Hearing Date: October 27, 2011
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ITEM ___

DRAFT STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES

Elections Code Sections 2151 and 13102(b)

Statutes 2000, Chapter 898 (SB 28)

Modified Primary Election
(01-TC-13)

County of Orange, Claimant

EXECUTIVE SUMMARY

Background

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Following the court's decision, the test claim statute was enacted (Statutes 2000, chapter 898) and largely repealed and reenacted the code sections that had been amended by Proposition 198 – generally restoring the language to the law that was in place immediately prior to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.

Proposed Parameters and Guidelines

The issues in dispute involve the period of reimbursement and the reimbursable activities.

Period of Reimbursement

The claimant's proposed parameters and guidelines state that the period of reimbursement for the test claim begins on September 29, 2000, the date of enactment of the test claim statute.

Although the test claim statute, Statutes 2000, chapter 898, was approved by the Governor and filed with the Secretary of State on September 29, 2000, it was not enacted as urgency legislation and, thus, did not immediately go into effect upon its enactment. Nor did the statute have a delayed operative date to give counties time to implement the statute.[1] Rather, the operative and effective date of the statute was January 1, 2001.[2] A statute has no force and effect until its operative and effective date.[3] Thus, the reimbursable activities identified in the parameters and guidelines did not become "mandated" and were not required to be implemented until January 1, 2001.

Staff has modified Section III of the proposed parameters and guidelines to reflect the period of reimbursement beginning January 1, 2001, and to incorporate the most recent boilerplate language.

Reimbursable Activities

The first activity approved by the Commission as a reimbursable state-mandated activity is to add information about the *Modified Primary* program to the voter registration card. Although the claimant did not include this activity in its proposed parameters and guidelines, the Commission is required to identify all costs mandated by the state in the parameters and guidelines. Staff recommends that the Commission identify this activity in the parameters and guidelines as a one-time activity.

The second activity determined by the Commission to be reimbursable is the ongoing activity to "allow" voters who declined to state a party affiliation to vote a party ballot at each primary election if a political party authorizes such a vote. The Commission's statement of decision does not define what it means to "allow" a decline to state voter to vote a party ballot, and the claimant's proposed parameters and guidelines list of reimbursable activities attempt to define that activity.

However, the Legislature has established a statutory process to allow the decline to state voter to vote a partisan ballot in primary elections. To the extent the process was adopted by the

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[1] *Preston v. State Bd. of Equalization* (2001) 25 Cal.4th 197, 223–224.

[2] Article IV, section 8(c), of the California Constitution; Government Code section 9600.

[3] *People v. Camba* (1996) 50 Cal.App.4th 857, 866.

Legislature at the same time as the test claim statute (Stats. 2000, ch. 898), staff recommends that the Commission include the activities in the parameters and guidelines to define what is meant to "allow" the decline to state voter to vote under the *Modified Primary* program.

In addition, in June 2010, the voters adopted Proposition 14, the "Top Two Primaries Act," effective January 1, 2011. The proposition amended article II, sections 5 and 6 of the California Constitution to provide for a "voter-nominated primary election" for each state elective office and congressional office in California. Voters can vote in the primary election for any candidate for a congressional or state elective office without regard to the political party affiliations of either the candidate or the voter. The *Modified Primary* rules continue to apply at any primary election for President of the United States or for a party committee. Thus, the *Modified Primary* program no longer applies to primary elections for state elective or congressional offices. Staff recommends that the parameters and guidelines reflect this change in law.

The Commission may also authorize reimbursement for activities that are "the most reasonable methods of complying with the mandate" pursuant to section 1183.1(a)(4) of the Commission's regulations. Staff has included those activities to extent they are supported by evidence in the record.

Staff recommends that Section IV of the parameters and guidelines state the following:

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.)

4. Add the following information regarding the *Modified Primary* program to the notice and application to vote by mail:

   a. Language informing 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, if that political party has adopted a party rule, duly noticed to the Secretary of State, authorizing that vote.

   b. A toll-free telephone number, established by the Secretary of State, which the voter may call to access information to identify which political parties have adopted such a rule authorizing decline to state voters to vote their party ballot. The application shall also contain a check-off box with a statement that says "I

am not presently affiliated with any political party. However, for this primary election only, I request a vote by mail ballot for the ___ Party." (Elec. Code, § 3006.)

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.[4]

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.

Conclusion and Staff Recommendation

Staff recommends that the Commission:

- Adopt the proposed parameters and guidelines, beginning on page 22.
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

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[4] 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.

STAFF ANALYSIS

Claimant

County of Orange

Chronology

07/28/2006	Commission adopts statement of decision
08/07/2006	Statement of decision issued
08/25/2006	Claimant files proposed parameters and guidelines
09/05/2006	Proposed parameters and guidelines deemed complete and issued for comment
09/29/2006	Department of Finance files comments on claimant's proposed parameters and guidelines
10/03/2006	Claimant requests extension of time to file rebuttal comments; extension granted until October 23, 2006
12/15/2006	Claimant files rebuttal comments and declarations from the County of Orange Registrar of Voters and the County of Sacramento Assistant Registrar of Voters
01/18/2007	Claimant files proposed amended parameters and guidelines to add time study language and to amend the boilerplate language for Section VII, Offsetting Savings and Reimbursements
01/25/2007	Claimant files proposed amended parameters and guidelines and informs Commission staff that it will be negotiating a joint reasonable reimbursement methodology (RRM) with Department of Finance
01/__/2010	Claimant informs Commission staff that it is no longer negotiating an RRM with Department of Finance, and parameters and guidelines may proceed

I. Background and 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. Commission's Responsibility for Adopting Parameters and Guidelines

If the Commission approves a test claim, the Commission is required by Government Code section 17557 to adopt parameters and guidelines for the reimbursement of any claims. The successful test claimant is required to submit proposed parameters and guidelines to the Commission for review. The parameters and guidelines shall include the following information: a summary of the mandate; a description of the eligible claimants; a description of the period of reimbursement; a description of the specific costs and types of costs that are reimbursable, including activities that are not specified in the test claim statute or executive order, but are determined to be reasonably necessary for the performance of the state-mandated program; instructions on claim preparation, including instructions for the direct or indirect reporting of the actual costs of the program or the application of an RRM; and any offsetting revenue or savings that may apply.[5]

As of January 1, 2011, Commission hearings on the adoption of proposed parameters and guidelines are conducted under Article 7 of the Commission's regulations.[6] Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is based on substantial evidence in the record, and oral or written testimony is offered under oath or affirmation.[7] Each party has the right to present witnesses, introduce exhibits, and submit declarations. However, the hearing is not conducted according to the technical rules of evidence. Any relevant non-repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence may be used to supplement or explain, but is not sufficient in itself to support a finding unless the hearsay evidence would be admissible in civil actions.[8]

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[5] Government Code section 17557; California Code of Regulations, Title 2, section 1183.1.

[6] California Code of Regulations, Title 2, section 1187.

[7] Government Code section 17559(b); California Code of Regulations, Title 2, section 1187.5.

[8] California Code of Regulations, Title 2, section 1187.5.

Should the Commission adopt this analysis and proposed parameters and guidelines, a cover sheet would be attached indicating that the Commission adopted the analysis as its decision. The decision and adopted parameters and guidelines are then submitted to the State Controller's Office to issue claiming instructions to local governments, and to pay and audit reimbursement claims. Issuance of the claiming instructions constitutes the notice of the right of local governments to file reimbursement claims with the State Controller's Office based on the parameters and guidelines.

III. Party Positions

Claimant

The claimant requests reimbursement for the following activities:

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.
2. Had meetings with the elections department in order to ascertain what activities were necessary to implement the legislation.
3. Developed new internal policies and procedures.
4. Redesigned and republished the sample ballot and absentee voter application.
5. Redesigned and implemented new election software.
6. Informed and trained poll workers regarding the voting options for the decline to state voter.
7. Provided specialized official ballots for the decline to state voter at each poll site.

B. Ongoing Activities

1. Notify every permanent voter who is registered as a decline to state voter that he or she has an option to vote a partisan ballot as long as that political party has agreed.
2. Hand process absentee voter requests.
3. Provide postage paid post card for the permanent absent decline to state voter to indicate which partisan absentee ballot they would like sent to them.
4. Enter the requested partisan ballot information from the post card into the computer software database.
5. Send to each voter a sample ballot containing the information regarding the options available to the decline to state voters.
6. Inform and train poll workers regarding the options for the decline to state voter.
7. Provide specialized official ballots for the decline to state voter at each poll site.

Although these activities are not expressly required by the test claim statute, the claimant argues they are the most reasonable methods of complying with the mandate and, pursuant to section 1183.1(a)(1)(4), should be reimbursable.

The claimant also requests reimbursement from the enactment date of the statute, rather than from the later operative and effective date of the statute.

Department of Finance

As described more fully in the analysis, the Department of Finance argues that many activities requested by the claimant are not reasonably necessary to comply with the mandate and, thus, should be denied.

IV. Discussion

Staff reviewed the claimant's proposed parameters and guidelines, and comments from the parties. As described below, staff recommends that the Commission amend the proposed boilerplate language to conform to recently adopted parameters and guidelines. Staff further recommends that the Commission amend the proposed language for Section III, Period of Reimbursement, to reflect the operative and effective date of the statute, and the proposed language for Section IV, Reimbursable Activities.

A. Section 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. This test claim was filed on April 18, 2002 (fiscal year 2001-2002), establishing eligibility for reimbursement beginning July 1, 2000. The test claim statute, however, was enacted and became operative and effective after that date.

The claimant's proposed parameters and guidelines state that the period of reimbursement for the test claim begins on September 29, 2000, the date of enactment of the test claim statute.

Although the test claim statute, Statutes 2000, chapter 898, was approved by the Governor and filed with the Secretary of State on September 29, 2000, it was not enacted as urgency legislation and, thus, did not immediately go into effect upon its enactment. Nor did the statute have a delayed operative date to give counties time to implement the statute.[9] Rather, the operative and effective date of the statute was January 1, 2001.[10] A statute has no force and effect until its operative and effective date.[11] Thus, the reimbursable activities identified in the parameters and guidelines did not become "mandated" and were not required to be implemented until January 1, 2001.

Staff has modified Section III of the proposed parameters and guidelines to reflect the period of reimbursement beginning January 1, 2001, and to incorporate the most recent boilerplate language.

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[9] *Preston v. State Bd. of Equalization* (2001) 25 Cal.4th 197, 223–224.

[10] Article IV, section 8(c), of the California Constitution; Government Code section 9600.

[11] *People v. Camba* (1996) 50 Cal.App.4th 857, 866.

B. Section IV, Reimbursable Activities

1. Activities required by the *Modified Primary* program

The Commission approved this test claim for the following reimbursable state-mandated activities:

- 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 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 first activity to add information about the *Modified Primary* program to the voter registration card has been determined by the Commission to be a reimbursable state-mandated cost. Although the claimant did not include this activity in its proposed parameters and guidelines, the Commission is required to identify all costs mandated by the state in the parameters and guidelines.[12] Staff recommends that the Commission identify this activity in the parameters and guidelines as a one-time activity.

The second activity determined by the Commission to be reimbursable is the ongoing activity to "allow" voters who declined to state a party affiliation to vote a party ballot at each primary election if a political party authorizes such a vote. The Commission's statement of decision does not define what it means to "allow" a decline to state voter to vote a party ballot, and the claimant's proposed parameters and guideline and list of reimbursable activities attempt to define that activity.

At the time the test claim statute was adopted in 2000, however, the Legislature enacted statutes to implement the *Modified Primary* program that allows the decline to state voter (either an absentee or vote by mail voter[13] or one that votes at the polls) to vote a partisan ballot at a primary election. Some of the claimant's proposed activities are generally modeled from these statutes, but the claimant's proposed language does not track the statutory language. Staff recommends that the Commission include in the parameters and guidelines the statutory activities adopted by the Legislature when the test claim statute was enacted to define the reimbursable activity to allow the decline to state voter to vote a partisan ballot in a primary election. These activities are described in the paragraphs below.

The Legislature also continued to add statutes to the *Modified Primary* program in years after it enacted the initial program. The claimant has not specifically identified these activities in its proposed parameters and guidelines as being required or necessary to implement the program.

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[12] Government Code sections 17514 and 17557.

[13] In 2007, the Legislature renamed the "absent voter" and "permanent absent voter" to "vote by mail voter." (Stats. 2007, ch. 508.)

In addition, a test claim has not been filed on these later-adopted statutes. Staff recommends that the Commission *not* include the later-added activities in the parameters and guidelines.[14]

Under the process adopted with the test claims statute, the voter is first made aware of the *Modified Primary* rules at the time of registration or of transferring registration. As indicated in the statement of decision, when an elector registers to vote, the elector may declare the name of the political party with which he or she intends to affiliate at the primary election. The voter registration card shall inform the electors that they 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 the elector has stated the name of the party with which he or she intends to affiliate, or unless under the *Modified Primary* program, he or she has declined to state a party affiliation and the 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. In addition, 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 registration, 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

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[14] In this case, the Commission's determination that a reimbursable mandate exists under the *Modified Primary* program to allow a decline to state voter to vote a partisan ballot is based on the enactment of Statutes 2000, chapter 898. Elections Code sections 3205(b) (amended by Stats. 2001, ch. 925) and 13102(d) (amended by Stats. 2002, ch. 10), are later-adopted statutes amending the *Modified Primary* program that have not been properly included in a test claim. Section 3205 was addressed in *Permanent Absentee Voters II* (03-TC-11, pp. 10-11), but the Commission determined that it was not properly pled in that test claim and did not reach any conclusions on that statute.

Elections Code section 3205(b) states that prior to each primary election, county election officials shall mail to every decline to state voter *whose name appears on the permanent vote by mail voter list* a notice and application regarding voting in the primary election. The notice shall inform the voter that he or she may request a vote by mail ballot for a particular political party for the primary election, if that political party has adopted by rule, duly noticed to the Secretary of State, authorizing these voters to vote in their primary. The notice is required to contain a toll-free telephone number, established by the Secretary of State, stating that the voter may call to access information regarding which political parties have adopted such a rule. The application also contains a check-off box that states "I am not presently affiliated with any political party. However, for this primary election only, I request a vote by mail ballot for the ___ Party." The name of the political party is affixed by the voter.

Elections Code section 13102(d) states that the county elections official shall maintain a record of which political party's ballot was requested pursuant to subdivision (b), or whether a nonpartisan ballot was requested, by each person who declined to disclose a party preference. The record shall be made available to any person or committee who is authorized to receive copies of the printed indexes or registration for primary and general elections pursuant to Elections Code section 2184.

These activities are not addressed in the proposed parameters and guidelines for *Modified Primary*.

person who has declined to state a party affiliation to vote the party ballot or for delegates to the party convention.[15]

Within a specified number of days before the primary election, county elections officials are required to prepare separate sample ballots for each political party and a separate sample nonpartisan ballot. The sample ballots are required to be identical to the official ballot, except as authorized by law. The nonpartisan ballot provided to the decline to state voter shall contain only the names of all candidates for nonpartisan offices, voter-nominated offices, and measures to be voted for at the primary election. Voters that register with a political party shall be furnished only a ballot for which the voter disclosed a party preference and the nonpartisan ballot, both of which shall be printed together as one ballot.[16]

County elections officials are also required to include with the sample ballot an application for a vote by mail ballot.[17] The application for a vote by mail ballot includes language that the decline to state voter has the option to vote a partisan ballot if authorized by the political party. The application is required to also contain a toll-free telephone number, established by the Secretary of State, which the voter may call to access information to identify which political parties have adopted such a rule. The application shall also contain a check-off box with a statement that says "I am not presently affiliated with any political party. However, for this primary election only, I request a vote by mail ballot for the ___ Party." The name of the political party is affixed by the voter.[18] Under existing statutes, if the voter requests to vote by mail for a primary election, the county is required to verify the voter's signature and address on the application and, when successfully filed, the county elections official delivers to each qualified applicant the correct ballot.[19]

If the decline to state voter does not vote by mail and instead votes at the polls, the decline to state voter may request to vote the ballot of a political party if authorized by the party's rules and duly noticed to the Secretary of State.[20]

Thus, in order to "allow" a decline to state voter the right to vote a partisan ballot at a primary election, when authorized by a political party, the following activities are required by statute to be performed:

- One-time activity to 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 at a primary election if the political party, by party rule duly noticed to the Secretary of State, authorizes that vote. (Elec. Code, § 2151.)

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[15] Elections Code section 2151, as amended by Statutes 2000, chapter 898.

[16] Elections Code sections 13102(b) and 13300(b).

[17] Elections Code section 3022.

[18] Elections Code section 3006, as amended by Statutes 2000, chapter 898. The claimant did not plead section 3006 in its test claim.

[19] Elections Code sections 3000 et seq. (added by Stats. 1994, ch. 920.)

[20] Elections Code section 13300(c), as amended by Statutes 2000, chapter 898.

- One –time activity to add the following information regarding the *Modified Primary* program to the notice and application to vote by mail:
    1. Language informing 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, if that political party has adopted a party rule, duly noticed to the Secretary of State, authorizing that vote.
    2. A toll-free telephone number, established by the Secretary of State, which the voter may call to access information to identify which political parties have adopted such a rule authorizing decline to state voters to vote their party ballot. The application shall also contain a check-off box with a statement that says "I am not presently affiliated with any political party. However, for this primary election only, I request a vote by mail ballot for the ___ Party." (Elec. Code, § 3006.)
- 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.)
- 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).)

Staff recommends that the Commission include these activities in the parameters and guidelines.

In addition, the Department of Finance has noted the relationship between this program and the *Absentee Ballot* program (CSM 3713). Under the *Absentee Ballot* program, counties are eligible for reimbursement for the administration of absentee ballots based on a funding formula for the number of absentee ballots cast in the jurisdiction. The *Modified Primary* program does not reimburse counties for the administration of the absentee, or vote by mail ballots. Rather, the proposed activities are limited to those activities directly related to the *Modified Primary* program. Staff recommends that the proposed parameters and guidelines include language that states the following: "The costs for the administration of the *Absentee Ballot* program (CSM 3713) are not reimbursable under these parameters and guidelines."

2. 2011 change in law

In June 2010, the voters adopted Proposition 14, the "Top Two Primaries Act," effective January 1, 2011. The proposition amended article II, sections 5 and 6 of the California Constitution to provide for a "voter-nominated primary election" for each state elective office and congressional office in California. Voters can vote in the primary election for any candidate for a congressional or state elective office without regard to the political party affiliations of either the candidate or the voter. The *Modified Primary* rules continue to apply at any primary election for President of the United States or for a party committee.

The Legislature implemented Proposition 14 by amended Elections Code section 2151(b) to now states in relevant part the following:

The voter registration card shall inform the affiant that any elector may decline to state a political party reference, but no person shall be entitled to vote the ballot of any political party at any primary election for President of the United States or for a party committee unless he or she has disclosed the name of the party that he or she prefers or unless he or

she has declined to disclose a party preference and the political party, by party rule duly noticed to the Secretary of State, authorizes a person who has declined to disclose a party preference to vote the ballot of that political party. The voter registration card shall further inform the affiant that any registered voter may vote for any candidate at a primary election for state elective office or congressional office, regardless of the disclosed party preference of the registrant or the candidate seeking that office or the refusal of the registrant or candidate to disclose a party preference. . . . [21]

Thus, the *Modified Primary* program no longer applies to primary elections for state elective or congressional offices. Staff recommends that the parameters and guidelines reflect this change in law.

3. Other activities requested by the claimant

The Commission may also authorize reimbursement for activities that are "the most reasonable methods of complying with the mandate" pursuant to section 1183.1(a)(4) of the Commission's regulations. Section 1183.1(a)(4) states the following:

> Reimbursable Activities. A description of the specific costs and types of costs that are reimbursable, including one-time costs and on-going costs, and a description of the most reasonable methods of complying with the mandate. "The most reasonable methods of complying with the mandate" are those methods not specified in statute or executive order that are necessary to carry out the mandated program.
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> Approval of the most reasonable methods of complying with the mandate requires substantial evidence in the record, provided through oral or written testimony offered under oath or affirmation, to support the finding that the requested activity is necessary to carry out the mandated program.[22]

An analysis of the claimant's request for other activities follows below.

a) Conduct meetings to obtain information from the Secretary of State and with the county elections department

The claimant requests one-time reimbursement to:

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

The Department of Finance opposes the first activity to conduct meetings to obtain information from the Secretary of State and requests that the activity be deleted. Finance states the following:

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[21] Statutes 2009, chapter 1.

[22] Government Code section 17559(b); California Code of Regulations, Title 2, section 1187.5.

> Finance notes that there are only eight registered political parties in California; and that to communicate with these parties, or the Secretary of State, as to the party's allowances is easily obtained by phone calls or web-site accessing. Additionally, the California Association of Clerks and Elections Officials is an efficient and obvious conduit for relaying this information without holding a meeting.

The claimant has provided two declarations to respond to the objections of the Department of Finance. The declarations are signed under penalty of perjury by the County of Sacramento Assistant Registrar of Voters and Orange County's Registrar of Voters, who both declare the following:

> Elections Code, Section 13102, as found by the Commission, allows only those persons who have declined to state their party affiliation to vote in a partisan primary if the political party "by 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." When the legislation was passed, it was unclear as to what political parties, if any, would allow decline to state voters to participate in their primary election. Meetings were necessary in order to obtain the information from the Secretary of State. Only if the Secretary of State received such a rule could persons vote in that party's primary. Neither the Counties nor the California Association of Clerks and Elections Officials (CACEO) are authorized to obtain this information directly from the political parties, as contended by the Department of Finance.
>
> Although this activity did not take long, it was required in order to properly implement the test claim legislation.

Elections Code sections 2151 and 13102(b) provide that a decline to state voter may vote a party ballot at any primary election if "the 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." By the plain language of the statutes, if a political party authorizes decline to state voters to vote the ballot of that political party, the party notifies the Secretary of State's Office. There is no requirement to notify the California Association of Clerks and Elections Officials, as implied by the Department of Finance.

When the test claim was filed, the Secretary of State's Office filed comments supporting the approval of the test claim and explaining that the test claim statute "added layers of complexity and cost to the conduct of elections," and that meetings were conducted with counties to implement the statutes.

> [I]n 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 election officials via printed implementation manuals as well as on-site visits with virtually every county to ensure uniform implementation throughout the state.
>
> I want to stress that this uniformity is absolutely critical to the State's interest in a 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. The planning stage was essential.[23]

Based on the comments from the Secretary of State's Office and the declarations filed by the counties, staff finds that the two activities requested by the claimant were reasonable methods of carrying out the mandated program. Staff recommends that the Commission approve the following activity for one-time reimbursement: "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."

b) Develop internal policies and procedures

The claimant requests reimbursement for the one-time activity of developing internal policies and procedures. The Department of Finance does not object to this activity.

Staff finds that the activity of developing internal policies and procedures for the modified primary program is a reasonable method of complying with the mandate and is supported by the comments filed on the test claim by the Secretary of State's Office, which provided the following:

> Fifth, 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 pollworkers 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.[24]

Staff recommends that the Commission modify the claimant's proposed language to tailor the activity to the scope of the mandate as follows:

> Develop~~ed~~ 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.

c) Redesign and republish the sample ballots

The claimant requests reimbursement to redesign and republish the sample ballot and the absentee ballot. The absentee ballot issue has been addressed under Issue 1.

The Department of Finance recommends that this activity by deleted for the following reasons:

> Finance notes that the sample ballot and absentee ballot for each election are completely different from the prior election. Finance points out that this is an ongoing part of an existing process. We also note that activities related to the absentee ballot should already be reimbursed through the "Absentee Ballot" mandate. The current reimbursement method for the "Absentee Ballot" claims

[23] Secretary of State comments, filed July 29, 2002.

[24] Secretary of State comments, filed July 29, 2002.

> consist of several formulas based on the number of ballots rather than specific activities.

The claimant responded as follows:

> However, both the sample ballot and absentee ballot had to be redesigned on a one-time basis by creating and adding material that addressed the fact that those individuals who had declined to state their party affiliation could request a ballot for those parties whose rules allow those who decline to state to vote in their primary. This activity is a new activity strictly for the implementation of the test claim legislation and was not previously required to be included in the sample ballot or absentee ballot.[25]

Staff recommends that the Commission deny the request to redesign and republish the sample ballot. As stated above, the mandated activity here requires counties, pursuant to Elections Code section 2151, to add to the voter registration card a statement 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. Similar information is required to be included in the notice and application to vote by absentee or vote by mail ballots. There is no requirement in law to add this information to the sample ballot or provide notice of the modified primary rules in the sample ballot.

d) Send to each voter a sample ballot containing the information regarding the options available to the decline to state voters

The claimant requests reimbursement to send to each voter a sample ballot containing the information regarding the options available to the decline to state voters.

Staff recommends that the Commission deny this request. As indicated above, there is no requirement in law to add the *Modified Primary* information to the sample ballot.

Moreover, since at least 1994, Elections Code sections 13102 and 13300 have required counties to send a sample ballots before each primary election to all voters. The sample ballots are required to be substantively identical to the official ballots. The *Modified Primary* program did not change the law with respect to sample ballots.

Accordingly, staff recommends that the Commission deny the request for reimbursement to send to each voter a sample ballot containing the information regarding the options available to the decline to state voters.

e) Redesign and implement new election software

The claimant requests reimbursement to redesign and implement new election software. The Department of Finance does not object to the reimbursement of this activity. In comments to the test claim, the Secretary of State's Office stated that counties had to review and adapt "software and computer processes to count and tabulate votes."

Staff recommends that the Commission deny this request. Counting and tabulating votes is not required by the *Modified Primary* statutes. Nor has the claimant identified how this activity is

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[25] Declarations from the County of Sacramento Assistant Registrar of Voters and the Orange County Registrar of Voters.

reasonably necessary to comply with the activities mandated by the 2000 test claim statute to add information to the voter registration card and to allow a decline to state voter to vote a party ballot at a primary election.

In 2002, the Legislature added subdivision (d) to Elections Code section 13102 to require counties to maintain a record of which political party's ballot was requested under the modified primary program.[26] Redesigning software may be necessary to comply with the requirement in Elections Code section 13102(d), but there has been no mandate finding on the 2002 statute.

Thus, staff finds that the request to redesign and implement new election software goes beyond the scope of the mandate determined by the Commission and is not supported by any evidence in the record.

f) Inform and train poll workers regarding the options for the decline to state voters

Claimant requests reimbursement for the ongoing activity of informing and training poll workers before each primary election regarding the options for the decline to state voter.

The Department of Finance objects to the reimbursement of this activity, arguing that training is already a part of any election and not unique to the requirements of the *Modified Primary Election* mandate.

The claimant filed reply declarations from county elections officials, stating the following:

> However, what we are requesting is that portion of training which now must be given for each primary so that the poll workers know what to do with the decline to state voter. The decline to state voter is the most difficult voter to assist during the primary election due to this legislation. It has necessitated additional training on the subject of modified primary voting in order to eliminate any voter disenfranchisement due to confusion on the part of the poll worker. This is a necessary component of this test claim legislation and is clearing an on-going cost. Without this training, the poll workers will not be able to implement the intent of the modified primary.[27]

Elections Code section 13300(c) allows the decline to state voter to request to vote the ballot of a political party on election day. Based on the declarations filed by the claimant, staff finds that the activity to inform and train poll workers regarding the options available for decline to state voters is reasonably necessary to comply with the mandate to allow decline to state voters the right to vote a party ballot if the political party authorizes the vote, by party rule duly noticed to the Secretary of State.

This finding is supported by the declarations filed by the claimant, and the comments on the test claim filed the Secretary of State's Office that stated the following:

> Fourth, 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 pollworker training programs and polling place procedures.

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[26] Statutes 2002, chapter 10 (SB 585).

[27] Declarations of Alice Jarboe, Assistant Registrar of Voters, County of Sacramento; and Neal Kelley, Registrar of Voters, County of Orange.

> This is not an insignificant task. On the contrary, it is a very difficult task. No matter what procedures are written down and distributed to implement a new law, they are of no use whatsoever unless the people who implement them understand them and are equipped to apply them on election day.
>
> The universe of pollworkers is made up of many elderly persons and others who have followed a given set of procedures for years, and modifying their behavior is both critical and requires repetition and patience. 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.
>
> This procedure also had the effect of discouraging people from becoming pollworkers because it added one more level of complexity to an already long and difficult day for a population of largely elderly persons. The result was to make it more difficult to recruit and retain pollworkers, requiring more time, resources, and money to make sure they polls were open on election day and staffed by people who could serve the customers (voters).[28]

Staff further recommends that the language proposed by the claimant be clarified with the following underlined text:

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

Accordingly, staff recommends that the Commission approve this activity for ongoing reimbursement.

g) Hand process absentee voter requests and enter the requested partisan ballot information from the post card into the computer software database

The claimant requests reimbursement to hand process absentee voter requests and to enter the requested partisan ballot information from the post card into the computer software database. The Department of Finance object to this activity, arguing that the *Absentee Ballot* mandate already provides reimbursement for costs associated with the increase in absentee ballot filing.

In response to the Department of Finance comments, the claimant clarifies that it is not seeking reimbursement for the increase in absentee ballots. Rather, what is being requested is the activity to "key into" the computer the decision of the decline to state voter to vote a partisan ballot in order to ensure that the proper ballot is delivered. The declarations filed by the claimant states the following:

> The absentee voter can vote in different parties in different primaries. This activity is not related to the increase in absentee ballots to be voted, but recognizes that there is an additional activity to make sure that each decline to state voter who chooses to vote absentee in a primary receives the proper ballot.[29]

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[28] Secretary of State comments filed July 24, 2002.

[29] Declarations of Alice Jarboe, Assistant Registrar of Voters, County of Sacramento; and Neal Kelley, Registrar of Voters, County of Orange.

Based on the declarations filed by the claimant, staff finds that entering into the computer a request of 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, is an activity that is reasonably necessary to comply with the mandate to allow the decline to state voter the right to vote a partisan ballot under the *Modified Primary* program. Staff recommends that the Commission include this activity in the parameters and guidelines.

4. Summary of proposed reimbursable activities

Based on the above analysis, staff recommends that Section IV. of the parameters and guidelines state the following:

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.)
4. Add the following information regarding the *Modified Primary* program to the notice and application to vote by mail:
   a. Language informing 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, if that political party has adopted a party rule, duly noticed to the Secretary of State, authorizing that vote.
   b. A toll-free telephone number, established by the Secretary of State, which the voter may call to access information to identify which political parties have adopted such a rule authorizing decline to state voters to vote their party ballot. The application shall also contain a check-off box with a statement that says "I am not presently affiliated with any political party. However, for this primary election only, I request a vote by mail ballot for the ___ Party." (Elec. Code, § 3006.)

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.[30]

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.

V. Conclusion and Staff Recommendation

Staff recommends that the Commission:

- Adopt the proposed parameters and guidelines, beginning on page 22.
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

[30] 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.

STAFF'S PROPOSED PARAMETERS AND GUIDELINES

Elections Code Sections 2151 and 13102(b)

Statutes 2000, Chapter 898 (SB 28)

Modified Primary Election (01-TC-13)

County of Orange, Claimant

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, 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.)

4. Add the following information regarding the *Modified Primary* program to the notice and application to vote by mail:

   a. Language informing 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, if that political party has adopted a party rule, duly noticed to the Secretary of State, authorizing that vote.

   b. A toll-free telephone number, established by the Secretary of State, which the voter may call to access information to identify which political parties have adopted such a rule authorizing decline to state voters to vote their party ballot. The application shall also contain a check-off box with a statement that says "I am not presently affiliated with any political party. However, for this primary election only, I request a vote by mail ballot for the ___ Party." (Elec. Code, § 3006.)

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.[31]

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.

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.

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[31] 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.

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.

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 CRF 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 chapter[32] 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

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

guidelines, the Commission shall direct the Controller to modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

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.