

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

TABLE OF CONTENTS

Exhibit A
Parameters and Guidelines adopted October 27, 2011 2

Exhibit B
Draft Staff Analysis issued June 8, 2012 9

Exhibit C
Department of Finance Comments dated June 15, 2012 13

PARAMETERS AND GUIDELINES

Elections Code Sections 2151 and 13102(b)

Statutes 2000, Chapter 898 (SB 28)

Modified Primary Election

01-TC-13

I. SUMMARY OF THE MANDATE

This program deals 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Following the court’s decision, the test claim statute was enacted (Statutes 2000, chapter 898) and largely repealed and reenacted the code sections that had been amended by Proposition 198 – generally restoring the language to the law that was in place immediately prior to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 Commission concluded that Statutes 2000, chapter 898, as it amended Elections Code sections 2151 and 13102(b), 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 imposes costs mandated by the state pursuant to Government Code section 17514 for the following specific new activities:

- Add information to the voter registration card stating that voters who declined 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 such a person to do so. (Elec. Code, § 2151.)
- Allow voters who declined to state a party affiliation to vote a party ballot if the political party, by party rule duly noticed to the Secretary of State, authorizes such a person to do so. (Elec. Code, §§ 2151 and 13102(b).)

The remaining allegations pled in the test claim were denied by the Commission.

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 Orange filed the test claim on April 18, 2002, establishing eligibility for reimbursement beginning July 1, 2000. However, the operative and effective date of the test claim statute was January 1, 2001. Therefore, costs incurred for compliance with the mandated activities are reimbursable on or after January 1, 2001.

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, training packets, 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 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.¹

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).)
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.

¹ 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.

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.

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.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

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 CFR 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 chapter² 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.

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.

² This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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.

Hearing: July 27, 2012
j:mandates/2001/tc/01tc13/sce/dsa

ITEM _____
DRAFT 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

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

¹ Exhibit A.

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).)
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.

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.

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

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.



EDMUND G. BROWN JR. ■ GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DDF.CA.GOV

Exhibit C

June 15, 2012

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Halsey:

The Department of Finance (Finance) has reviewed the Commission on State Mandates (Commission) draft staff analysis of the proposed statewide cost estimate (SCE) for the Modified Primary Election (01-TC-13) test claim submitted by the County of Orange.

Finance has no concerns with the Commission's recommendation to adopt the SCE of \$1,077,719 for January 1, 2001 to June 30, 2001, and fiscal years 2001-02 through 2010-11. We also agree that the total costs for this period may be higher or lower based on the actual number of eligible claimants, amended or late claims, and/or audit findings.

Finance notes, however, that due to the passage of Proposition 14 in 2010, the Commission found that the 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. As a result, the total cost of the program may be lower based on this finding.

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents that are e-filed with the Commission on State Mandates need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any questions regarding this letter, please contact Carla Shelton, Associate Finance Budget Analyst at (916) 445-3274.

Sincerely,

A handwritten signature in blue ink that reads "Tom Dyer". The signature is stylized and cursive.

TOM DYER
Assistant Program Budget Manager

Enclosure

Enclosure A

DECLARATION OF CARLA SHELTON
DEPARTMENT OF FINANCE
CLAIM NO. CSM-01-TC-13

Exhibit C

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

June 15, 2012
at Sacramento, CA

Carla Shelton
Carla Shelton