

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. Gness* (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.