

## Senate Bill No. 28

### CHAPTER 898

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.

[Approved by Governor September 28, 2000. Filed  
with Secretary of State September 29, 2000.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 28, 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.

(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.

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

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 Section 2001 of the Elections Code is repealed.

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 Section 2151 of the Elections Code, as added by Chapter 920 of the Statutes of 1994, is repealed.

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 Section 2151 of the Elections Code, as amended by Proposition 198 at the March 26, 1996, direct primary election, is repealed.

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

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

The voter registration card shall inform the affiant that any elector 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 he or she has stated the name of the party with which he or she intends to affiliate or unless 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. The voter registration card shall include a listing of all qualified political parties.

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 his or her registration, except as provided by Section 2152 or 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 person who has declined to state a party affiliation to vote the party ballot or for delegates to the party convention.

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

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

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

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

(3) The voter's signature.

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

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

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

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

(3) Any application which contains preprinted information shall contain a conspicuously printed statement, as follows: "You have the legal right to mail or deliver this application directly to the local elections official of the county where you reside."

(c) The application shall 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 to the Secretary of State, authorizing that vote. The application shall contain a phone number that the voter may call to inquire which political parties have adopted such a rule. The application shall contain a check-off box with a conspicuously printed statement that reads, as follows: "I am not presently affiliated with any political party. However, for the primary election only, I request an absentee ballot for the \_\_\_\_\_ Party." The name of the political party shall be personally affixed by the voter.

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



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

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

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

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

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

(b) At partisan primary elections, each voter not registered as intending to affiliate with any one of the political parties participating in the election shall be furnished only a nonpartisan ballot, unless he or she requests a ballot of a political party and that 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. The nonpartisan ballot shall contain only the names of all candidates for nonpartisan offices and measures to be voted for at the primary election. Each voter registered as intending to affiliate with a political party participating in the election shall be furnished only a ballot of the political party with which he or she is registered and the nonpartisan ballot, both of which shall be printed together as one ballot in the form prescribed by Section 13207.

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

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

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

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

13203. Across the top of the ballot shall be printed in heavy-faced gothic capital type not smaller than 30-point, the words "OFFICIAL BALLOT." However, if the ballot is no wider than a single column, the words "OFFICIAL BALLOT" may be as small as 24-point.



Beneath this heading, in the case of a partisan primary election, shall be printed in 18-point boldface gothic capital type the official party designation or the words “NONPARTISAN BALLOT” as applicable. Beneath the heading line or lines, there shall be printed, in boldface type as large as the width of the ballot makes possible, the number of the congressional, Senate, and Assembly district, the name of the county in which the ballot is to be voted, and the date of the election.

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

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

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

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

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

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

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

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

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

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

(c) “Partisan voters,” for purposes of this section, includes persons who have declined to state a party affiliation, but who have chosen



to vote the ballot of a political party as authorized by that party's rules duly noticed to the Secretary of State.

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

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

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

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

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

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

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

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

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

(c) One sample ballot of the party to which the voter belongs, as evidenced by his or her registration, shall be mailed to each voter entitled to vote at the primary who registered at least 29 days prior to the election not more than 40 nor less than 10 days before the



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

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

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

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

13301. (a) At the time the county elections official prepares sample ballots for the presidential primary, he or she shall also prepare a list with the name of candidates for delegates for each political party. The names of the candidates for delegates of any political party shall be arranged upon the list of candidates for delegates of that party in parallel columns under their preference for President. The order of groups on the list shall be alphabetical according to the names of the persons they prefer to appear upon the ballot. Each column shall be headed in boldface 10-point, gothic type as follows: "The following delegates are pledged to \_\_\_\_\_." (The blank being filled in with the name of that candidate for presidential nominee for whom the members of the group have expressed a preference.) The names of the candidates for delegates shall be printed in eight-point, roman capital type.

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

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

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

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

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



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

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

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

