



Received
August 30, 2013
Commission on
State Mandates

August 30, 2013

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

Dear Ms. Halsey:

The Department of Finance (Finance) has reviewed the test claim entitled "Top Two Candidates Open Primary Act" (12-TC-02), submitted by the County of Sacramento (claimant) to determine whether costs attributable by the claimant to statutes cited in the test claim and certain executive orders, issued by the Secretary of State's Office, resulted in reimbursable state mandated costs.

The claimant cites three statutes that impose the alleged mandate, which are:

- 1) Chapter 2 of the Statutes of 2009 (SCA4). This Senate Constitutional Amendment was the measure that put the "Top Two Candidates Open Primary Act" before the voters.
- 2) Chapter 1 of the Statutes of 2009 (SB 6). This Senate Bill, according to the Senate Floor analysis (attachment A), implements SCA 4, the "Top Two Candidates Open Primary Act."
- 3) Chapter 3 of the Statutes of 2012 (AB 1413). As stated in the Assembly Bill analysis of AB 1413 (attachment B), "At the same time that it passed SCA 4, the Legislature also approved and the Governor signed SB 6 (Maldonado), Chapter 1, Statutes of 2009. SB 6 made various changes to state statute that became effective upon the approval of Proposition 14 by the voters. This bill (AB 1413) makes numerous technical and substantive changes to the Elections Code to provide for more effective and efficient implementation of California's top two primary election system."

These three statutes were necessary to either put the ballot measure before the voters or to implement the ballot measure once it was approved by the voters. Specifically, the voters approved Proposition 14, the Top Two Candidates Open Primary Act, in the June 8, 2010 election.

In addition to these statutes, the claimant contends that four Secretary of State's "County Clerk/Registrars of Voters Memorandums" also impose the alleged mandate. These memorandums are:

1. County Clerk/Registrar of Voters (CC/ROV) Memorandum #11005, dated January 1, 2011, which states "The Secretary of State's office has developed the following directives to ensure county elections officials who conduct special elections to fill legislative or congressional vacancies do so in a uniform fashion that complies with the Top Two Candidates Open Primary Act, which took effect January 1, 2011."
2. CC/ROV Memorandum #11125, dated November 23, 2011, which states "While some county elections officials have conducted special elections under the state's Top Two Candidates Open Primary Act that took effect in 2011, the 2012 election cycle will be the first time all county elections officials will conduct an election under the Act. To ensure this measure is implemented as uniformly as possible across the state next year, the Secretary of State's office is providing clarifying guidance on certain provisions."
3. CC/ROV Memorandum #11126, dated November 23, 2011, which states "While some county elections officials have conducted special elections under the state's Top Two Candidates Open Primary Act that took effect in 2011, the 2012 election cycle will be the first time all county elections officials will conduct an election under the Act. The Secretary of State's office has developed the following direction to ensure that all county elections officials conduct the upcoming statewide elections in a uniform fashion that complies with the Top Two Candidates Open Primary Act."
4. CC/ROV Memorandum #12059, dated February 10, 2012, which states "While some county elections officials have conducted special elections under the state's Top Two Candidates Open Primary Act, the 2012 election cycle will be the first time all county elections officials will conduct an election under the Act. The Secretary of State's office has developed the following **updated** direction to ensure that all county elections officials conduct the upcoming statewide elections in a uniform fashion that complies with the Top Two Candidates Open Primary Act."

These four memorandums were considered necessary by the Secretary of State's office to implement the ballot measure once it was approved by the voters.

Finance is of the opinion that the Commission on State Mandates (Commission) should deny the test claim, in its entirety, based upon Government Code section 17556 (f) which finds that no state mandate exists if "The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters."

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents that are e-filed with the Commission on State Mandates need not be otherwise served on persons that have provided an e-mail address for the mailing list." If you have any questions regarding this letter, please contact Michael Byrne, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,


TOM DYER
Assistant Program Budget Manager

ENCLOSURE

SENATE RULES COMMITTEE	SB 6
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520 Fax: (916)	
327-4478	

THIRD READING

Bill No: SB 6
Author: Maldonado (R), et al
Amended: 2/19/08
Vote: 21

WITHOUT REFERENCE TO COMMITTEE OR FILE

SUBJECT : Elections: open primary

SOURCE : Author

DIGEST : This bill implements SCA 4 (Maldonado) the Top-Two Candidates Open Primary Act.

ANALYSIS : The California Constitution currently provides that a political party that participated in a primary election for a partisan office has the right to participate in the general election for that office and shall not be denied the ability to place on the general election ballot the candidate who received, at the primary election, the highest vote among that party's candidates.

SB 6 implements the statutory implementing language of SCA 4 as follows:

1. Permits voters to register as indicating "no party preference" in a manner similar to the current option of declining to state a party preference. Provides for various mechanisms to inform voters of this option and the ramifications thereof including notices on

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affidavits of registration, in the ballot pamphlet, ballots themselves, and at polling places.

2. Requires voters to indicate a party preference when registering in order to vote in primary elections for a party's Presidential nominee and for party officers (county central committees), unless the party in question otherwise permits unaffiliated voters to do so (similar to current law permitting "DTS" participation in partisan primaries at the discretion of the parties).
3. Provides that "independent" candidates must appear on the primary ballot and must be one of the two candidates who receive the greatest number of votes to appear on the general election ballot.
4. Repeals the provision of law prohibiting an "independent" candidate from being a member of a political party in the 13 months prior to a general election.
5. Prohibits candidates from switching their party preference between the primary and general elections.
6. Provides that any voters may sign a candidate's nomination papers for state or Congressional office.
7. Requires the Secretary of State to post on her website each affected candidates' party preference history for the 10 years preceding each relevant election.
8. Repeals the provision of law permitting party central committees to appoint a replacement candidate if their party's nominee dies prior to the general election.
9. Provides that in a special election to fill a legislative or congressional vacancy that if no candidate receives a majority of all votes cast in the special primary that the two candidates who receive the greatest number of votes shall appear on the special general ballot regardless of party affiliation.
(Current law provides that if a special general election is necessary then the top "vote-getter" from each party represented in the special primary appears on the

special general ballot).

10.Requires county elections officials to print lists of party endorsed candidates if parties provide them.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: No

DLW:do 2/19/09 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

**** END ****

CONCURRENCE IN SENATE AMENDMENTS

AB 1413 (Fong)

As Amended January 5, 2012

2/3 vote. Urgency

|ASSEMBLY: | | (May 19, 2011) |SENATE: |36-0 |(January 19, 2012) |-----
(vote not relevant)-----
|COMMITTEE VOTE: |7-0 |(January 26, 2012) |RECOMMENDATION: |concur |-----
Original Committee Reference: E. & R.

SUMMARY : Makes numerous substantive and technical changes to state election law to implement the top two primary election system.

The Senate amendments delete the Assembly version of this bill, and instead:

- 1) Conform the procedure for presidential electors to be chosen by the Democratic Party to the top two primary system. Establish a procedure for the chairperson of the Democratic Party to appoint an elector if the candidate who is entitled to appoint that elector fails to do so.
- 2) Require that the option for a voter to decline to disclose a party preference be placed at the end of the listing of qualified political parties on the voter registration card. Permit the Secretary of State (SOS) to exhaust the existing supply of voter registration cards.
- 3) Permit candidate filing for a voter-nominated office to re-open if any candidate who filed nomination papers at the primary election for that office dies after the deadline for delivery of nomination documents, but not less than 83 days before the election.
- 4) Modify the format of nomination documents to conform to the top two primary system. Require a candidate for voter-nominated

office to include a certification of his or her party preference history for the previous 10 years on his or her nomination papers.

- 5) Provide that if a candidate for voter-nominated office dies prior to the primary election, and that deceased candidate is one of the top two vote getters in the primary election, the name of that deceased candidate shall appear on the ballot at the general election. Provide that if a candidate for voter-nominated office who is entitled to appear on the general election ballot dies, the name of that candidate nonetheless shall appear on the general election ballot.
- 6) Provide that if a candidate for voter-nominated office who is deceased receives a majority of votes cast for the office at the general election, a vacancy shall exist in the office to which he or she was elected. Provide that this vacancy shall be filled in the same manner as if the candidate had died subsequent to taking office.
- 7) Shorten and clarify the explanation of the election procedure for partisan office, voter-nominated office, and nonpartisan office that appears in the state ballot pamphlet. Require an explanation of the election procedure for voter-nominated office to be included in the sample ballot at any special election held to fill a vacancy in the Legislature or in Congress.
- 8) Modify the manner in which the party preference designation for a candidate for voter-nominated office will appear on the ballot, pursuant to the following:
 - a) If the candidate has declared a preference for a qualified political party on his or her most recently filed affidavit of registration, the designation appears in the following manner: "Party Preference: _____ (name of the qualified political party)."
 - b) If the candidate has not declared a preference for a qualified political party on his or her most recently filed affidavit of registration, the designation appears in the following manner: "Party Preference: None."
- 9) Provide flexibility to counties in the placement on the ballot of the party affiliation of Presidential candidates. Eliminate type-size and typeface requirements for instructions that must be

printed on the ballot. Clarify and shorten the instructions that appear on the ballot, and require specified instructions to be printed on the ballot at general elections.

- 10) Provide that spaces for write-in votes will not be printed on the ballot for voter-nominated offices at the general election.
- 11) Conform provisions of the Political Reform Act (PRA) that regulate payments made by a political party for communications with its members to the top two primary election process.
- 12) Make various technical and non-substantive changes.
- 13) Add an urgency clause, allowing this bill to take effect immediately upon enactment.

AS PASSED BY THE ASSEMBLY , this bill made minor and technical changes to the PRA.

FISCAL EFFECT : According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS : In February 2009, the Legislature approved SCA 4 (Maldonado), Res. Chapter 2, Statutes of 2009, which was enacted by the voters as Proposition 14 on the June 2010 statewide primary election ballot. Proposition 14 implemented a top two primary election system in California for most elective state and federal offices. At primary elections, voters are able to vote for any candidate, regardless of party, and the candidates receiving the two highest vote totals, regardless of party, advance to the general election.

At the same time that it passed SCA 4, the Legislature also approved and the Governor signed SB 6 (Maldonado), Chapter 1, Statutes of 2009. SB 6 made various changes to state statute that became effective upon the approval of Proposition 14 by the voters. This bill makes numerous technical and substantive changes to the Elections Code to provide for more effective and efficient implementation of California's top two primary election system.

This bill was substantially amended in the Senate and the Assembly-approved provisions of this bill were deleted. As a result, this bill was re-referred to the Assembly Elections & Redistricting Committee pursuant to Assembly Rule 77.2, and the committee subsequently recommended that the Assembly concur in the

Senate amendments to this bill.

Please see the policy committee analysis for a full discussion of this bill.

Analysis Prepared by : Ethan Jones / E. & R. / (916) 319-2094
Enclosure A

DECLARATION OF MICHAEL BYRNE
DEPARTMENT OF FINANCE
CLAIM NO. 12-TC-02

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

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

8/30/2012

at Sacramento, CA

Michael Byrne