with counties to (1) explore alternative, simpler mechanisms for funding election mandates (such as providing a set level of reimbursement for each voter in the county), and (2) assess whether some mandated requirements could be modified to realize the same goals at lower costs. The administration should submit its recommendations regarding elections mandates to the Legislature along with its 2014-15 proposed budget.

The 2017-18 Budget:

Considering the State's Role in Elections

MAC TAYLOR • LEGISLATIVE ANALYST • MARCH 2017

LAO

EXECUTIVE SUMMARY

Counties Administer Most Elections and Pay Elections Costs. As traditionally has been the case across the United States, county governments in California administer most local, state, and federal elections pursuant to state and federal law. Typically, counties appropriate funds from their general funds to pay for costs related to administering elections. Cities, special districts, and schools pay for a share of elections costs as well. Often, these local governments reimburse the county based on the proportion of the ballot dedicated to the local governments' candidates and issues. Neither the state nor the federal government provides regular payments for county elections administration.

State Requires Certain Activities in Elections Administration. Since 1975, the state must pay for the associated cost (in most cases) of election-related requirements imposed on counties. These requirements are called reimbursable mandates. The state has placed a handful of requirements on counties related to elections administration costing roughly $30 million in general election years. For many years, however, the state has suspended the mandates. When a mandate is suspended, the requirement remains in law but local governments do not have to comply with the requirements in that year and the state has no reimbursement obligation. Counties typically have continued to comply with these requirements, effectively paying for these state-priority costs with local funds.

Recent Law Created Optional New Voting Model. Under SB 450 (Chapter 832 of 2016), counties may replace the current precinct model of voting with a new "vote center" model. Rather than opening thousands of polling places, implementing counties will be required to open a certain number of vote centers (based on population). Vote centers will be similar to polling places, but will offer more services than polling places and be open for more days.

Effective Elections Administration an Important State Interest. The state has a clear interest in secure, timely, and uniform elections. While the state reaps regular benefits from county elections administration, it only sporadically provides funding to counties for election activities. Relying on the existing mandates system to provide state support to elections is ineffective. We recommend the Legislature develop a new financial relationship between the state and counties to (1) direct statewide elections policy and (2) provide a reasonable and reliable level of financial support that reflects the benefits to the state of county elections administration. The pending implementation of SB 450 provides an opportunity for the Legislature to consider how to structure such a financial relationship to ensure consistency across counties as well as address other elections issues.

Create Block Grant for Ongoing Support. We suggest the Legislature consider sharing in the cost of elections through a block grant. A block grant would provide counties state support to partially offset county costs to comply with a range of elections activities specified by the Legislature. In addition to making block funding contingent on county implementation of the vote center model, the Legislature could include other elections issues like timely vote counting, protecting elections systems, keeping voter registration current, and complying with existing suspended mandates. There are various options for how to distribute the block grants. For example, basing the grant amount on the number of registered voters could encourage counties to increase voter registration.

INTRODUCTION

In 2016, the Legislature passed and the Governor signed SB 450, the Voter's Choice Act (Chapter 832). The law allows counties to implement a new model of voting that enables voters to cast their votes over a period of days prior to election day. This new model is a significant change in state elections policy. A subset of counties may implement the new model in 2018. All other counties may move to this model in 2020. This report discusses the landscape of elections administration in California today and the changes to that landscape in counties choosing to adopt the new elections model permitted. We then layout a framework for considering the roles and responsibilities in elections. The report concludes by outlining options the Legislature could consider to provide financial support to counties for elections administration to ensure secure, timely, and uniform elections. The Governor's budget does not include any state support for elections administration or SB 450 implementation.

ELECTIONS IN CALIFORNIA

Administration

Counties Administer Most Elections. As traditionally has been the case across the United States, county governments in California administer most local, state, and federal elections pursuant to various requirements established under state and federal law. County elections officials administer almost every part of voting in California including: processing voter registrations; accepting candidate filings; verifying signatures on petitions to qualify initiatives for the ballot; determining what equipment voters use to cast ballots at polling places; establishing precinct boundaries and poll locations; printing ballots and sample ballots; mailing materials to voters (including ballots for people who vote by mail); hiring and training poll workers and other temporary staff; receiving ballots; and tabulating election results.

Secretary of State Provides Statewide Oversight and Direction. The Secretary of State is the state's chief elections officer and oversees county administration of all federal and state elections within California. The Secretary of State oversees county administration of elections by promulgating regulations that provide direction to counties about how to comply with statute; advising local elections officials on how to administer elections; testing and approving all voting equipment used in the state; coordinating and compiling the tabulation of votes from each county; and certifying final election results. In addition, the Secretary of State has many direct administrative responsibilities in statewide elections including: maintaining the statewide voter registration system, known as VoteCal; tracking and certifying initiatives for the statewide ballot; determining the order of candidates on the ballot; and printing and mailing the statewide voter guide.

Funding

County General Purpose Funds Pay Elections Administration Costs. Typically, a county appropriates funds from its general fund to pay for costs related to administering elections. As is the case with any general purpose funds, boards of supervisors must determine how to allocate these limited resources among a number of competing priorities.

Local Governments Typically Pay County to Administer Elections. Counties often administer elections for cities, special districts, and schools in the county. These local governments typically pay counties for administering their local elections, based on the proportion of the ballot dedicated to the local governments' candidates and issues put to the voters—this cost allocation sometimes is referred to as "ballot real estate."

State Has Not Provided Regular Payments for Elections Administration. The state requires various activities to be performed by counties when administering elections. Proposition 4 (1979) requires the state to reimburse local governments for requirements placed upon them by the state after 1975. These requirements are called reimbursable state mandates. Some required elections activities are reimbursable state mandates. Prior to Proposition 1A (2004), there was no payment schedule for reimbursing local governments for these state mandates. As a result, the state went many years without paying counties for the costs associated with certain state elections requirements. Proposition 1A required the state (1) to reimburse local governments for these outstanding prior years' mandates costs and (2) either to suspend or reimburse local governments for state mandates on an ongoing basis. 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. Below, we discuss a few examples of when counties have received one-time funds from the federal or state governments to address specific needs in administering elections.

One-Time Federal and State Funding in 2002. Voting equipment and the administration of U.S. elections became a prominent issue following the contested presidential election in 2000. At the federal level, the Help America Vote Act of 2002 (HAVA) established standards for federal elections. To help state and local governments implement the requirements established under HAVA, the federal government provided funding to the states. California received $392 million in federal funds to implement the mandates established under the federal law—$195 million of which was allocated to counties to comply with HAVA voting system requirements. Of the $195 million, the Secretary of State indicates that—as of July 20, 2016—counties have $35.6 million remaining for these purposes. Thirty counties have expended all of the federal funds available to them for this purpose, and nine counties have more than 50 percent of their allocated federal funds still available. In addition to federal funds made available to counties in 2002, California voters also approved the issuance of $200 million in state bonds for counties to procure new voting equipment. The nearby box explains what happened with these funds.

One-Time State Funding in 2016. In spring 2016, the Secretary of State raised concerns to the Legislature that counties were facing high overtime costs and other expenses related to unusually high numbers of (1) initiatives seeking qualification for the November 2016 general election and (2) residents registering to vote before the June 2016 primary. The Legislature made available $16.3 million in one-time state funds to reimburse counties for specified election costs through Chapter 11 of 2016 (AB 120, Committee on Budget). The Secretary of State reports that 47 counties received reimbursements totaling $15.7 million. The specific amount received by each county varied depending on the county's number of (1) eligible voters and (2) signatures on initiative petitions being verified.

Voting

Beyond the specific requirements established in state and federal law, county elections officials have discretion in how people vote in their county. Consequently, election operations—including equipment used to cast and count ballots—vary across counties. In addition, voter preferences vary across the counties, affecting the proportion of (1) eligible voters who are registered to vote and (2) registered voters who vote by mail or in person at the polling place.

Voter Registration in California. To be eligible to vote in California, a person must be (1) a U.S. citizen, (2) a resident of California, (3) at least 18 years old on election day, (4) not currently incarcerated or on parole for the conviction of a felony, and (5) not prohibited from voting by a court due to mental capacity. Individuals can register to vote up to and including election day. Individuals registering within two weeks of election day are conditionally registered—pending verification they are not registered elsewhere—and must use "provisional" ballots. (Provisional ballots are used when there are questions about a given voter's eligibility. Once his or her eligibility to vote is verified, the ballot is counted.) As of October 24, 2016, the Secretary of State reported that 78 percent of the approximately 25 million people eligible to vote in California were registered to vote in the November 2016 general election. Figure 1 (see next page) shows how voter registration varies across the state by county.

A False Start in Modernizing California Voting Equipment

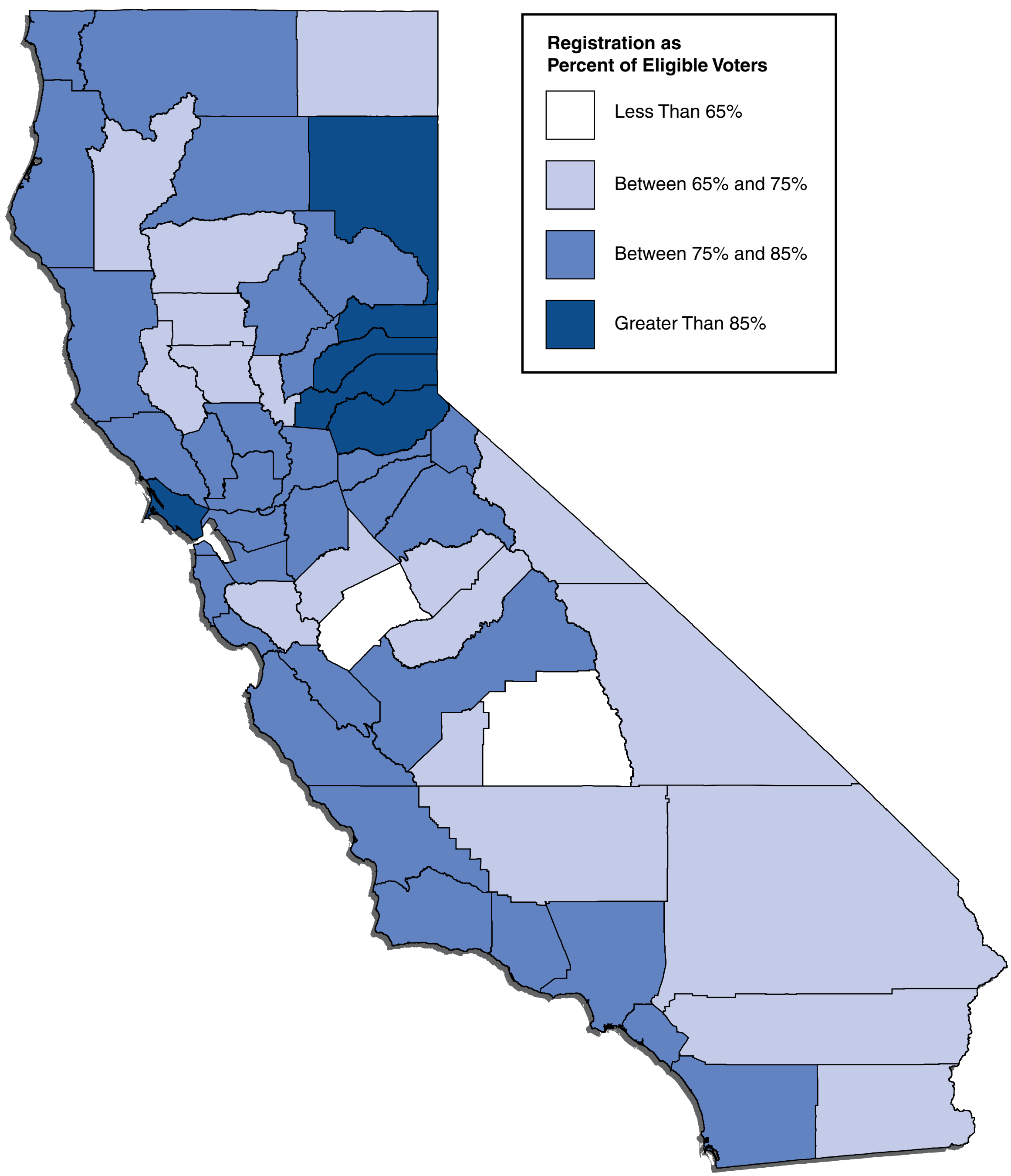
Bond Money Provided to Counties on Matching Basis to Replace Voting Equipment. Voters approved Proposition 41 in 2002. The proposition allowed the state to sell $200 million in general obligation bonds to assist any county in the purchase of new voting equipment that was certified by the Secretary of State. In order to receive bond monies, a county had to expend $1 of county funds to receive $3 of bond monies—a three-to-one ratio of state-to-county money. The proportion of the bond monies available to each county depended on a formula that took into account each county's number of eligible, registered, and participating voters and number of polling places. In addition to Proposition 41 money, the federal government provided $195 million to upgrade voting systems in 2002.

Decertification of Purchased Voting Equipment. In the years following Proposition 41's passage, some counties replaced defunct punch card voting systems with electronic voting equipment. By 2005, actions taken by then Secretary of State Kevin Shelley and the Legislature imposed certain restrictions on electronic voting systems. In 2007, then Secretary of State Debra Bowen established new rules relating to the testing and requirements of electronic voting equipment. Through these state actions, several counties were forced to abandon their recently purchased electronic voting systems and, instead, rely on paper-based, optical scan technology. Little has changed since 2007—most counties continue to use paper-based, optical scan systems for polling place voting.

Voter Participation in California. In the November 2016 election, about 14.6 million votes were cast in California. This means that about three-fourths of registered voters in the state participated in that election. Voter participation—or "turnout"—varies significantly by the type of election, among other factors. Voter turnout in presidential elections tends to be higher, for

Figure 1

Share of Eligible Voters Registered to Vote Varies by County



example, while turnout for special elections tends to be low. For example, in the November 2016 election 68 percent of registered voters in Los Angeles voted; however, in the March 7, 2017 consolidated municipal and special election, fewer than 20 percent of registered voters cast ballots.

Precinct Model of Voting. The traditional voting model relies on precincts—a geographical subdivision of a county determined by a county's elections official. State law generally requires that each precinct include no more than 1,000 voters (excluding permanent vote by mail voters). Counties with high populations have thousands of precincts. Each address in a county is assigned a precinct. Each precinct has a polling place where voters are expected to cast their ballot. If a voter goes to a polling place other than the one designated for his or her precinct, the voter must cast a "provisional" ballot. Depending on the election, each polling place may have numerous ballot types—for example, at a primary election the polling place may have different ballots for each political party. In a general election, ballots will vary based on the governments and representatives serving the precincts at the polling place. (For example, voters served by two different school districts may be assigned to the same polling place and require different ballots for school board candidates.)

Voting by Mail a Popular Alternative. California voters have the choice to cast their ballots in person at a polling place or through the mail. Voters who choose to vote by mail can do so on a one-time or permanent basis. Voting by mail has become increasingly popular. Statewide, about 12.2 million voters—nearly 63 percent of all registered voters—received a mail ballot in the November 2016 general election. About 70 percent of these vote-by-mail (VBM) ballots were returned (either through the U.S. Postal Service or dropped at polls) to county elections officials to be counted. In total, about 58 percent of the 14.6 million ballots cast in the November election in California were VBM ballots. The share of voters casting VBM ballots in that election varied across the state from fewer than one-half of voters casting their ballots by mail in Los Angeles, Lassen, and Merced Counties to more than 90 percent of registered voters voting by mail in Napa, Alpine, Plumas, and Sierra Counties.

Antiquated Equipment and Systems Used by Most Counties. All but a few counties in the state use voting systems that are more than a decade old. In many cases, components of the systems no longer are supported or produced by manufacturers. In one example, a county's system had a failed part that no longer is supported by the manufacturer or easy to replace. The county purchased a replacement part through eBay. In another example, a county uses the same system it used in the 1990s. Although this county's system has been updated periodically, it currently relies on computers that operate on Microsoft Windows XP—an operating system that was released in 2001 and no longer receives free security upgrades or other support from the manufacturer. Both of these examples raise serious concerns about the security of the voting system as well as the possibility of a catastrophic failure of voting systems in counties. Updating these systems requires money and political support from counties to spend the necessary funds on these upgrades instead of other priorities in their budgets. In many cases, counties appear to be allowing their systems to "limp along" in the hope that the state or federal government will again provide financial assistance to replace the systems.

Some Counties Plan to Replace Equipment Soon. Although many counties we spoke with have no imminent plans to replace their equipment, a few counties recently acquired new voting systems. Other counties have established plans to replace their existing systems within a certain number of years, regardless of whether they receive state or federal funds. Most counties with plans to replace their existing systems intend to purchase or lease equipment from one of a handful of vendors.

Los Angeles County is taking a different approach. It currently uses one of the most antiquated voting systems in the state. Their system is referred to as a "modified punch card" system, which converts punch card ballots into marked ballots. This modification prevents failed punches, but still relies on the old system. Instead of purchasing or leasing a system maintained by a vendor, Los Angeles County is in the late stages of developing its own open source system. Although the county will rely on a vendor to manufacture the equipment, the county will own all intellectual rights to the system. Figure 2 shows photographs of the current modified punch card system and the prototype of the county's new system.

SB 450: NEW MODEL FOR VOTING IN CALIFORNIA

Under SB 450, counties may replace the current precinct model of voting with a new "vote center" model. This section explains the structure of the new model for counties other than Los Angeles County. The requirements for Los Angeles County vary somewhat, but the overarching structure is the same.

Changes to Elections Administration

Implementation Is Optional. Counties are not required to implement SB 450. Doing so is at the discretion of county elections officials. Fourteen counties—Calaveras, Inyo, Madera, Napa, Nevada, Orange, Sacramento, San Luis Obispo, San Mateo, Santa Clara, Shasta, Sierra, Sutter, and Tuolumne—may implement SB 450 for the 2018 election cycle. All other counties may implement the system for the 2020 election cycle.

Vote Centers Replace Polling Places. Rather than open thousands of polling places, implementing counties will be required to open a certain number of vote centers (based on population). Vote centers will be similar to polling places, but will offer more services to voters. Counties will have far fewer vote centers than polling places, but the center will be open for longer periods before an election.

All Registered Voters Receive Vote by Mail Ballots. In implementing counties, all registered voters will receive a vote-by-mail ballot. This is different from the model that exists today, which requires voters to request VBM ballots. Under the vote center model, voters may submit their VBM ballots by mail (which requires postage), by turning them in at drop boxes (located throughout the county), or by returning their ballots to a vote center or the county registrar of voters.

Vote Centers Open Ten Days Prior to Election Day. Senate Bill 450 requires implementing counties to open at least one vote center per 50,000 registered voters ten days prior to election day. (Counties with fewer than 50,000 registered voters must open two vote centers.) Three days prior to election day, counties must open at least one vote center per 10,000 registered voters. The vote centers also must be open on election day. (In some cases, counties may have slightly fewer vote centers in the three days prior to election day; however, counties with at least 20,000 registered voters must have at least two vote centers during this period.) At a vote center, a voter can register to vote or update his or her voter registration and/or cast his or her vote either by turning in a VBM ballot or using a voting machine. Vote centers must meet accessibility and language requirements as defined in current law. As prescribed by the measure, vote centers also must be distributed across the county "so as to afford maximally convenient options for voters" and "established at accessible locations as near as possible to public transportation routes."

A Voter Can Use Any Vote Center in County. Today, a voter not wishing to use a VBM ballot and, instead, vote in person must go to his or her designated polling place. Under SB 450, a voter can use any vote center in his or her county. If a registered voter does not bring his or her VBM ballot to the vote center, he or she can receive a ballot and vote there. As a result, vote centers must be able to provide all ballot types at every vote center. Each county has multiple ballot types to reflect the different governments and districts serving and representing each resident.

Individuals Can Simultaneously Register and Vote at Vote Centers. As noted earlier, vote centers will be able to register voters and allow newly registered voters to vote in person. To do this, vote centers will have to check whether an individual is already registered in another county as well as whether the individual already cast a ballot. As the statewide voter registry of record, VoteCal will allow counties to do these checks.

Implementing Counties Must Have Plan Approved by Secretary of State. Counties implementing SB 450 must develop a plan for

Figure 2

Los Angeles County's Current and Prototype Voting Machines

Current Modified Punch Card Voting System

Prototype Electronic Voting System

Los Angeles County Registrar of Voters.

implementing the statute's requirements. The plan must be developed with input from communities across the county. Moreover, counties must meet with community groups to discuss the plan and allow for public comment. Once a county's plan is finalized, the county must submit the plan to the Secretary of State for approval. The Secretary of State may approve, approve with modifications, or reject a county's plan. Counties must update these plans every few years with input from their communities.

Fiscal Effects on Counties Uncertain

Overall SB 450 Costs May Be Lower Than Current Model in Some Counties. To implement SB 450, counties will have to establish vote centers, provide all ballot types at every vote center, and mail all registered voters a VBM ballot, among other requirements. These activities come with some amount of new costs not incurred under the current voting model. For instance, some counties may have to pay for the use of facilities for vote centers. Vote centers also may require additional paid staff for some counties. On the other hand, some costs associated with the current voting model may decline. For instance, the SB 450 system requires fewer voting machines. Under the current model, counties need voting machines for potentially thousands of polling places. Under SB 450, counties will only need equipment for the significantly fewer vote centers. Whether overall elections costs will increase or decrease with the implementation of SB 450 likely will vary by county. A couple of counties considering implementing SB 450 in 2018 indicated that they believe overall costs will decline largely as a result of needing fewer voting machines and hiring fewer poll workers. (These counties need to update their voting equipment for the 2018 election regardless of whether they implement SB 450.) Despite the potential long-term savings of SB 450, some counties may not implement the new model. In part, this may be because additional costs to implement the measure must be incurred now while net benefits might not be realized for many years.

Remaining Work and Challenges

Secretary of State Finalizing Necessary Regulations. The Secretary of State indicates that it has nine packets of regulations that it is preparing to submit to the Office of Administrative Law in order to complete the regulatory process and promulgate regulations related to SB 450 implementation. The need for these regulations preceded the passage of SB 450. While SB 450 does not require new regulations itself, its passage assumed these regulations would be in place. Figure 3 summarizes these regulations. The Secretary of State is soliciting regular input from the counties and is working closely with the statewide association of county elections officials to develop these regulations. The Secretary of State hopes to have established some regulations as soon as within a few months, while others likely will be completed several months from now—perhaps in 2018. The Secretary of State has identified which regulations it sees as a priority for SB 450 implementation and hopes to promulgate these higher priority regulations first. Although the Secretary of State is working closely with counties, many counties have indicated that they are concerned that the amount of time it is taking to promulgate these regulations will hamper their abilities to implement the SB 450 vote center model in 2018. To date, the state has not provided the Secretary of State any new resources to implement SB 450 despite bill analyses that indicated the Secretary of State would incur roughly $300,000 in additional annual costs.

Unlikely That All Authorized Counties Will Implement the New System in 2018. Those counties permitted to implement SB 450 in 2018, as well as Los Angeles County, are participating in an ongoing workgroup with the Secretary of State. Based on conversations in those workgroups as well as discussions with counties, we do not believe that all counties permitted to implement SB 450 in 2018 will do so. In some cases, county registrars are concerned about garnering sufficient support for the new system from their communities and boards of supervisors. In other cases, counties are unsure as to whether or not they can meet the equipment needs—and other related costs—associated with implementation. Counties permitted to implement the new model in 2018 will likely decide whether to do so later in 2017.

Significant Voter Outreach Will Be Needed. As mentioned earlier, county registrars are required to do significant outreach when developing their SB 450 implementation plans. In addition, counties will need to do significant outreach to voters when shifting to the new model. Voters who are not permanent vote-by-mail voters will need to understand why they are receiving VBM ballots and their options for casting their votes. For example, in many cases, voters who choose to vote in person have gone to the same polling place in their neighborhood for decades to cast their ballots. Without sufficient outreach, these voters may not understand why they (1) are receiving a ballot in

Figure 3

Status of Regulations Related to Elections Administration

Subject	Associated Statute	Description	Status
Conditional voter registration	Chapter 497 of 2012 (AB 1436)	Requirements related to the procedures for conditional voter registration.	Developing draft.
Recounts	Chapter 723 of 2015 (AB 44)	Requirements related to the procedures for recounting ballots and how counties can impose charges on other governments for recounts.	Developing draft.
Ballot pickup	Chapter 724 of 2015 (AB 363)	Requirements related to sealing of ballots and delivery of ballots to central counting location.	Draft developed.
VoteCal	Chapter 728 of 2015 (AB 1020)	Various changes to voter registration procedures related to the state's voter registration system of record, VoteCal.	Draft developed. External review expected in April.
Motor Voter	Chapter 729 of 2015 (AB 1461)	Requirements related to canceling voter registrations of persons who are ineligible to vote. Also includes requirements for education and outreach on new Motor Voter registration law.	Submitted to OAL. Public comment period ends in April.
Vote by mail drop boxes	Chapter 733 of 2015 (SB 365)	Requirements related to the security of vote by mail drop off locations and drop boxes.	Draft developed. External review expected in April.
Ballot printing	Chapter 734 of 2015 (SB 439)	Requirements for "ballot on demand systems," which print ballots for voters as needed.	Rulemaking documents drafted. SOS anticipates submitting regulations to OAL in April.
ePollbooks	Chapter 734 of 2015 (SB 439)	Requirements for "ePollbooks" and their use. ePollbooks contain information regarding registered voters.	Rulemaking documents drafted. SOS anticipates submitting regulations to OAL in April.
Vote-by-mail and provisional ballot processing	Chapter 821 of 2016 (AB 1970)	Requirements for processing vote by mail and provisional ballots.	Draft developed.

SOS = Secretary of State and OAL = Office of Administrative Law.

the mail and (2) cannot vote at their customary polling place (assuming the polling place is not being used as a vote center). Reaching out to voters will be particularly important due to the fact that some counties will be implementing the new model while neighboring counties will not.

Moving Forward, the State May Have Two Different Voting Models. As noted earlier, implementing SB 450 is at each county's discretion. As a result, some counties may shift to the new model, while others may not. This could present challenges for voters who may be confused as to which system their county uses. Moreover, this will require the Secretary of State to oversee two different types of election models.

ROLES AND RESPONSIBILITIES IN ELECTIONS

Counties Best Positioned to Administer Elections. California governments form a complex web of overlapping boundaries of federal, state, and local government districts. Administering elections—that is, determining which residents are eligible to vote in a particular district election and facilitating that contest—is a function best suited for county government. Counties not only are familiar with their landscape of governments, but also the preferences of their residents. This local knowledge allows counties to organize elections in a manner consistent with local needs. Counties also are large enough to allow for economies of scale in voting—residents can vote for all of their elected officials using one ballot in a county administered election.

County Administration Yields Significant Benefits to the State. The state derives significant benefits from county administration of elections. These benefits include relieving the state from organizing thousands of local government elections as well as the elections for California's members of Congress, the State Legislature, other statewide positions (like the Governor and Secretary of State), and statewide initiatives. In fact, in many elections, state issues make up the majority of the ballot. While the state reaps regular benefits from county elections administration, it only sporadically provides funding to counties for elections activities. Counties (and other local governments) generally bear elections' costs without regular support from the state.

Effective Elections Administration an Important State Interest. The state has a clear interest in secure and timely elections. Moreover, some level of uniformity across counties in elections administration is valuable. Many legislative and other voting districts span multiple counties. Significant variation in elections procedures across counties could have implications for voter turnout, and by extension, election results.

State's Financial Role in Elections. Due to the state's challenging reimbursable mandates process, the Legislature does not often place new reimbursable requirements upon local governments. And when new requirements have been imposed, the Legislature typically has suspended them to avoid reimbursement to counties. Counties typically have continued to comply with the requirements (because they remain in state law), effectively paying for these state-priority costs with local funds. In addition, the state has made a number of changes to elections administration (see Figure 3) which are not yet identified as reimbursable mandates but may impose new costs on counties. Given the importance of uniformity in elections, relying on the existing mandates system is ineffective.

We recommend that the Legislature develop a new financial relationship between the state and county elections officials that allows the state to (1) direct statewide elections policy and (2) provide a reasonable and reliable level of financial support that reflects the benefits to the state of county elections administration. The pending implementation of SB 450 provides an opportunity for the Legislature to consider how to structure such a financial relationship to ensure consistency across counties as well as address other elections issues. In the next section, we provide options for how the state could provide such support.

STATE FUNDING OF COUNTY ELECTION ACTIVITIES

Considerations for Providing Funding. In assessing the state's role in funding county election activities, the Legislature will want to consider such key factors as existing—largely unfunded—state mandated responsibilities; any net costs that might result from implementing SB 450; and the major costs of buying and replacing voting machines. In addition, there may be other elections improvements the Legislature may want that go beyond current requirements. These could include timely vote counting, protecting elections systems, and keeping voter registration current. (The box on the next page goes into more detail on some of these potential issues.) When determining the proper level of state support, the Legislature will want to consider all existing requirements as well as any other desired improvements to the elections system.

A Different Process for Funding. As discussed above, the process the state uses to achieve its local elections priorities—the mandates process—simply has not worked. We suggest the Legislature consider a different approach. In this new approach, the state and counties would share in the costs of elections, with state support addressing the costs associated with a range of activities directed by the Legislature. Only those counties choosing to take state funding would be required to perform the specified activities. For the new funding process to be effective, the Legislature would need to set the funding at such a level as to cover a reasonable portion of the associated costs so that counties would be willing to participate. As an example, the Legislature could model a new funding arrangement along the lines of the existing Education Mandates Block Grant. This program provides the same per-pupil funding level to participating districts for various state educational requirements. School districts that participate in the block grant—currently 95 percent of districts—cannot claim reimbursement for mandate requirements covered by the block grant. If the Legislature were to establish a similar program for county election activities, the amount of funding provided would depend on the number of activities required and the share of counties the Legislature hoped would participate. Should the Legislature want elections to be more uniform across counties, the amount of funding would have to be set at such a level as to get most—if not all—counties to participate.

Create Block Grant for Ongoing Support. We recommend the Legislature structure ongoing support for elections as a block grant to participating counties. At minimum, we recommend the Legislature require participating counties to implement SB 450 by 2022. We also recommend the Legislature determine which existing mandates, if any, counties should perform and include those in the block grant.

There are various options for how to distribute the block grant. For example, basing the grant amount on the number of registered voters could encourage counties to increase voter registration. As an example, were the state to provide $3 per eligible voter, the annual costs would be a bit less than $60 million if all counties participated. (Alternatively, the Legislature could base the grant amounts on the number of voters in recent elections.) The state also could consider using the ballot real estate model. That is, the state could reimburse counties for election costs based on the share of the ballot state issues comprise. Because state issues often are a large share of the ballot, the ballot real estate model could be more costly than the other options.

Other Elections Issues to Consider

Various Elections Issues Loom. While the Voter's Choice Act (Chapter 832) SB 450 presents one new issue facing county elections officials, it is clear that California's election system faces other significant issues. In designing a new financial relationship with counties, the Legislature could take into account the fiscal impacts of implementing any actions related to the issues discussed below. Counties may take different approaches to addressing these issues. In designing state support, the Legislature may not want to direct specific county activities, but rather focus on the desired outcome of those activities and incentivize counties accordingly.

- ***Timely Vote Counting.*** Due in large part to the widespread use of vote-by-mail and provisional ballots, counties now take weeks to finish counting ballots. Some voters are saying this undermines their confidence in the election process, in part because California counts ballots so much slower than other states do. Should the Legislature determine that swift determination of elections results is an important state goal, the Legislature could make receipt of funding conditional on counties demonstrating efforts to improve the swiftness of their tallies. Reducing the need for voters to use provisional ballots also could be a goal.

- ***Cybersecurity.*** The security of electronically stored voting information is paramount to maintaining confidence in elections. While the Secretary of State already sets standards for voting equipment used by counties, the Legislature could take further steps in designing financial support to encourage counties to continually upgrade and maintain their cybersecurity systems.

- ***Voter Registration.*** Maintaining up to date voter registration will be particularly important with conditional voter registration. VoteCal will facilitate county maintenance of the rolls, but the Legislature may want to consider what other steps counties should take to keep registrations up to date.

- ***Other Outcomes.*** State support also could be designed to encourage any particular outcomes or goals the Legislature may have with regard to elections administration. The Legislature could require the Secretary of State to gather information over time to see if counties make sufficient progress towards any such legislative priorities.

Consider One-Time Support to Replace Counties Voting Systems. While not directly related to the ongoing elections issues discussed above, most counties voting equipment is quite old. Historically, the state has assisted counties in replacing their systems. In part, this may be because the state controls what voting equipment is available to counties to purchase. Should the Legislature wish to assist counties again, there are various ways to do so—including matching grants, short-term loans, or bonds. The state could provide all of the necessary funds or only a portion. The Secretary of State estimates the total costs to replace counties' voting equipment to be around $400 million.

CONCLUSION

Although the state receives significant benefit from county administration of elections in California, the state has provided sporadic financial support for elections administration. The existing process to provide state support for elections administration—the reimbursable mandates process—is ineffective. We recommend that the Legislature create a block grant to provide regular ongoing support to counties for Legislative priorities in elections. While the creation of an optional new voting model—SB 450—is an impetus for the Legislature to reconsider the state's role in elections, we recommend taking a broader approach in considering elections issues addressed by a block grant.

LAO Publications

This report was prepared by Carolyn Chu and Nick Schroeder, and reviewed by Jason Sisney. The Legislative Analyst's Office (LAO) is a nonpartisan office that provides fiscal and policy information and advice to the Legislature.

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August 30, 2019 Los Angeles County Employees Retirement Association Election

August 13, 2019 City of Los Angeles Council District 12 Special Runoff Election

June 4, 2019 Municipal and Special Elections

June 4, 2019 Senate District 33 Special General Election

May 14, 2019 LAUSD District 5 Special Runoff Election

April 16, 2019 City of Compton Primary Nominating Election

March 26, 2019 Senate District 33 Special Primary Election

March 5, 2019 General Law and Charter City Elections

February 29, 2019 San Marino USD Special Parcel Tax Election

November 6, 2018 General Election

August 7, 2018 Senate District 32 Special General Election

July 24, 2018 Los Angeles County Employees Retirement Association Election

June 5, 2018 Statewide Direct Primary Election

June 5, 2018 Assembly Districts 39 and 45 Special General Elections

June 5, 2018 Long Beach City General Municipal (Run-Off) Election

April 10, 2018 Long Beach USD and Community College District Governing Board Member Elections

April 3, 2018 Special Elections

February 27, 2018 South Pasadena Unified School District Special Parcel Tax Election

December 5, 2017 Assembly District 51 Special General Election

November 7, 2017 Local and Municipal Consolidated Elections

October 3, 2017 Assembly District 51 Special Primary Election

August 1, 2017 Los Angeles Employees Retirement Association Election

June 6, 2017 Congressional District 34 Special General Election

April 18, 2017 Arcadia Unified School District Board of Education

April 4, 2017 Congressional District 34 Special Primary Election

March 7, 2017 Consolidated Municipal and Special Elections

November 8, 2016 General Election

August 9, 2016 Los Angeles County Employees Retirement Association Election

June 7, 2016 Presidential Primary Election

April 12, 2016 Long Beach Unified School District and Long Beach Community College District Governing Board Member Elections

November 3, 2015: Local and Municipal Consolidated Elections

August 11, 2015 Los Angeles County Employees Retirement Association Election

March 17, 2015 Senate District 21 Special Primary Election

March 10, 2015 San Marino USD Special Parcel Tax Election

March 3, 2015 Consolidated Elections Cities of Bell, Cudahy and Huntington Park

December 9, 2014 Senate District 35 Special Primary Election

November 4, 2014 General Election

August 5, 2014 Los Angeles County Employees Retirement Association Election

June 3, 2014 Statewide Direct Primary Election

April 8, 2014 Long Beach Unified School District and Long Beach Community College District Governing Board Member Elections

March 25, 2014 Senate District 23 Special Primary Election

March 4, 2014 La Cañada Unified School District Special Parcel Tax Election

December 3, 2013 Assembly District 54 Special Primary Election

November 19, 2013 Assembly District 45 Special General Election

November 5, 2013 Local and Municipal Consolidated Elections

September 24, 2013 Assembly District 52 Special General Election

September 17, 2013 Special Primary Elections (Senate District 26 & Assembly District 45)

July 30, 2013 LACERA Safety Member Election

July 23, 2013 Assembly District 52 Special Primary Election

June 18, 2013 Pasadena Glen Community Services District Special Advisory Election

May 14, 2013 Senate District 32 Special General (Runoff) Election

March 12, 2013 Senate District 32 Special Primary Election

March 12, 2013: School District Special Parcel Tax Elections (San Marino Unified School District and South Pasadena Unified District)

March 5, 2013: Burbank Unified School District Special Bond Election

March 5, 2013: Consolidated Elections (Bell City General Municipal & Cudahy City General Municipal/Special Municipal)

November 6, 2012 - General Election

July 31, 2012 - LACERA Election

June 5, 2012: Presidential Primary Election

April 10, 2012: Long Beach Unified School District and Community College District Governing Board Member Elections

March 13, 2012: Arcadia Unified School District Special Parcel Tax Election

November 8, 2011: Consolidated Elections

Election Candidate Handbook and Resource Guides

- April 19, 2011 - Arcadia Unified School District Board of Education Election
- May 17, 2011 - Congressional District 36 Special Primary and Consolidated Elections
- Feb. 15, 2011 - 17th & 28th State Senate District Special Primary Elections
- June 8, 2010 - Statewide Direct Primary Election
- April 13, 2010 - 43rd State Assembly District Special Primary Election
- April 13, 2010 - Long Beach School Election and Long Beach Community College District Governing Board Member Elections
- Dec. 29, 2009 - Long Beach Unified School District Special Election
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- Sept. 1, 2009 - 51st State Assembly District Special Primary Election
- June 30, 2009 - School District Special Parcel Tax Elections (La Canada Unified School District and Rowland Unified School District)
- June 23, 2009 - Palos Verdes Peninsula Unified School District Special Parcel Tax Election
- June 16, 2009 - South Pasadena Unified School District Special Parcel Tax Election
- May 19, 2009 - Statewide Special and Consolidated Elections
- April 21, 2009 - Arcadia Unified School District Board of Education Election
- March 24, 2009 - 26th State Senate District Special Primary Election
- Nov. 4, 2008 - General Election
- June 3, 2008 - Primary Election
- April 8, 2008 - Long Beach Community College and Unified School District Elections
- Feb. 5, 2008 - Presidential Primary Election
- Nov. 6, 2007 - Consolidated Elections
- Nov. 6, 2007 - School and/or General Districts Measure Elections
- Aug. 21, 2007 - Special Election
- July 31, 2007 - Los Angeles County Employees Retirement Association Election
- June 26, 2007 - 37th Congressional District Special Primary Election
- June 12, 2007 - Wiseburn School District Special Election
- June 5, 2007 - Special Elections
- May 15, 2007 - 39th State Assembly District Special Primary Election and July 10, 2007 - Special Election
- April 17, 2007 - Arcadia Unified School District Board of Education Election
- March 6, 2007 - San Marino Unified School District Special Tax Election (Consolidated with the San Marino City General Municipal Election)

Nov. 7, 2006 - General Election

Aug. 8, 2006 - LACERA Election

June 6, 2006 - Primary Election

June 6, 2006 - Primary Election Signatures In Lieu of Filing Fee Information Booklet

April 11, 2006 - Long Beach Unified School District & Long Beach Community College District Governing Board Member Elections (Consolidated with Long Beach City Primary Nominating Election)

April 4, 2006 - El Rancho Unified School District Special Election

Nov. 8, 2005 - Special Statewide & Consolidated Elections

Sept. 13, 2005 - 53rd State Assembly District Special Primary Election and Nov. 8, 2005 Special Election

April 19, 2005 - Arcadia Unified School District Election

Nov. 2, 2004 - General Election

April 13, 2004 - Long Beach Unified School District and Community College District Governing Board Member Elections (Consolidated with the Long Beach Primary Nominating Election)

March 2, 2004 - Primary Election

Nov. 4, 2003 - Consolidated Elections

Oct. 7, 2003 - Statewide Special Election

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