

AMENDED IN ASSEMBLY AUGUST 25, 2000
AMENDED IN ASSEMBLY AUGUST 11, 2000
AMENDED IN ASSEMBLY AUGUST 7, 2000
AMENDED IN ASSEMBLY JULY 6, 2000
AMENDED IN ASSEMBLY APRIL 14, 1999
AMENDED IN ASSEMBLY MARCH 25, 1999
AMENDED IN SENATE MARCH 11, 1999
AMENDED IN SENATE JANUARY 26, 1999

SENATE BILL

No. 28

Introduced by Senator Peace
(Principal coauthor: Assembly Member Scott)

December 7, 1998

An act to amend Section 3006, to repeal Section 2001 of, and to repeal and add Sections 2151, 13102, 13203, 13206, 13230, 13300, 13301, and 13302 of, the Elections Code, relating to primary elections.

LEGISLATIVE COUNSEL'S DIGEST

SB 28, as amended, Peace. Primary elections.

(1) Existing law governing partisan primary elections, until 1996, provided for what is commonly known as a "closed" partisan primary, in which only persons who are registered members of a political party may vote the ballot of that political party. Those provisions were amended by the

adoption of Proposition 198, an initiative statute approved by the voters at the March 26, 1996, direct primary election. The amendments made by Proposition 198 changed the primary system to what is known as a “blanket” primary, in which all registered voters may vote for any candidate for each public office, regardless of political affiliation and without a declaration of political faith or allegiance.

On June 26, 2000, the United States Supreme Court in *California Democratic Party v. Jones*, ruled that the state’s “blanket” primary system established by Proposition 198 is unconstitutional because it violates a political party’s First Amendment right of association.

This bill would repeal the amendments made by Proposition 198, and would reenact provisions similar to those in effect prior to 1996 providing for a “closed” partisan primary, but authorizing persons who decline to state a party affiliation to vote the ballot of a political party if authorized by the rules of that party, duly noticed to the Secretary of State, as provided. This bill would make certain conforming changes.

(2) Existing law requires specified information on a printed application that is distributed to voters for requesting an absent voter ballot.

This bill would further require the application to inform the voter that if he or she is not affiliated with a political party, the voter may request an absentee ballot for a particular political party for the primary election, if that political party has adopted a party rule, duly noticed by the Secretary of State, authorizing that vote. The bill would require the application to contain a check-off box allowing the voter to make that request.

This bill would impose a state-mandated local program by imposing new duties on local elections officials in implementing its provisions.

The

(3) The bill would incorporate additional provisions to Section 13300 of the Elections Code to take effect if this bill and AB 1094 are both enacted and become effective on or before January 1, 2001, and this bill is enacted last.



(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2001 of the Elections Code is
2 repealed.

3 SEC. 2. Section 2151 of the Elections Code, as added
4 by Chapter 920 of the Statutes of 1994, is repealed.

5 SEC. 3. Section 2151 of the Elections Code, as
6 amended by Proposition 198 at the March 26, 1996, direct
7 primary election, is repealed.

8 SEC. 4. Section 2151 is added to the Elections Code,
9 to read:

10 2151. At the time of registering and of transferring
11 registration, each elector may declare the name of the
12 political party with which he or she intends to affiliate at
13 the ensuing primary election. The name of that political
14 party shall be stated in the affidavit of registration and the
15 index.

16 The voter registration card shall inform the affiant that
17 any elector may decline to state a political affiliation, but
18 no person shall be entitled to vote the ballot of any
19 political party at any primary election unless he or she has
20 stated the name of the party with which he or she intends
21 to affiliate or unless he or she has declined to state a party
22 affiliation and the political party, by party rule duly
23 noticed to the Secretary of State, authorizes a person who



1 has declined to state a party affiliation to vote the ballot
2 of that political party. The voter registration card shall
3 include a listing of all qualified political parties.

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

12 SEC. 5. Section 3006 of the Elections Code is amended
13 to read:

14 3006. (a) Any printed application that is to be
15 distributed to voters for requesting absent voter ballots
16 shall contain spaces for the following:

17 (1) The printed name and residence address of the
18 voter as it appears on the affidavit of registration.

19 (2) The address to which the ballot is to be mailed.

20 (3) The voter's signature.

21 (4) The name and date of the election for which the
22 request is to be made.

23 (5) The date the application must be received by the
24 elections official.

25 (b) (1) The information required by paragraphs (1),
26 (4), and (5) of subdivision (a) may be preprinted on the
27 application. The information required by paragraphs (2)
28 and (3) of subdivision (a) shall be personally affixed by
29 the voter.

30 (2) An address, as required by paragraph (2) of
31 subdivision (a), may not be the address of any political
32 party, a political campaign headquarters, or a candidate's
33 residence. However, a candidate, his or her spouse,
34 immediate family members, and any other voter who
35 shares the same residence address as the candidate may
36 request that an absentee ballot be mailed to the
37 candidate's residence address.

38 (3) Any application which contains preprinted
39 information shall contain a conspicuously printed
40 statement, as follows: "You have the legal right to mail or



1 deliver this application directly to the local elections
2 official of the county where you reside.”

3 (c) The application shall inform the voter that if he or
4 she is not affiliated with a political party, the voter may
5 request an absentee ballot for a particular political party
6 for the primary election, if that political party has adopted
7 a party rule, duly noticed to the Secretary of State,
8 authorizing that vote. The application shall contain a
9 phone number that the voter may call to inquire which
10 political parties have adopted such a rule. The application
11 shall contain a check-off box with a conspicuously printed
12 statement that reads, as follows: “I am not presently
13 affiliated with any political party. However, for the
14 primary election only, I request an absentee ballot for the
15 _____ Party.” The name of the political
16 party shall be personally affixed by the voter.

17 (d) The application shall provide the voters with
18 information concerning the procedure for establishing
19 permanent absentee voter status, and the basis upon
20 which permanent absentee voter status is claimed.

21 (e) The application shall be attested to by the voter as
22 to the truth and correctness of its content, and shall be
23 signed under penalty of perjury.

24 SEC. 6. Section 13102 of the Elections Code, as added
25 by Chapter 920 of the Statutes of 1994, is repealed.

26 SEC. 7. Section 13102 of the Elections Code, as
27 amended by Proposition 198 at the March 26, 1996, direct
28 primary election, is repealed.

29 SEC. 8. Section 13102 is added to the Elections Code,
30 to read:

31 13102. (a) All voting shall be by ballot. There shall be
32 provided, at each polling place, at each election at which
33 public officers are to be voted for, but one form of ballot
34 for all candidates for public office, except that, for
35 partisan primary elections, one form of ballot shall be
36 provided for each qualified political party as well as one
37 form of nonpartisan ballot, in accordance with
38 subdivision (b).

39 (b) At partisan primary elections, each voter not
40 registered as intending to affiliate with any one of the



1 political parties participating in the election shall be
2 furnished only a nonpartisan ballot, unless he or she
3 requests a ballot of a political party and that political
4 party, by party rule duly noticed to the Secretary of State,
5 authorizes a person who has declined to state a party
6 affiliation to vote the ballot of that political party. The
7 nonpartisan ballot shall contain only the names of all
8 candidates for nonpartisan offices and measures to be
9 voted for at the primary election. Each voter registered
10 as intending to affiliate with a political party participating
11 in the election shall be furnished only a ballot of the
12 political party with which he or she is registered and the
13 nonpartisan ballot, both of which shall be printed
14 together as one ballot in the form prescribed by Section
15 13207.

16 (c) A political party may adopt a party rule in
17 accordance with subdivision (b) that authorizes a person
18 who has declined to state a party affiliation to vote the
19 ballot of that political party at the next ensuing partisan
20 primary election. The political party shall notify the party
21 chairman immediately upon adoption of that party rule.
22 The party chairman shall provide written notice of the
23 adoption of that rule to the Secretary of State not later
24 than the 60th day prior to the partisan primary election
25 at which the vote is authorized.

26 SEC. 9. Section 13203 of the Elections Code, as added
27 by Chapter 920 of the Statutes of 1994, is repealed.

28 SEC. 10. Section 13203 of the Elections Code, as
29 amended by Proposition 198 at the March 26, 1996, direct
30 primary election, is repealed.

31 SEC. 11. Section 13203 is added to the Elections Code,
32 to read:

33 13203. Across the top of the ballot shall be printed in
34 heavy-faced gothic capital type not smaller than 30-point,
35 the words "OFFICIAL BALLOT." However, if the ballot
36 is no wider than a single column, the words "OFFICIAL
37 BALLOT" may be as small as 24-point. Beneath this
38 heading, in the case of a partisan primary election, shall
39 be printed in 18-point boldface gothic capital type the
40 official party designation or the words "NONPARTISAN



1 BALLOT” as applicable. Beneath the heading line or
2 lines, there shall be printed, in boldface type as large as
3 the width of the ballot makes possible, the number of the
4 congressional, Senate, and Assembly district, the name of
5 the county in which the ballot is to be voted, and the date
6 of the election.

7 SEC. 12. Section 13206 of the Elections Code, as added
8 by Chapter 920 of the Statutes of 1994, is repealed.

9 SEC. 13. Section 13206 of the Elections Code, as
10 amended by Proposition 198 at the March 26, 1996, direct
11 primary election, is repealed.

12 SEC. 14. Section 13206 is added to the Elections Code,
13 to read:

14 13206. (a) On the partisan ballot used in a direct
15 primary election, immediately below the instructions to
16 voters, there shall be a box one-half inch high enclosed by
17 a heavy-ruled line the same as the borderline. This box
18 shall be as long as there are columns for the partisan ballot
19 and shall be set directly above these columns. Within the
20 box shall be printed in 24-point boldface gothic capital
21 type the words “Partisan Offices.”

22 (b) The same style of box described in subdivision (a)
23 shall also appear over the columns of the nonpartisan part
24 of the ballot and within the box in the same style and point
25 size of type shall be printed “Nonpartisan Offices.”

26 SEC. 15. Section 13230 of the Elections Code, as added
27 by Chapter 920 of the Statutes of 1994, is repealed.

28 SEC. 16. Section 13230 of the Elections Code, as
29 amended by Proposition 198 at the March 26, 1996, direct
30 primary election, is repealed.

31 SEC. 17. Section 13230 is added to the Elections Code,
32 to read:

33 13230. (a) If the county elections official determines
34 that, due to the number of candidates and measures that
35 must be printed on the ballot, the ballot will be larger
36 than may be conveniently handled, the county elections
37 official may provide that a nonpartisan ballot shall be
38 given to each partisan voter, together with his or her
39 partisan ballot, and that the material appearing under the
40 heading “Nonpartisan Offices” on partisan ballots, as well



1 as the heading itself, shall be omitted from the partisan
2 ballots.

3 (b) If the county elections official so provides, the
4 procedure prescribed for the handling and canvassing of
5 ballots shall be modified to the extent necessary to permit
6 the use of two ballots by partisan voters. The county
7 elections official may, in this case, order the second ballot
8 to be printed on paper of a different tint, and assign to
9 those ballots numbers higher than those assigned to the
10 ballots containing partisan offices.

11 (c) "Partisan voters," for purposes of this section,
12 includes persons who have declined to state a party
13 affiliation, but who have chosen to vote the ballot of a
14 political party as authorized by that party's rules duly
15 noticed to the Secretary of State.

16 SEC. 18. Section 13300 of the Elections Code, as added
17 by Chapter 920 of the Statutes of 1994, is repealed.

18 SEC. 19. Section 13300 of the Elections Code, as
19 amended by Proposition 198 at the March 26, 1996, direct
20 primary election, is repealed.

21 SEC. 20. Section 13300 is added to the Elections Code,
22 to read:

23 13300. (a) By at least 29 days before the primary,
24 each county elections official shall prepare separate
25 sample ballots for each political party and a separate
26 sample nonpartisan ballot, placing thereon in each case
27 in the order provided in Chapter 2 (commencing with
28 Section 13100), and under the appropriate title of each
29 office, the names of all candidates for whom nomination
30 papers have been duly filed with him or her or have been
31 certified to him or her by the Secretary of State to be
32 voted for in his or her county at the primary election.

33 (b) The sample ballot shall be identical to the official
34 ballots, except as otherwise provided by law. The sample
35 ballots shall be printed on paper of a different texture
36 from the paper to be used for the official ballot.

37 (c) One sample ballot of the party to which the voter
38 belongs, as evidenced by his or her registration, shall be
39 mailed to each voter entitled to vote at the primary not
40 more than 40 nor less than 10 days before the election. A



1 nonpartisan sample ballot shall be so mailed to each voter
2 who is not registered as intending to affiliate with any of
3 the parties participating in the primary election,
4 provided that on election day any such person may, upon
5 request, vote the ballot of a political party if authorized
6 by the party's rules, duly noticed to the Secretary of State.

7 *SEC. 20.5. Section 13300 is added to the Elections*
8 *Code, to read:*

9 *(a) By at least 29 days before the primary, each county*
10 *elections official shall prepare separate sample ballots for*
11 *each political party and a separate sample nonpartisan*
12 *ballot, placing thereon in each case in the order provided*
13 *in Chapter 2 (commencing with Section 13100), and*
14 *under the appropriate title of each office, the names of all*
15 *candidates for whom nomination papers have been duly*
16 *filed with him or her or have been certified to him or her*
17 *by the Secretary of State to be voted for in his or her*
18 *county at the primary election.*

19 *(b) The sample ballot shall be identical to the official*
20 *ballots, except as otherwise provided by law. The sample*
21 *ballots shall be printed on paper of a different texture*
22 *from the paper to be used for the official ballot.*

23 *(c) One sample ballot of the party to which the voter*
24 *belongs, as evidenced by his or her registration, shall be*
25 *mailed to each voter entitled to vote at the primary who*
26 *registered at least 29 days prior to the election not more*
27 *than 40 nor less than 10 days before the election. A*
28 *nonpartisan sample ballot shall be so mailed to each voter*
29 *who is not registered as intending to affiliate with any of*
30 *the parties participating in the primary election,*
31 *provided that on election day any such person may, upon*
32 *request, vote the ballot of a political party if authorized*
33 *by the party's rules, duly noticed to the Secretary of State.*

34 *SEC. 21. Section 13301 of the Elections Code, as added*
35 *by Chapter 920 of the Statutes of 1994, is repealed.*

36 *SEC. 22. Section 13301 of the Elections Code, as*
37 *amended by Proposition 198 at the March 26, 1996, direct*
38 *primary election, is repealed.*

39 *SEC. 23. Section 13301 is added to the Elections Code,*
40 *to read:*

1 13301. (a) At the time the county elections official
2 prepares sample ballots for the presidential primary, he
3 or she shall also prepare a list with the name of candidates
4 for delegates for each political party. The names of the
5 candidates for delegates of any political party shall be
6 arranged upon the list of candidates for delegates of that
7 party in parallel columns under their preference for
8 President. The order of groups on the list shall be
9 alphabetical according to the names of the persons they
10 prefer to appear upon the ballot. Each column shall be
11 headed in boldface 10-point, gothic type as follows: “The
12 following delegates are pledged to _____.” (The blank
13 being filled in with the name of that candidate for
14 presidential nominee for whom the members of the
15 group have expressed a preference.) The names of the
16 candidates for delegates shall be printed in eight-point,
17 roman capital type.

18 (b) Copies of the list of candidates for delegates of
19 each party shall be submitted by the county elections
20 official to the chairperson of the county central
21 committee of that party, and the county elections official
22 shall post a copy of each list in a conspicuous place in his
23 or her office.

24 SEC. 24. Section 13302 of the Elections Code, as added
25 by Chapter 920 of the Statutes of 1994, is repealed.

26 SEC. 25. Section 13302 of the Elections Code, as
27 amended by Proposition 198 at the March 26, 1996, direct
28 primary election, is repealed.

29 SEC. 26. Section 13302 is added to the Elections Code,
30 to read:

31 13302. The county elections official shall forthwith
32 submit the sample ballot of each political party to the
33 chairperson of the county central committee of that
34 party, and shall mail a copy to each candidate for whom
35 nomination papers have been filed in his or her office or
36 whose name has been certified to him or her by the
37 Secretary of State, to the post office address as given in the
38 nomination paper or certification. The county elections
39 official shall post a copy of each sample ballot in a
40 conspicuous place in his or her office.



1 SEC. 27. *It is the intent of the Legislature that special*
2 *elections to fill vacancies in legislative and congressional*
3 *offices continue to be conducted pursuant to Chapter 1*
4 *(commencing with Section 10700) of Part 6 of Division 10*
5 *of the Elections Code.*

6 SEC. 28. *Section 20.5 of this bill incorporates*
7 *provisions in Section 13300 of the Elections Code, as*
8 *proposed to be added by both this bill and Assembly Bill*
9 *1094. It shall only become operative if (1) both bills are*
10 *enacted and become effective on or before January 1,*
11 *2001, (2) each bill adds Section 13300 to the Elections*
12 *Code, and (3) this bill is enacted after AB 1094, in which*
13 *case Section 20 of this bill shall not become operative.*

14 SEC. 29. Notwithstanding Section 17610 of the
15 Government Code, if the Commission on State Mandates
16 determines that this act contains costs mandated by the
17 state, reimbursement to local agencies and school
18 districts for those costs shall be made pursuant to Part 7
19 (commencing with Section 17500) of Division 4 of Title
20 2 of the Government Code. If the statewide cost of the
21 claim for reimbursement does not exceed one million
22 dollars (\$1,000,000), reimbursement shall be made from
23 the State Mandates Claims Fund.

