

COMMISSION ON STATE MANDATES

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September 19, 2006

Mr. Allan P. Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: Supplemental Staff Analysis

County of Orange, Claimant
Elections Code Sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13300, 13303,
and 13306
Statutes 2000, Chapter 899 (AB 1094)

Dear Mr. Burdick:

The supplemental staff analysis for this test claim is enclosed for your review.

Hearing

The test claim and proposed statement of decision are set for hearing on **Wednesday, October 4, 2006, at 1:30 p.m.** in Room 126 of the State Capitol, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, or if other witnesses will appear.

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 Katherine Tokarski at (916) 445-9429 with any questions regarding the above.

Sincerely,

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

NANCY PATTON
Assistant Executive Director

Enc. Supplemental Staff Analysis and Comments from Claimant and County of Sacramento
(Late Filings)

MAILED: Mail List FAXED:
DATE: 9/14/00 INITIAL: JD
CHRON: FILE:
WORKING BINDER:

ITEM 5
TEST CLAIM
SUPPLEMENTAL STAFF ANALYSIS

Elections Code Sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094,
13300, 13303 and 13306

Statutes 2000, Chapter 899 (AB 1094)

Fifteen Day Close of Voter Registration
(01-TC-15)

County of Orange, Claimant

The draft staff analysis for this test claim was issued on July 24, 2006, with a deadline for comments of August 21, 2006. The final staff analysis was issued on September 7, 2006. The claimant, County of Orange, filed comments on September 15, 2006, and the County of Sacramento, interested party, filed comments received on September 18, 2006. The following discussion is a supplemental analysis to address these late filings, and is to be considered in addition to the final staff analysis, not in substitution.

Prior law allowed voters to newly register to vote, reregister, or change their address with county elections officials, until the 29th day before an election. After that date, voter registration closed until the conclusion of the upcoming election. Statutes 2000, chapter 899 amended the Elections Code to allow new registrations or changes to voter registrations through the 15th day prior to an election. The claimant seeks mandate reimbursement for costs incurred to register voters from the 28th through the 15th day before elections, such as for: implementation planning meetings; revising training programs; holding an informational media campaign; responding to additional inquiries about the new law; and providing additional personnel to accommodate the increased workload.

As discussed in the final staff analysis, staff recommends that the Commission approve a one-time reimbursable activity from Statutes 2000, chapter 899, as it amended Elections Code section 13303, subdivision (c), as follows:

- Amend the polling place notice sent to each voter who registered after the 29th day prior to the election, to include the following: information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed.

In the written comments received September 15, 2006, County of Orange asserts that "This shows how little Staff is aware of the necessities of the County Registrar of Voters, and what elections entail." The claimant continues:

First of all this particular provision is not applicable just to one election: it is applicable to all elections held. Any voter can register to vote, or change their address for voting purposes up until the 15th day before any election. Thus, to provide this as an activity on a one time basis ignores the fact that elections are continually held, and this legislation was not just applicable to one election. Thus, this is an ongoing activity which is conducted before each election.

Staff is aware that elections are held throughout the state semi-annually to biennially, but the act of amending a pre-existing polling place notice is not one that reoccurs at every election. Once the text of the notice is amended to include the material required by Statutes 2000, chapter 899, there are no additional activities required that were not already required under prior law.

The prior law of Elections Code section 13303, subdivision (b), already required that an "elections official shall send notice of the polling place to each voter with the sample ballot." In addition, Elections Code section 13306, has long provided that "*Notwithstanding Sections 13300, 13301, 13303, and 13307, sample ballots and candidates' statements need not be mailed to voters who registered after the 54th day before an election, but all of these voters shall receive polling place notices ...*" [Emphasis added.] Therefore under prior law, elections official were required to send polling place notices to voters who registered after the 54th day prior to an election. Elections Code section 13303, subdivision (c), as added by Statutes 2000, chapter 899, added information to the polling place notice, which provides a higher level of service to the public within an existing program.

The claimant's only allegations that can be clearly attributed to Elections Code section 13303 are at page 4 in the test claim filing, where the claimant alleged that "Those who registered late were entitled to notification, and an additional mailing was required." Elections Code section 13306 demonstrates that an *additional* mailing is not required as polling place notices were already required for voters who registered anytime after the 54th day before an election. The claimant has not shown what ongoing activities are *newly* required by the amended Elections Code section 13303, subdivision (c) after the boilerplate text of a polling place notice is amended; therefore staff maintains its recommendation to approve this activity on a one-time basis.

The remainder of the September 15, 2006 filing from County of Orange, and the text of the September 18, 2006 filing from County of Sacramento, describe the impact that changing the timeframe for registration prior to an election has had on county registrars and argue that this change has mandated an increased level of service resulting in a reimbursable state-mandated program. These filings are printed in yellow and can be found immediately following this supplemental analysis.

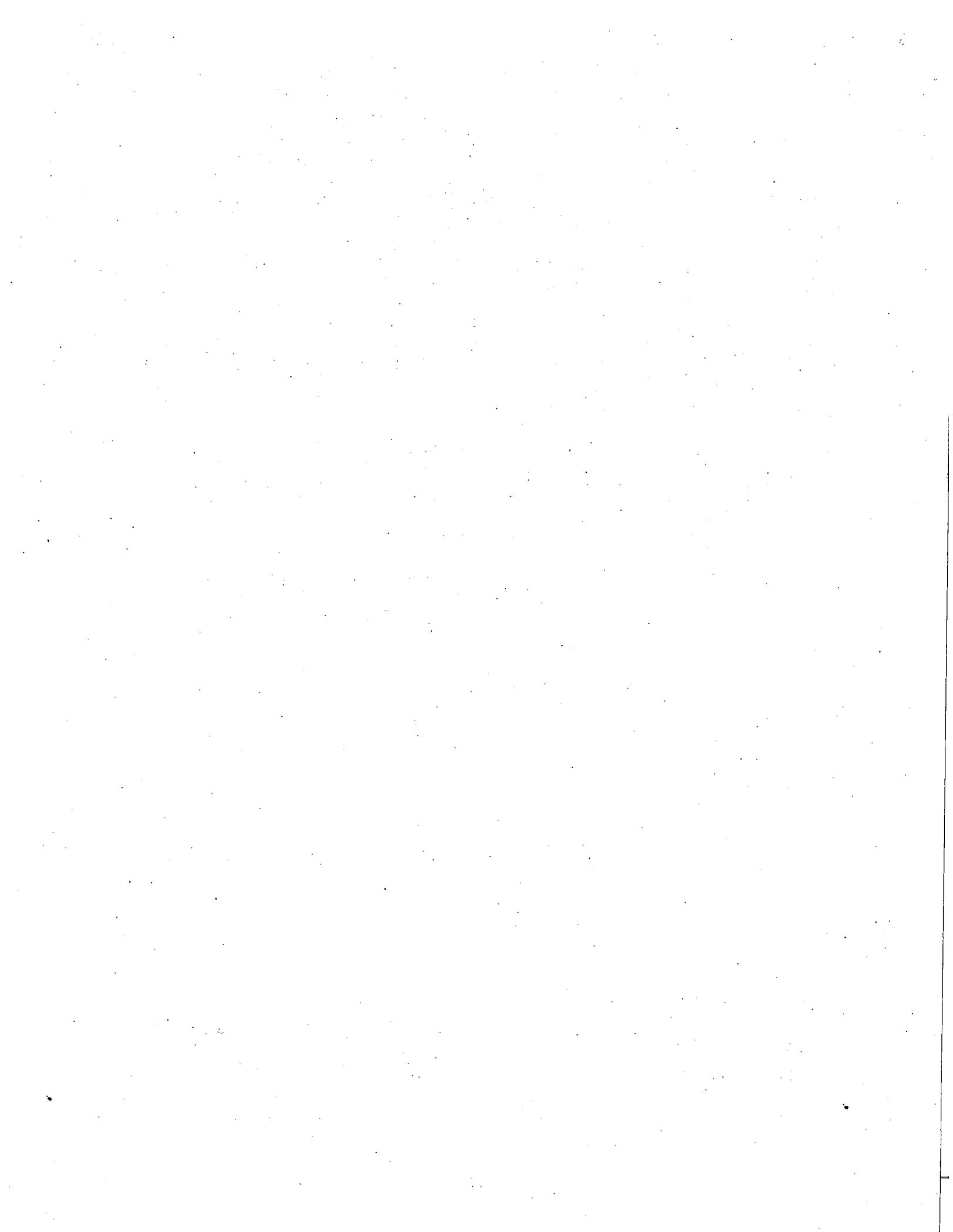
A representative argument from these filings is found on the first page of the County of Sacramento comments:

This shortened time frame clearly provides for a higher level of service from that previously required, in that the deadline to register to vote for any election was shortened from E-29 days prior to any election to E-15 days prior to the election. This creates a new window of time in which eligible citizens can qualify to vote for any specific election. And, in order to implement this legislation, county election offices have had to drastically increase the level of service provided to the public in order to provide the legally required voting material to both the voter and the polling place on election day.

Staff's legal analysis responding to this contention can be found on pages 9 through 12 of the final staff analysis, but in brief, staff finds that the Elections Code, as amended, does not mandate a new program or higher level of service on elections officials within the meaning of article XIII B, section 6 because processing and accepting voter registration affidavits and changes of address are not newly required under the Elections Code. Elections officials have been required to perform these activities long before the enactment of Statutes 2000, chapter 899.¹ The test claim allegations generally request reimbursement for increased staffing expenses, developing and conducting training, and holding planning meetings; these are not new *activities* directly required by the test claim legislation, but instead are *costs* that the claimant is associating with the changed timeframes. Staff does not dispute the claimant's allegations that the changed timeframes impose a burden on the way business is conducted by elections officials during the weeks before an election, and that there are likely associated costs; but the test claim legislation itself did not require the activities alleged in the manner required for reimbursement under mandates law.

Staff recommends that the Commission follow the analysis and recommendation in the final staff analysis, and partially approve the *Fifteen Day Close of Voter Registration* test claim for the activity described in the Conclusion at page 16.

¹ The voter registration timelines were last substantively amended following the decision in *Young v. Gnos* (1972) 7 Cal.3d 18, in which the California Supreme Court found the 54-day residency requirement and corresponding voter registration deadlines unconstitutional and declared 30 days to be the *maximum* voter registration restriction permissible under a reasonableness standard.



Countywide Services Agency

Voter Registration and Elections



County of Sacramento

Terry Schutten, County Executive
Penelope Clarke, Agency Administrator

Jill LaVine, Registrar of Voters

September 15, 2006

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300RE: Fifteen Day Close of Voter Registration (01-TC-15)
Comments on Staff Analysis

I have read through staff's analysis of the Fifteen Day Close of Voter Registration test claim and have concerns with their interpretation of the workflow related to the changes implemented as an outcome of the related legislation. Staff has noted that there is no validity to the claim as registering voters is a basic requirement of this office. To be clear, I agree with the staff analysis that the requirement to register voters has not changed. What is disagreed upon is the level of service mandated in the legislation in order to include people who register late (between E-28 and E-15) are included in the upcoming election. It is clear that the legislation wanted these late registrants to be included in the upcoming election. Further, this legislation requires on-going work that is not one-time in nature.

This shortened time frame clearly provides for a higher level of service from that previously required, in that the deadline to register to vote for any election was shortened from E-29 days prior to any election to E-15 days prior to the election. This creates a new window of time in which eligible citizens can qualify to vote for any specific election. And, in order to implement this legislation, county election offices have had to drastically increase the level of service provided to the public in order to provide the legally required voting material to both the voter and the polling place on election day.

As an example of the increased level of service to voters required by this legislation, Sacramento County alone received over 30,000 valid registration cards during this 14 day period for the November 2004 general election. These were registration cards that this legislation required to be processed so that these late registrants would be eligible to vote at the November 2004 election. Prior to this legislation, there was no mandate to process these cards until after the election. If any registration cards were received after the E-29 date, they would be held until after the election for processing.

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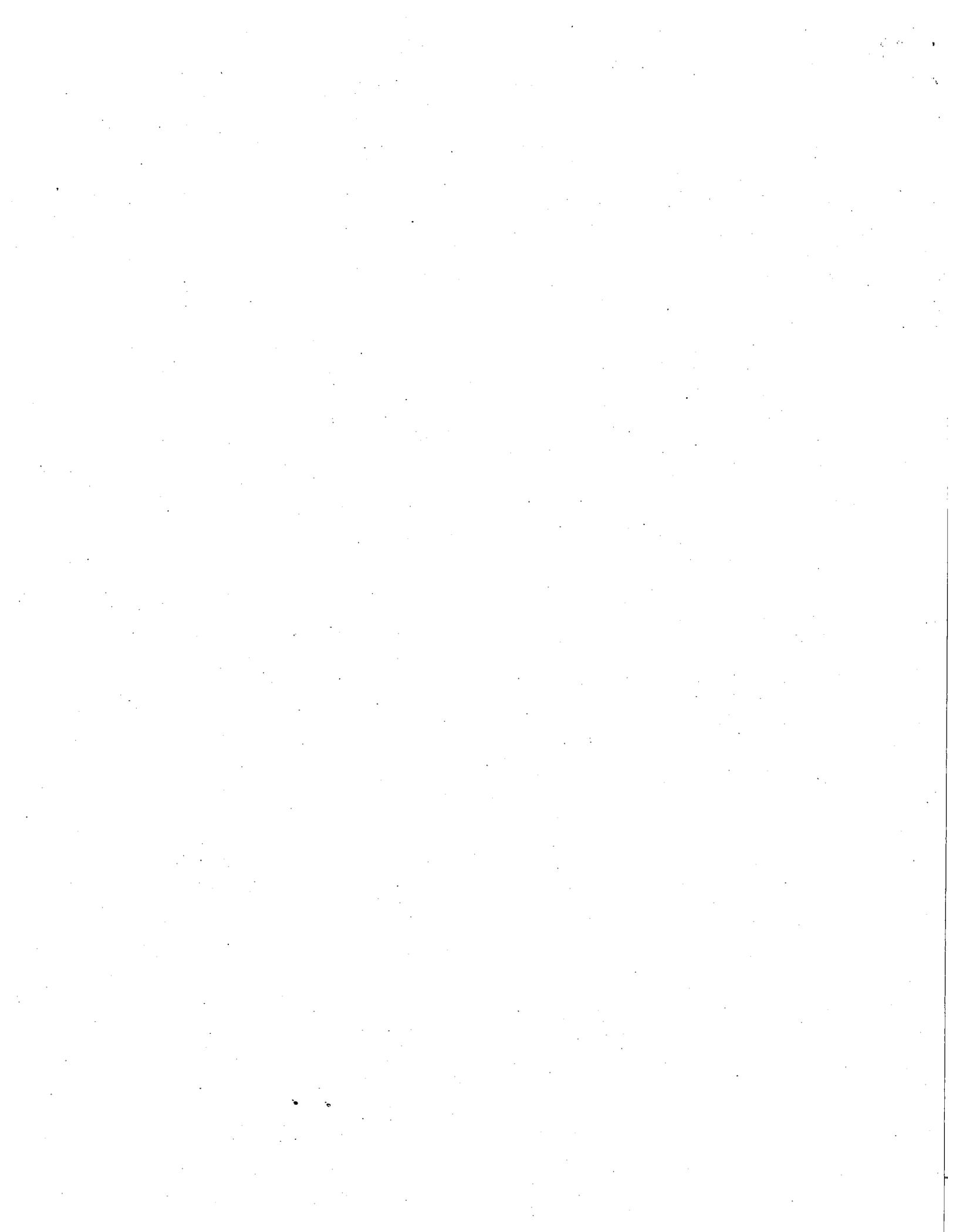
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COMMENTS ON DRAFT STAFF ANALYSIS



Fifteen Day Close of Voter Registration
(01-TC-15)

Elections Code Sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13300
13303 and 13306
Statutes 2000, Chapter 899 (AB 1094)

County of Orange, Claimant

The Draft Staff Analysis herein finds that there is only one reimbursable component, to wit: Amend the polling place notice sent to each voter who registered after the 29th day prior to the election, to include the following: information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed. This reimbursable component was allowed as a one time cost only.

This shows how little Staff is aware of the necessities of the County Registrar of Voters, and what elections entail.

First of all, this particular provision is not applicable just to one election: it is applicable to all elections held. Any voter can register to vote, or change their address for voting purposes up until the 15th day before any election. Thus, to provide this as an activity on a one time basis ignores the fact that elections are continually held, and this legislation was not just applicable to one election. Thus, this is an ongoing activity which is conducted before each election.

Secondly, the fact that the period for registration has been substantially shortened, during a period of time when the Registrar of Voter's Office is undertaking substantial activities in order to conduct the election in a proper and timely basis ignores the impact that this new program has on local registrar of voters offices.

First of all, if a new voter registers, that name must be on the roster of eligible voters. An increased amount of sample ballots must be made available to voters who register after the 29th day prior to the election who do not have access to an electronic version of the sample ballot. This results in substantial additional costs for printing sample ballots.

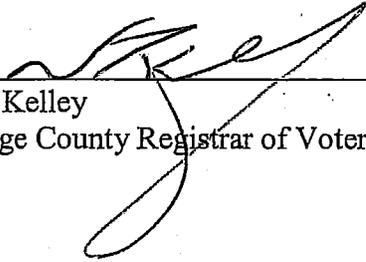
The fact that the time for registration has been shortened does not result, as contended by the Department of Finance, in no new costs ignores the reality of the impact of this

legislation. Prior to the test claim legislation, the voters had until the 29th day prior to the day of the election to register. The shortening of the period means that individuals who have moved, desire to register, or change their political party particularly in light of the increased campaigning towards day of the election, will now be eligible to register when they otherwise wouldn't.

Every voter who registers from the 29th day to the 15th day is one more voter who otherwise would not have been eligible to vote in the upcoming election. The Registrar of Voters previously would have knowledge, on the 29th day, of how many voters there would be eligible to vote, and thus how many sample ballots and ballots need to be made available. Given the lead time for printing, and the shortened period of time, additional ballots must be ordered to take in to account those persons who would now be voting.

The fact that this legislation did not increase those who are eligible to vote does not mean that there is not an increased level of service in an existing program. Although the 29% who the Department of Finance contends were eligible to vote and had not chosen to register could have registered before the 29th day does not mean that there are no increased activities. It is maintaining the same level of service from the 29th day to the 15th day close, which has resulted in an increased level of service due to the loss of 14 days, which must be, accommodated results in the claimed costs.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed this 13th day of September, 2006, at Santa Ana, California.



Neal Kelley
Orange County Registrar of Voters

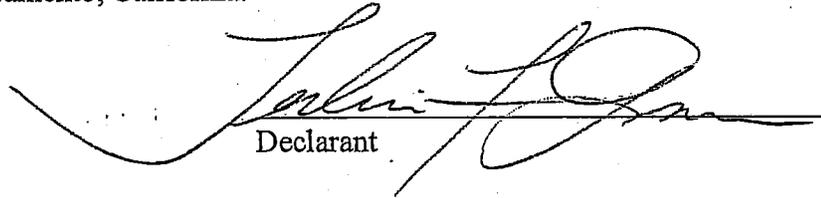
PROOF OF SERVICE BY MAIL

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 is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841.

On September 15, 2006, I served Comments to Draft Staff Analysis, *15 Day Close of Voter Registration*, by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list attached hereto, and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully prepaid.

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 this 15 day of September, 2006, at Sacramento, California.


Declarant

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Commission on State Mandates

Original List Date: 5/31/2002
Last Updated: 9/19/2006
List Print Date: 09/19/2006
Claim Number: 01-TC-15
Issue: Fifteen Day Close of Voter Registration

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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