



March 30, 2015

Honorable Mark Leno, Chair
Joint Legislative Budget Committee
Senate Budget and Fiscal Review Committee

Honorable Shirley Weber, Chair
Assembly Budget Committee

Honorable Ricardo Lara, Chair
Senate Appropriations Committee

Honorable Jimmy Gomez, Chair
Assembly Appropriations Committee

ELECTIONS MANDATES REPORT

The Department of Finance respectfully submits the following Elections Mandates Report (Report) pursuant to provision 4 of Item 8885-295-0001.

The Report evaluates simpler mechanisms and alternatives for funding the suspended election mandates, assesses whether some mandated requirements could be modified to realize the same goals at lower costs, and estimates the statewide costs to achieve the goals of the mandate in a cost effective manner.

If you have any questions or need additional information regarding the Report, please call Evelyn Suess, Principal Program Budget Analyst, at (916) 445-3274.

MICHAEL COHEN
Director

By:

KEELY M. BOSLER
Chief Deputy Director

Attachment

cc: On following page

cc: Honorable Jim Nielsen, Vice Chair, Senate Budget and Fiscal Review Committee
Honorable Melissa Melendez, Vice Chair, Assembly Budget Committee
Honorable Richard Roth, Chair, Senate Budget and Fiscal Review Subcommittee No. 4
Honorable Adrin Nazarian, Chair, Assembly Budget Subcommittee No. 4
Mr. Mac Taylor, Legislative Analyst (3)
Mr. Mark Ibele, Staff Director, Senate Budget and Fiscal Review Committee
Mr. Mark McKenzie, Staff Director, Senate Appropriations Committee
Mr. Seren Taylor, Staff Director, Senate Republican Fiscal Office
Mr. Craig Cornett, Senate President pro Tempore's Office (2)
Mr. Christian Griffith, Chief Consultant, Assembly Budget Committee
Mr. Pedro R. Reyes, Chief Consultant, Assembly Appropriations Committee
Mr. Eric Swanson, Staff Director, Assembly Republican Fiscal Committee
Mr. Jim Richardson, Policy and Fiscal Director, Assembly Republican Leader's Office
Mr. Christopher W. Woods, Assembly Speaker's Office (2)

ELECTIONS MANDATES REPORT

The Department of Finance respectfully submits this evaluation of the suspended election mandates according to provision 4 of Item 8885-295-0001, Budget Act 2014 which states:

“The Department of Finance shall submit to the Legislature by January 10, 2015, a report that: (1) evaluates simpler mechanisms and alternatives for funding the suspended election mandates; (2) assesses whether some mandated requirements could be modified to realize the same goals at lower costs; and (3) estimates the statewide costs to achieve the goals of the mandate in a cost effective manner. The administration shall consult with the Legislative Analyst’s Office and counties in the preparation of this report.”

In preparing this report, Finance has consulted with representatives of the Legislative Analyst Office, the California State Association of Counties, local elections offices, the Secretary of State, and various stakeholder groups.

As required in the provisional language, this report provides an evaluation of each suspended mandate and provides alternatives for modifying mandated requirements to lower costs but still realize the same goals of the laws – to facilitate voters’ ability to cast ballots.

The Commission on State Mandates

In 1979, voters passed Proposition 4, which added a requirement to the California Constitution that the state reimburse local governments for costs associated with new programs or higher levels of service the state imposes on them. Through a multi-step process, the Commission on State Mandates makes a determination whether a statute is a reimbursable mandate. The Constitution requires the state to fully fund or suspend reimbursable mandates in the annual budget act. The state’s General Fund generally bears the costs of funded mandates. If a reimbursable mandate is suspended, the state is under no obligation to fund local agencies during the mandate’s suspension. Also, the statute’s language remains intact but the mandated activities become optional for local governments to perform.

After the 2014 Budget Act’s \$100 million payment to local agencies for mandate debt, the state owes \$1.845 billion in total local agency mandate costs. Of this amount, \$790 million are unpaid costs local agencies accrued before the 2004-2005 fiscal year. The 2014 Budget also included a trigger mechanism that provides for repayment on the remaining \$790 million if revenues are sufficient at the May Revision. The current estimated payment on the remaining pre-2004 debt is \$533 million.

Suspended Election Mandates

Nine elections-related mandates were suspended in the 2014 Budget. The chart below indicates the year each election mandate was first suspended, the total remaining debt and the pre-2004 portion of each debt according to data from the State Controllers’ Office.

**Elections Mandates Payable Balances
(Including Pre-2004 Balance – in millions)**

| <u>Mandates</u> | <u>First Suspended</u> | <u>Pre-2004 Owed</u> | <u>Total Owed</u> |
|--|------------------------|----------------------|-------------------|
| 1) MAIL-IN BALLOTS | | | |
| Absentee Ballots (CSM-3713) | 2011 | \$ 33.2 | \$ 82.8 |
| Absentee Ballots-Tabulation by Precinct (00-TC-16) | 2011 | - | 0.1 |
| Permanent Absent Voters I (CSM-4358) | 2011 | 5.1 | 6.5 |
| Permanent Absent Voters II (CSM-4358) | 2013 | - | 12.1 |
| 2) PRIMARY ELECTIONS | | | |
| Modified Primary Elections (01-TC-13) | 2013 | - | 1.8 |
| 3) IDENTIFICATION | | | |
| Voter Identification Procedures (03-TC-23) | 2013 | - | 10.1 |
| 4) REGISTRATION | | | |
| Voter Registration Procedures (04-LM-04) | 2011 | 3.0 | 5.5 |
| Fifteen-day Close of Voter Registration (01-TC-15) | 2011 | - | - |
| 5) ALL OTHER ELECTION MANDATES | | | |
| Brendon Maguire Act (CSM-4357) | 2011 | - | - |
| Handicapped Voter Access (CSM-4363) ¹ | 2005 | - | - |
| Total | | \$ 41.3 | \$ 118.9 |

MAIL-IN BALLOTS

Unpaid claims for activities related to mail-in ballots represents 86 percent of the \$118.9 million due for all elections mandates. To date, the state has paid over \$190 million for local governments' implementation of the mail-in ballot mandates.

1) Absentee Ballots

Chapter 77, Statutes of 1978 (AB 1699), requires that absentee ballots (mail ballots) be available to any registered voter. (Elec. Code § 3003.) Under prior law, local election officials had to make absentee ballots available only to voters who had a physical disability, were ill, were absent from their precinct on an election day, had a religious commitment or lived more than ten miles from their polling place. Because this law pre-existed the absentee ballot mandate statute, local agencies must still provide absentee ballots to these voters irrespective of this mandate's suspension since the 2011-2012 Budget Act.

Evaluation

The individuals we consulted in preparation of this report indicate that the increased costs for this mandate occur because local agencies, since 1978, have to operate a vote by mail system

¹ The Commission determined subsequent changes to this mandate resulted in it becoming permissive and therefore, no longer state-reimbursable.

in addition to traditional polling places. Our research indicates that of the two systems, the all-mail ballot system is less costly than operating polling places. To administer the traditional system, local election offices must incur costs related to hiring and training staff, renting and maintaining polling places at each precinct, purchasing polling place materials and other costs. In comparison, the costs of the absentee ballot system are lower. The major costs for mail ballots are limited to printing ballots, assembling packages for mailing, mailing ballots and instructions to voters, and preparing returned ballots for tabulation.

Our discussions with county elections staff indicate that costs of polling place voting can be as high as \$4 to \$6 dollars per vote, whereas absentee ballot costs are in the range of \$2 to \$3 dollars per vote. For example, in its consideration of moving to all vote-by-mail balloting to fill city council seats at special elections, the City of Sacramento states that the Sacramento County Registrar of Voters estimates absentee balloting costs 25 percent less than traditional polling place voting. Yolo County indicates that all-mailed ballot elections results in as much as 43 percent cost savings compared to polling place elections. In 2009, Orange County estimated all-mail elections would result in county savings of \$200,000.

In light of this data that indicates mail balloting is more cost effective than polling place voting, we note that Government Code section 17514 entitles local governments to reimbursement for the actual increased costs to implement the mandate. Offsetting savings from the mandated program must be deducted from any state subvention for the mandated program (Cal. Code Regs., tit. 2, § 1183.7, subd. (h).) We believe local agencies may be realizing savings to the extent that each voter who votes by mail is an individual that local officials do not have to provide polling place services at the higher per-vote rate. However, to date, the Controller has not received a single claim for this mandate that includes offsetting savings. Consequently, we have requested the Controller to audit this mandate, as well as the Permanent Absentee Voter mandate, to capture offsetting savings. The Controller has initiated an audit of Orange County toward this end, to be completed in the spring 2015.

Mail voting is also becoming the preferred method for individuals to vote. Data from the Secretary of State's office indicates 51.2 percent of ballots cast in the 2012 general election were absentee. For the 2002 general election, that figure was 27.1 percent. For the most recent primary election in June 2014, 69.4 percent of ballots cast were absentee. Additionally, local agencies have inherent reasons to continue providing mail voting independent of state funding because it is a less costly alternative than maintaining physical polling places. Thirty-six years after AB 1699 was enacted, it is appropriate to reconsider the level the state should be funding a voting option that is now implicit to operating a modern local elections office.

One option to make this mandate simpler and lower cost, while still maintaining the same goal of mail balloting, is to amend Elections Code section 3003 to make the mandate permissive. Local agencies will continue providing the more cost-effective vote-by-mail ballot system and the state's General Fund will not be responsible for the system's ongoing costs. Additionally, local agencies should be provided maximum flexibility to provide physical voting sites in areas that make sense for their citizens. This will likely relieve local agencies from the unnecessary costs of operating polling places that are seldom used. Such flexibility will also result in savings to local agencies they can use to operate their elections offices and engage in voter outreach.

2) Absentee Ballots – Tabulation by Precinct

Chapter 697, Statutes of 1999 (AB 1530), directs county election officials to tabulate by precinct, votes cast in statewide elections or special elections conducted after June 1, 2000 to fill congressional or legislative vacancies. (Elec. Code § 15321, subd. (a).) AB 1530 also requires officials to make the elections returns tabulated by precinct available to the Legislature. Prior law did not require officials to tabulate votes by precinct (some counties tabulated by ballot type) and therefore in 2003, the Commission found AB 1530 to be a reimbursable state mandate. However, the Commission determined that because Section 15321 was operative from June 1, 2000 to January 1, 2001, the mandate is no longer state reimbursable.

AB 1530 also requires local election officials to include voters' precincts when they perform their preexisting duty to keep an accurate list of all voters who received and voted an absentee ballot. (Elec. Code § 15111.) Because the Commission found this to be a new activity, the state must reimburse local elections officials for the costs of including a voter's precinct when they fulfill their non-reimbursable mandated activity of maintaining an accurate list of absentee ballot voters. This mandate has been suspended since the 2011-2012 Budget Act.

Evaluation

The Commission held that AB 1530's requirement that local election officials tabulate election results by precinct and make those results available to the Legislature for elections between June 1, 2000 and January 1, 2001 is no longer a reimbursable mandate, and therefore, we have determined that no additional changes to this portion of the mandate are needed.

Before AB 1530, local election officials were required to maintain an accurate list of all voters who voted by absentee ballot at each election. Election officials also had to compare this list with the roster of voters in each precinct that elections officials had to complete after canvassing election returns (i.e., to prevent double-voting). (Elec. Code § 15278.) These requirements remain irrespective of this mandate's suspension. This mandate's suspension only affects the activity of noting voters' election precincts when local election officials perform their non-reimbursable duty to maintain accurate absentee voter lists.

A more cost-effective mechanism that realizes this mandate's goals is to make the precinct notation in Elections Code section 15111 optional for local officials to perform. Local officials have preexisting obligations to maintain an absentee ballot list under Elections Code section 15111 and compare that list with the roster of voters in each precinct according to Elections Code section 15278; including voter precinct data on the absentee voter list seems to be the most effective way to perform those duties. Consequently, amending section 15111 to make precinct notation optional for local officials to perform will likely not result in local agencies no longer noting absentee voters' precincts.

3) Permanent Absent Voters II

Chapter 922, Statutes of 2001 (AB 1520); Chapter 664, Statutes of 2002 (AB 3034); and Chapter 347, Statutes of 2003 (AB 188), allow any voter to apply for permanent absent voter status, instead of limiting eligibility to voters with certain disabilities. In addition to expanding permanent absent voters to any voters who applied, the statutes require elections officials to maintain a list of permanent absent voters and delete from that list a voter who has failed to

return an absent voter ballot for any primary or general election. This mandate has been suspended since the 2011-2012 Budget Act.

Evaluation

This is a mandate that furthers the goal of allowing individuals to vote by mail. Above, we note the likely savings local agencies realize by operating a vote by mail system. As such, counties have inherent reasons to continue allowing voters to become permanent absentee voters independent of state funding. Therefore, a simpler mechanism to consider is to amend this mandate to make it permissive. Locals will likely continue facilitating the more cost-effective permanent absentee balloting.

OTHER ELECTION MANDATES

4) Modified Primary Election

Chapter 898, Statutes of 2000 (SB 28), requires elections officials to allow decline-to-state voters to vote the ballot of a political party (should the party so approve) in a presidential or party committee primary election. The Commission determined in 2006 that: 1) the one-time activity of 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 authorized such action and, 2) the ongoing activities required to allow these voters to vote (e.g., processing applications, providing partisan ballots at the polls, and training poll workers) are reimbursable mandates. (Elec. Code § 2151.) This mandate was first suspended in the 2013-2014 Budget Act.

Evaluation

The Secretary of State pays the cost of printing voter registration cards and reimburses counties for return postage. (Elec. Code §§ 2157, subd. (a)(8), 2161, and 2164, subd. (a)(2).) Therefore, any local costs for this mandate are related to allowing decline-to-state voters to vote at presidential or party committee primary elections.

When the Secretary of State prints registration cards, the cards state that decline-to-state voters shall be entitled to vote on a party ballot. The Secretary of State will continue doing this irrespective of whether this mandate is suspended. Decline-to-state voters comprise 23 percent of registered voters, according to the Secretary of State. Turning these voters away from the polls would mislead voters, given the information on the registration card, and fundamentally violate a core mission of local election officials— facilitating voters' ability to cast ballots.

As a simpler mechanism, we recommend considering making this mandate permissive to remove the state's fiscal responsibility to fund these activities that are part of the core mission of local election officials.

5) Voter Identification Procedures

In 2006, the Commission decided that amendments made by Statutes of 2000, Chapter 260 (SB 414), to Elections Code section 14310(c)(1), which require local election officials to compare a voter's signature on a provisional ballot envelope with the voter's signature on his or her affidavit of registration, was a reimbursable mandate. Before this change, the Election Code required elections officers, during the official canvass, to "examine the records with respect to all

provisional ballots cast.” According to the bill analyses for SB 414, local officials were already “routinely checking” provisional ballot signatures with the signatures on registration affidavits. Further, this activity was an existing procedure developed by the Secretary of State. Therefore, SB 414 was a codification of an existing best practice that local and state election officials were already performing to prevent voter fraud. This mandate was first suspended in the 2013-2014 Budget Act.

Even though local offices were already conducting the activity and existing law required election officials to examine all records associated with a provisional ballot, the Commission determined that the change in law was an “increased level of service” because it further specified that local officials must compare a voter’s provisional ballot signature with the signature on the registration affidavit.

Evaluation

This mandate’s underlying activities are well-established methods for effectively preventing voter fraud. Further, the law before the enactment of this mandate required local election officials to “examine the records” associated with provisional ballots during an official canvass. While the pre-mandate requirement does not specifically require local officials to conduct these mandated activities, the existing requirement to “examine records” relating to provisional ballots necessarily includes activities identical or similar to comparing a voter’s provisional ballot and affidavit signatures. Consequently, one lower cost option for this mandate is to amend the statute back to its pre-2000 form.

6) Voter Registration Procedures

Chapter 704, Statutes of 1975 (AB 822), a mandate expressed in statute that requires the Secretary of State to adopt regulations requiring each county to design and implement programs that identify qualified individuals who are not registered voters and to register those persons to vote. This law also requires county clerks to process voter registration cards that prospective voters mailed or personally delivered to the county clerk.

This mandate has been suspended since the 2011-2012 Budget Act. Nevertheless, the mandate’s suspension does not affect other statutory requirements that county clerks’ process voter registration cards individuals mail and have postmarked on or before the 15th day before an election. (Elec. Code § 2102, subd. (a)(1).)

County election officials must continue to process voter registration cards that they receive by mail or in person according to federal law. (Elec. Code § 2102 subd. (a)(2).) This means elections officials must continue to process registrations individuals complete on a federal registration form, on a state registration form that originates from the Department of Motor Vehicles, public assistance agencies (52 U.S.C § 20506 subd. (a)(2)(A)), state-funded agencies serving the disabled (52 U.S.C § 20506 subd. (a)(2)(B)), the Franchise Tax Board and the Board of Equalization (Exec. Order No. W-98-94 pursuant to the National Voter Registration Act), the California Health Benefit Exchange and other agencies (52 U.S.C § 20506). Officials must also process registrations from military and overseas voters. (52 U.S.C. § 20302, Elec. Code §§ 300(b), 3101-3123.)

Additionally, the mandate’s suspension has not changed election officials’ duty to offer in-person registration services and to process voter registration cards they receive in person or third-party registration drives. (Elec. Code §§ 2102(a)(3), 2158.)

Evaluation

The state's obligation to reimburse local election officials for this mandate is limited to the statutory language of 1975's AB 822. Since 1975, the Legislature has renumbered the statute and made several substantive amendments (See Chapter 920, Statutes of 1994 (SB 1547), Chapter 1123, Statutes of 1996 (AB 1714), and Chapter 899, Statutes of 2000 (AB 1094)). Those amendments require local election officials to process all voter registration forms. The Commission on State Mandates has never determined these post-1975 legislative changes to be state reimbursable and therefore local officials have the obligation to process the registration forms according to Elections Code sections 2102 (a)(1)-(3) regardless of reimbursement from the state.

Based on the above, Finance does not recommend any statutory modifications to this mandate.

7) Fifteen-Day Close of Voter Registration

Statutes of 2000, Chapter 899 (AB 1094), requires county elections officials to allow qualified affiants to register to vote 15 days prior to an election. (Elections Code § 2102.) In 2006, the Commission determined this statute to be a reimbursable mandate but local agencies were entitled to reimbursement only for the one time activities of redesigning or acquiring computer software to alter the polling place notices sent to affiants who registered to vote between the 29th and the 15th day before the election. The Commission denied all other claims filed by county elections officials, concluding other provisions of the law did not mandate a new program.

Evaluation

Elections officials must continue to allow qualified affiants to register to vote 15 days prior to an election regardless of this mandate's suspension. Nevertheless, because no local government submitted an approved claim with the State Controller's Office by the deadline of February 3, 2010, this mandate is without cost and no longer state-reimbursable. Therefore, it will be removed from the list of suspended mandates.

8) Brendon Maguire Act

Chapter 391, Statutes of 1988 (AB 2582), a mandate expressed in statute related to the single instance when a candidate dies in a race for nonpartisan office involving only two candidates (one of whom is the incumbent). If a candidate dies 68 or fewer days before the Election Day, AB 2582 requires local election officials to cancel the election, provide signs in specific locations announcing the cancellation, and hold an election at a later date. (Elec. Code §§ 8026, 14106, and 14203.) If either candidate dies after the 88th but before the 68th day before the election, election officials must re-open the nomination period. (Elec. Code § 8027.) This mandate has been suspended since the 2011-2012 Budget Act.

Evaluation

While the Brendon Maguire Act provides a reasonable process that local election officials have the option to follow, Elections Code section 15402 is a non-reimbursable mandate that establishes a suitable process for local elections officials to follow when a candidate dies before an election. Section 15402 establishes standard procedures for filling offices in the event a

winning candidate on Election Day dies before taking office. Consequently, to prevent General Fund exposure to potential future costs related to this mandate, a simpler and more cost-effective option to consider is to make the mandated portions of AB 2582 permissive for local election officials to follow.