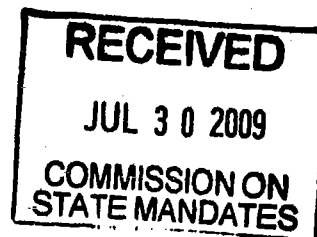


July 29, 2009



TO: Nancy Patton, Assistant Executive Director
Commission on State Mandates

FROM: Allan Burdick, Staff
Advisory Committee on State Mandates

RE: Pending Parameters and Guidelines

The California State Association of Counties (CSAC) and League of California Cities (LCC) Advisory Committee on State Mandates has met with the Department of Finance to consider the adoption of a reasonable reimbursement methodology (RRM) for inclusion in the pending sets of local agency parameters and guidelines for eight test claims approved by the CSM for which no parameters and guidelines have been developed to date. The Committee will meet with the Mandate Unit of the Department of Finance on July 30, 2009, to once again review the test claims findings to determine if there is any change in our previous discussions. The following is a list of the test claims separated into the following three categories: (1) Pursuing the adoption of a jointly negotiated RRM with the Department of Finance, (2) Pursuing the adoption of an RRM in a set of CSM's set of parameters and guidelines, and (3) Pursuing parameters and guidelines with no plans for a RRM. The Committee and Finance will also be discussing draft plans for completing the two test claims in which it is pursuing a jointly developed RRM and will be forwarding those plans to you soon.

Pursuing the adoption of a RRM with the Department of Finance

1. Identify Theft
2. Domestic Violence Background Checks

Proposing a RRM in a set of CSM parameters and guidelines

1. Voter Identification Procedures
2. Interagency Child Abuse and Neglect (ICAN) Reporting and Investigation

Pursuing parameters and guidelines with no RRM

1. Crime Statistics Report for the DOJ
2. Local Agency Formation Commission
3. Modified Primary
4. Permanent Absentee Voters II

The Committee and the two associations are also working with the Department of Finance to develop a legislative determined mandate for the Firefighters Procedural Bill of Rights based on AB 220 of the 2007 Legislative Session. If you have any questions, you can reach me in Sacramento at 471-5538.

PROPOSED PARAMETERS AND GUIDELINES
Modified Primary Election
01-TC-13

A. ONE-TIME ACTIVITIES

1. Conducted meetings in order to obtain information from the Secretary of State as to which political parties allowed voters who have not designated their political party to vote in primary elections of given political parties.

This activity is not found in the test claim statutes, nor did the Commission on State Mandates determine that it was a mandate.

Letter from the **Secretary of State** executed by John Mott-Smith, Chief, Elections Division dated July 24, 2002 states that, "Specifically, in order to plan for this new requirement, counties met together for months to hammer out the specifics of implementation. These meetings exposed issues of complexity and implementation that were then transmitted to all county elections officials via printed implementation manuals as well as on-site visits with virtually every county to ensure uniform implementation throughout the state."

John Mott-Smith also stated, "I want to stress that this uniformity is absolutely critical to the State's interest in fair election, and without the planning undertaken by the counties there could have been serious equal protection and other legal issues arising over this issue."

2. Had meetings with the elections department in order to ascertain what activities were necessary to implement the legislation.

This activity is not found in the test claim statutes, nor did the Commission on State Mandates determine that it was a mandate.

Letter from the **Secretary of State** executed by John Mott-Smith, Chief, Elections Division stated, "a part of the training process depends on the office staff in the Elections Department understanding the new law and being able to communicate it to the public and to potential poll workers who call. Providing accurate information to the public and other customers in the election process is critical to the integrity of the process and the confidence the public feels in the conduct and administration of elections."

3. Developed new internal policies and procedures.

This activity is not found in the test claim statutes, nor did the Commission on State Mandates determine that it was a mandate.

Letter from the **Secretary of State** executed by John Mott-Smith, Chief, Elections Division stated, “once the uniform application of procedures was determined, each county was required to review and adapt printed materials, as well as software and computer processes to count and tabulate votes.”

4. Re-designed and republished the sample ballot and absentee voter application.

Elections Code section 2151

The voter registration card shall inform the affiant that any elector may decline to state a political affiliation, but no person shall be entitled to vote the ballot of any political party at any primary election unless he or she has stated the name of the political party with which he or she intends to affiliate or unless he or she has declined to state a party affiliation and the political party, by party rule duly noticed to the Secretary of State, authorize a person who has declined to state a party affiliation to vote the ballot of that political party. The voter registration card shall include a listing of all qualified political parties.

No person shall be permitted to vote the ballot of any party or for any delegates to the convention of any party other than the party designated in his or her registration, except as provided by Section 2152 or unless he or she has declined to state a party affiliation and the party, by party rule duly noticed to the Secretary of State, authorizes a person who has declined to state a party affiliation to vote the party ballot or for delegates to the party convention.

Commission Findings

The Commission determined that holding any form of an open primary was neither the law prior to Proposition 198, nor required by the *Court in California Democratic Party v. Jones*, 530 U.S. 567.

The Commission finds that the amendments mandate a new program or higher level of service in regards to adding 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.

5. Re-design and implemented new election software.

This activity is not found in the test claim statutes, nor did the Commission on State Mandates determine that it was a mandate.

Letter from the **Secretary of State** executed by John Mott-Smith, Chief, Elections Division stated, “once the uniform application of procedures was determined, each county was required to review and adapt printed materials, as well as software and computer processes to count and to tabulate votes. This includes sample ballots, mailed to every voter, applications for absentee ballots, and other materials voters rely on to

receive election information, as well as all the software required to lay out and design ballots, count votes, aggregate vote totals, and produce a written record of vote results.”

6. Inform and train poll workers regarding the voting options for the decline to state voter.

This activity is not found in the test claim statutes, nor did the Commission on State Mandates determine that it was a mandate.

Letter from the **Secretary of State** executed by John Mott-Smith, Chief, Elections Division stated, “because voters would be treated differently at the polling place, depending on their political affiliation or lack of it, each county had to adapt its poll worker training programs and polling place procedures.”

John Mott-Smith further stated, “No matter what procedures are written down and distributed to implement new law, they are of no use whatsoever unless the people who implemented them understand them and are equipped to apply them on election day.”

Mr. Smith the adverse effects of no training by stating, “The universe of poll workers is made up of many elderly persons and others who have followed and given set of procedures for years...If this training does not take place , or is not successful, the potential for voters to receive the wrong ballot is unacceptably high and could result in legal exposure and jeopardy for the outcome of the election.”

Mr. Smith also stated that, “This procedure also had the effect of discouraging people from becoming poll workers because it added one more level of complexity to an already long and difficult day for a population of largely elderly persons.”

7. Provide specialized official ballots for the decline to state voter at each poll site.

Elections Code section 13203,13230,13301, and 13302

Across the top of the ballot shall be printed in heavy-faced gothic capital type not smaller than 30-point, the words “OFFICIAL BALLOT” may be as small as 24-point. Beneath this heading, in the case of a partisan primary election, shall be printed in 18-point boldface gothic capital type the official party designation or the words “NONPARTISAN BALLOT” as applicable. Beneath the heading line r lines, there shall be printed, in boldface type as large as the width of the ballot or lines, there shall be boldface type as large as the width of the ballot makes possible, the number of the congressional, Senate, and Assembly district, the name of the county in which the ballot is to be voted, and the date of the election.

Commission Findings

The Commission determined that the Legislature restored the law on the books exactly to the prior law, by Statute 200, chapter 898. The Commission concludes that the activity does not mandate a new program or higher level of service.

B. ON-GOING ACTIVITIES

1. Notify every permanent voter who is registered as a decline-to-state voter that they have an option to vote a partisan ballot as long as that political party has agreed.

Statute 2000, chapter 898 (2)

This bill would further require the application to inform the voter that if he or she is not affiliated with a political party, the voter may request an absentee ballot for a particular political party for the primary election... The bill would require the application to contain a check-off box allowing the voter to make that request.

This bill would impose a state-mandate on local programs by imposing new duties on local elections officials in implementing its provision.

2. Hand process absentee voter requests.

This activity is not found in the test claim statutes, nor did the Commission on State Mandates determine that it was a mandate.

3. Provide postage paid post card for the permanent absent voter decline to state voter to indicate which partisan absentee ballot they would like sent to them.

Statute 2000 chapter 898 (2)

This bill would further require the application to inform the voter that if he or she is not affiliated with a political party, the voter may request an absentee ballot for a particular political party for the primary election... The bill would require the application to contain a check-off box allowing the voter to make that request.

This bill would impose a state-mandate on local programs by imposing new duties on local elections officials in implementing its provision.

4. Enter the requested partisan ballot information from the post card into the computer software database.

This activity is not found in the test claim statutes, nor did the Commission on State Mandates determine that it was a mandate.

Letter from the **Secretary of State** executed by John Mott-Smith, Chief, Elections Division stated, "once the uniform application of procedures was determined, each county was required to review and adapt printed materials, as well as software and computer processes to count and tabulate votes. This included sample ballots, mailed to every voter, applications for absentee ballots, and other materials voters rely on to receive election information, as well as all the software required to lay out and design ballots, count votes, aggregate vote totals, and produce a written record of vote results."

5. Send to each voter a sample ballot containing the information regarding the options available to the decline-to-state voters.

Elections Code section 13102 (b) as amended by Section 2000, chapter 898

At partisan primary elections, each voter not registered as intending to affiliate with any one of the political parties participating in the election shall be furnished only a nonpartisan ballot, unless he or she requests a ballot of a political party and that political party, by party rule duly noticed to the Secretary of State, authorizes a person who has declined to state a party affiliation to vote the ballot of that political party. The nonpartisan ballot shall contain only the names of all candidates for nonpartisan offices and measures to be voted for at the primary election.

Statute 2000 chapter 898 (2)

This bill would further require the application to inform the voter that if he or she is not affiliated with a political party, the voter may request an absentee ballot for a particular political party for the primary election... The bill would require the application to contain a check-off box allowing the voter to make that request. This bill would impose a state-mandate on local programs by imposing new duties on local elections officials in implementing its provision.

Commission Findings

The Commission determined that there is a mandate to, "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."

6. Inform and train poll workers regarding the options for the decline to state voter.

This activity is not found in the test claim statutes, nor did the Commission on State Mandates determine that it was a mandate.

See One-Time Activity #6

7. Provide specialized official ballots for the decline to state voter at each poll site.

Elections Code section 13203,13230,13301, and 13302

Across the top of the ballot shall be printed in heavy-faced gothic capital type not smaller than 30-point, the words "OFFICIAL BALLOT" may be as small as 24-point. Beneath this heading, in the case of a partisan primary election, shall be printed in 18-point boldface gothic capital type the official party designation or the words "NONPARTISAN BALLOT" as applicable. Beneath the heading line or lines, there shall be printed, in boldface type as large as the width of the ballot or lines, there shall be boldface type as large as the width of the ballot makes possible, the number of the congressional, Senate, and Assembly district, the name of the county in which the ballot is to be voted, and the date of the election.

Commission Findings

The Commission determined that the Legislature restored the law on the books exactly to the prior law, by Statute 200, chapter 898, and that the activity does not mandate a new program or higher level of service.