

ITEM 13
FINAL STAFF ANALYSIS
Proposed Statewide Cost Estimate
\$1,077,719

Elections Code Sections 2151 and 13102(b)
Statutes 2000, Chapter 898 (SB 28)

Modified Primary Election
01-TC-13

County of Orange, Claimant

This matter was rescheduled from July 27, 2012 to September 28, 2012. Except to reflect the date change, no other revisions were made to this document.

STAFF ANALYSIS

Background and Summary of the Mandate

The test claim statutes deal with changes to the partisan primary system in California. In 1996 and earlier, California had a closed primary system in which registered voters who were declared members of any political party could only vote for members of their own party in partisan primary contests, and any voters who declined to state a party affiliation could only vote on non-partisan matters at a primary election. This changed in 1996 when Proposition 198, the “Open Primary Act,” was approved by the California voters. However, Proposition 198 was challenged and litigated up to the United States Supreme Court in *California Democratic Party v. Jones* (2000) 530 U.S. 567, which found the law unconstitutional.

Following the court’s decision, the test claim statute was enacted (Statutes 2000, chapter 898) and largely repealed and reenacted the code sections that had been amended by Proposition 198 – generally restoring the language to the law that was in place immediately prior to Proposition 198. However, by amending a few of the Elections Code sections, the test claim statute altered the prior closed primary system to one in which those voters who decline to state a political party affiliation may choose any political party’s partisan primary ballot, if that political party allows it. This created a form of open primary.

The claimant filed the test claim on April 18, 2002. The Commission on State Mandates (Commission) adopted a statement of decision on July 28, 2006 and the parameters and guidelines on October 27, 2011.¹ The Commission found that the test claim statute and regulations constitute a new program or higher level of service and impose a state-mandated program on counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Eligible claimants were required to file initial reimbursement claims for the period January 1, 2001 through June 30, 2001 and fiscal years 2001-2002 through 2010-2011 with the State Controller’s Office (SCO) by May 2, 2012. Claims for fiscal year 2011-2012 must be

¹ Exhibit A.

filed by February 15, 2013. Claims filed more than one year after the applicable deadline will not be accepted.

Eligible Claimants and Period of Reimbursement

Any county, or city and county, that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement.

The period of reimbursement for this program began on January 1, 2001.

The Commission approved the following activities for reimbursement:

The claimant is only allowed to claim and be reimbursed for the increased costs of the reimbursable activities identified below.

A. One-Time Activities

1. Conduct a meeting with the Secretary of State's Office and a meeting with employees from the County elections department regarding the implementation of the *Modified Primary* program.
2. Develop new internal policies and procedures relating to the activities mandated by Elections Code sections 2151 and 13102(b) to allow voters who decline to state a party affiliation to vote a party ballot in a primary election if authorized by the political party to do so, and to add such information regarding the modified primary statutes to the voter registration card.
3. Add information to the voter registration card stating that voters who decline to state a party affiliation shall be entitled to vote a party ballot if the political party, by party rule duly noticed to the Secretary of State, authorizes that vote. (Elec. Code, § 2151.)

B. On-going Activities

From January 1, 2001 through December 31, 2010, these activities apply to all primary elections. Beginning January 1, 2011, these activities apply only to primary elections for President of the United States or for a party committee and do not apply to primary elections for state elective or congressional offices. (Proposition 14, June 2010.)

1. If authorized by the political party, and upon receipt of the application to vote by mail by decline to state voters, deliver to the decline to state voters the partisan ballot requested for the primary election. (Elec. Code, § 3009.)

This activity includes and reimbursement is authorized for entering into the computer a request from the decline to state voter to vote a partisan ballot at a primary election following the receipt of the vote by mail application sent pursuant to Elections Code section 3006 in order to ensure that the proper ballot is delivered.²

2. If authorized by the political party, provide partisan ballots at the polls to decline to state voters that request a partisan ballot for the primary election. (Elec. Code, § 13300(c).)

² The costs for the administration of the *Absentee Ballot* program (CSM 3713), as required by Statutes 1978, chapter 77 and Statutes 2002, chapter 1032, are not reimbursable under these parameters and guidelines.

3. Inform and train poll workers before each primary election regarding the option for the decline to state voter to vote a party ballot if authorized, by party rule duly noticed to the Secretary of State, by the political party.

Statewide Cost Estimate

Staff reviewed the claims data submitted by 12 counties. Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

Assumptions

- *The actual amount claimed for reimbursement may increase and exceed the statewide cost estimate.*

There are 58 counties in California. Of those, only 12 counties filed reimbursement claims for this program between 2001 and 2010. However, other eligible claimants could file reimbursement claims which could increase the cost of the program. Late claims filed on the initial claiming period of January 1, 2001 through June 30, 2011 may be filed until May 2, 2012.

- *The number of reimbursement claims filed will vary from year to year.*

This program is based on reimbursable activities that apply to all primary elections from January 1, 2001 through December 31, 2010. However, beginning January 1, 2011, these activities apply only to primary elections for the President of the United States or for a party committee and do not apply to primary elections for state elective or congressional offices. Therefore, the total number of reimbursement claims filed with the SCO will increase or decrease based on election cycles.

- *The total amount of reimbursement for this program may be lower than the statewide cost estimate, because the SCO may reduce any reimbursement claim for this program.*

The SCO may conduct audits and reduce any claims it deems to be excessive or unreasonable.

- *There may be several reasons that non-claiming counties did not file for reimbursement, including but not limited to:*

- The Commission approved only a portion of this program as a mandate. Therefore, some counties cannot reach the \$1,000 threshold for filing reimbursement claims.
- Counties did not have supporting documentation to file a reimbursement claim.

Methodology

Reimbursement Period January 1, 2001 through June 30, 2001 and Fiscal Years 2001/2002 – 2010/2011

The statewide cost estimate for the reimbursement period of January 1, 2001 through June 30, 2001 and fiscal years 2001-2002 through 2010-2011 was developed by totaling the 44 actual reimbursement claims filed with the SCO for a total of \$1,077,719. Following is the total cost per fiscal year:

Fiscal Year	Number of Claims Filed with SCO	Estimated Cost
January 1, 2001-June 30, 2001	0	\$0
2001-2002	5	\$32,181
2002-2003	0	\$0
2003-2004	8	\$120,039
2004-2005	0	\$0
2005-2006	10	\$185,682
2006-2007	0	\$0
2007-2008	9	\$289,274
2008-2009	0	\$0
2009-2010	12	\$450,543
2010-2011	0	\$0
TOTAL	44	\$1,077,719

Comments on the Draft Staff Analysis and Proposed Statewide Cost Estimate

On June 8, 2012, Commission staff issued the draft staff analysis and proposed statewide cost estimate for comment.³ On June 15, 2012, the Department of Finance submitted comments.⁴ As stated in the second assumption of the proposed statewide cost estimate, Finance noted that, beginning January 1, 2011, reimbursable activities will only apply to the primary elections for the President and party committee offices, and will no longer apply to primary elections for state elected offices or congressional offices. Therefore, the cost of the program may be lower.

Staff Recommendation

Staff recommends the Commission adopt the proposed statewide cost estimate of **\$1,077,719** for costs incurred in complying with the *Modified Primary Election* program.

³ Exhibit B.

⁴ Exhibit C.