

## **California Secretary of State**

### **Notice of Proposed Rulemaking**

Notice is hereby given that the Secretary of State intends to amend the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

Hearing Date: No hearing date is scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the contact person listed no later than 15 days prior to the close of the written comment period.

Written Public Comment Period: September 30, 2013 through November 15, 2013.

Subject Matter of Proposed Regulations: Outreach Program Plans

#### **Proposed Regulatory Action**

The Secretary of State proposes the following regulatory action to Title 2, Division 7, Chapter 8 of the California Code of Regulations:

Amend sections 20000, 200001, 20003, 20004 and 20006; and

Repeal section 20002.

#### **Authority and Reference**

Authority cited: Sections 2105, 2130 and 2164 Elections Code; Section 12172, Government Code.

Reference: Sections 2105, 2130, 2153, 2157, 2158 and 2164 Elections Code.

#### **Informative Digest / Policy Statement Overview**

Chapter 704 of the Statutes of 1975 established voter registration by mail. Among other provisions, this legislation required the Secretary of State to adopt regulations requiring each county to design and implement programs to identify qualified electors who are not registered to vote, and to register them to vote

(current Elections Code section 2105). The regulations adopted in 1976 (California Code of Regulations section 20000, et seq.) require counties to submit voter outreach plans for review by the Secretary of State.

Following the adoption of the required regulations in 1976, 54 counties submitted outreach plans. Some counties continued to submit updated plans, periodically and inconsistently. It appears that at some point in the 1980's Chapter 704 of the Statutes of 1975 may have been interpreted to be a one-time reporting requirement.

Chapter 704 of the Statutes of 1975 also required that the Secretary of State reimburse counties for net costs associated with the implementation of the law. Specifically, the Secretary of State pays to print voter registration cards and pays for the return postage on the cards when the person wishing to register to vote mails the card to the state or their county elections official. (Elections Code sections 2157(a) (8), 2161, 2164(a) (2).)

The specific benefits anticipated by the proposed amendment of these regulations includes assisting county election officials by clarifying what needs to be submitted and when. The existing regulations were first adopted in 1976 and have not been changed or modified since. Leaving the existing regulations intact would perpetuate confusion. The anticipated benefit is to election officials so they can more easily comply with the currently vague requirements for outreach plans.

The Secretary of State has considered any other related regulations and statutes on this matter and has determined that this proposed amendment is not inconsistent or incompatible with existing regulations and statutes. The Secretary of State is the only state office responsible for administering these regulations.

This proposed regulatory action does the following:

**Section 20000** - Section 20000 is amended to specify that county elections officials rather than "counties" shall design and implement voter outreach programs.

**Section 20001** - Section 20001(a) is being amended to modify the consultation component to make it clear that county elections officials are to include a description of how they consult on an ongoing basis with persons who have experience with and interest in increasing voter registrations.

Section 20001(b) is being amended to modify the publicity component to make it clear that county elections officials must describe in the plan how they are going to publicize the voter registration process and related deadlines to eligible residents.

Section 20001(c) is being amended to establish that the outreach program needs to prioritize certain efforts over others and to require the plan to describe why certain efforts are prioritized over others.

Section 20001(d) is being amended to reword the budget component to make it clear that county elections officials shall detail how money is being spent on personnel, equipment, and materials for each outreach effort.

Section 20001(e) amends the schedule component by removing the requirement that the schedule of critical dates and deadlines for outreach efforts proposed be supported by “contractual and voluntary commitments.” This requirement is being removed because this type of detail is not needed.

Section 20001(f) amends the solicitation of local assistance component to reword the last sentence regarding soliciting offices that “come into frequent contact with unregistered electors who would be least likely to register under county registration practices in effect prior to July 1, 1976.” The solicitation of such offices is outdated, as the voter registration practices have changed dramatically since 1976.

Current Section 20001(h) is being deleted and moved to section 20002. As it is currently written, subsection (h) relates to controls that must be established for bulk distribution of voter registration affidavits and is not part of the outreach plan.

A new Section 20001(g) is being added to require that each county elections official maintain a link to the Secretary of State’s online voter registration application on their county elections office webpage. The online voter registration application was launched in 2012 and has proven to be extremely effective in promoting voter registration.

**Section 20002** - Current Section 20002 is being amended to delete the existing language because it is outdated and no longer applicable. 20001(g) is being inserted in its place. Minor non-substantive changes have been made to the language, including changing “card” to “affidavit” to be consistent with the Elections Code. The requirement that a copy of all statements of requests exceeding 2,000 affidavits be provided to the Secretary of State has been changed to 1,000.

**Section 20003** - Section 20003 is being amended to clarify when the outreach plans are to be submitted – January 31 preceding a regularly scheduled statewide election. As currently written, there is ambiguity as to when or if a county needs to submit an outreach plan.

**Section 20004** - Section 20004 is being deleted in its entirety. The Secretary of State will not be evaluating the outreach plans. Instead, the plans will be readily available as a public record.

**Section 20005** - Section 20005 is being amended to remove the existing language, which is no longer the process for reimbursements under Elections Code sections 2130 and 2164.

Election Code Section 2130 requires the Controller to reimburse counties for net costs incurred to implement voter registration activities, specifically the cost of processing voter registration affidavits. Counties submit annually to the Controller information detailing how many voter registration affidavits were returned by mail and received over the counter.

The counties are reimbursed a specific amount per voter registration affidavit. The amount varies by county and is based on the 1992-93 per affidavit cost adjusted for annual changes in the California Consumer Price Index.

This reimbursement process is separate from the reimbursements processed pursuant to Elections Code section 2164(a) and is completed with limited interaction with Secretary of State staff.

For section 2164 reimbursement, currently, counties submit quarterly reimbursement claim forms (sample attached) detailing the number of voter registration affidavits mailed 1) per voter request, 2) per voter outreach activities pursuant to Elections Code section 2105, and 3) per incomplete voter registration affidavits. The county representative must sign the claim form certifying that the "record is accurate to the best of my knowledge and that additional documentation is on file in my office to substantiate these figures." If a county indicates that they mailed voter registration affidavits pursuant to Section 2105, those reimbursements will be paid.

The updated reimbursement claim form will ask counties to provide information documenting where they sent outreach materials. Secretary of State staff follows up with any county that fails to include the required information with their claim form. However, there is not a review of whether those outreach activities directly link to a county outreach plan.

### **Written Comment Period.**

Any interested person, or the interested person's authorized representative, may submit written comments relevant to the proposed regulatory action to the Secretary of State. The written comment period closes at 5:00 p.m. on November 15, 2013. The Secretary of State will consider only comments received at the Secretary of State's office by that time. Submit comments to:

Stacey Jarrett  
Secretary of State  
1500 11th Street, Elections Division  
Sacramento, CA 95814  
Telephone: 916-653-1417  
Fax: 916-653-3214  
Stacey.jarrett@sos.ca.gov

The backup contact person for comment submission is:

Susan Lapsley, Deputy Secretary of State and Counsel  
Secretary of State  
1500 11th Street, Sixth Floor  
Sacramento, CA 95814  
Telephone: 916-651-7837

All inquiries regarding this proposed rulemaking, including requests for obtaining the Final Statement of Reasons, should be directed to Stacey Jarrett at the address listed above.

#### **Disclosures Regarding the Proposed Action.**

The Secretary of State has made the following initial determinations:

1. **Mandate on local agencies and school districts:** None.
2. **Costs or savings to any state agency:** None beyond those budgeted or expected to be budgeted for the Secretary of State.
3. **Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:** None.
4. **Other nondiscretionary costs or savings imposed on local agencies:** None.
5. **Costs or savings in federal funding to the state:** None.
6. **Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states:** None.
7. **Cost impacts on a representative private person or businesses:** The Secretary of State anticipates no cost impacts on private persons and businesses. The proposed changes are to update the regulations in order to clarify what is required to be submitted to the Secretary of State and

when it is to be submitted. The existing regulations were first adopted in 1976 and have not been changed or modified since. The anticipated benefit is to election officials so they can more easily comply with the currently vague requirements for outreach plans.

**8. Adoption of these amendments will not:**

- (A) create or eliminate jobs within California;
- (B) create new businesses or eliminate existing businesses within California; or
- (C) affect the expansion of businesses currently doing business within California.

**9. Significant effect on housing costs:** None.

**10. Effect on small business:** None. The proposed amendments do not impose any mandatory fees on small businesses or require any forms or reports be prepared or filed by any business.

**Results of the Economic Impact Analysis/Assessment**

The proposed changes are to update the regulations in order to clarify what is required to be submitted to the Secretary of State and when it is to be submitted. The existing regulations were first adopted in 1976 and have not been changed or modified since. The anticipated benefit is to election officials so they can more easily comply with the currently vague requirements for outreach plans. Accordingly, no jobs in California will be created or eliminated, no new businesses in California will be created or existing businesses eliminated, and no existing businesses in California will be expanded or eliminated.

**Consideration of Alternatives**

In accordance with Government Code section 11346.5(a)(13), the Secretary of State must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Secretary of State invites persons to present statements or arguments with respect to alternatives to the proposed amendments during the written comment period.

**Availability of Statement of Reasons and Text of Proposed Regulations.**

The Secretary of State will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice of Proposed Rulemaking, the regulations as proposed, and the Initial Statement of Reasons. The rulemaking file includes all the information upon which the proposed action is based. Copies are posted on the Secretary of State's website at <http://www.sos.ca.gov/admin/regulations/proposed/> and may also be obtained from the contact person indicated above.

**Availability of Changed or Modified Text.**

After considering all timely and relevant comments received, the Secretary of State may adopt the proposed regulations substantially as described in this Notice of Proposed Rulemaking. If the Secretary of State makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Secretary of State adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the contact person indicated above. The Secretary of State will accept written comments on the modified regulations for 15 days after the date on which the modified regulations are made available.

**Availability of Rulemaking Documents and the Final Statement of Reasons.**

Copies of rulemaking documents can be accessed through the Secretary of State's website at <http://www.sos.ca.gov/admin/regulations/proposed/>. Upon completion, the Final Statement of Reasons will be posted on the Secretary of State's website or obtained from the contact person indicated above.