California Election Funding and Governance Proposal

Drafted by the Election Funding Working Group 8/1/16, updated 12/5/16, 2/1/17, 2/10/17, 4/28/17 and 5/3/17

Executive Summary: County governments bear the responsibility to administer and conduct elections in California for all levels of government, including federal and state government. The funding for elections is appropriated by county boards of supervisors. Due to a variety of statewide budgetary conditions, legislative actions and varying priorities of county boards of supervisors, there is a wide variation in how much individual counties spend on elections. This results in unequal voting services and opportunities for California voters. This proposal is developed to stabilize election administration funding so that all California voters are equally served and protected.

The proposal establishes a funding formula in state law that requires the state to pay 50% of local governments' statewide election costs, subject to sunset after seven years with the possibility of extension. Funds can be used to support direct and indirect state election costs. Within this provision is at 3:1 match, similar to Proposition 41 and the federal Help America Vote Act (HAVA) for money spent by counties for voting equipment purchases. Funds will be allocated based on the number of registered voters within each county. Based on 19.4 million registered voters at a county average of $6.60 per voter, the annual amount is anticipated to be $64 million. Funding will take the form of reimbursements to counties and will be distributed by the State Controller, with oversight and compliance provided by the Secretary of State. Additional oversight/compliance will be provided by the Department of Finance.

About this proposal: The California Voter Foundation, in collaboration with the Future of California Elections, established an Election Funding Working Group in 2015 to identify the best approach to take to ensure there is sufficient state funding for local election programs while also achieving greater consistency in county election practices. The working group included members from the following organizations:

- California Association of Clerks and Election Officials (CACEO)
- California Forward
- California Secretary of State Alex Padilla
- California State Association of Counties
- California Voter Foundation
- Department of Finance
- Future of California Elections
- League of Women Voters of California
- Verified Voting Foundation

This California Election Funding and Governance Proposal was developed collaboratively by the working group over the past year. It is important to note that while this proposal reflects a consensus view of the working group members, organizational participation in the working group does not automatically constitute an organization's endorsement of this proposal.

Background: In California, the administration of elections is the responsibility of county government. The funding needed to administer and conduct all elections – federal, state and local – is appropriated by county boards of supervisors. Counties receive funding to pay for services and programs primarily from property taxes, as well as hotel, sales and utility taxes. In 1978, California voters enacted Proposition 13, requiring reduced and capped property tax rates and a two-thirds vote of approval to increase local special taxes. The following year, voters passed another measure that amended the California Constitution to require the state to reimburse local governments for any costs resulting from the implementation of new state laws or programs.

While many of California's election laws were written long before these changes, the status of laws enacted after 1979 has been in question since 2011, when California Governor Jerry Brown and the State Legislature agreed, in a cost-saving effort, to suspend funding for state-mandated election laws, including laws that give voters the right to "no-excuse", permanent vote-by-mail voting services.

Although counties continue to provide these services to voters even though state reimbursement has been suspended, there is considerable variation in how counties do so. Some counties, for example, make an extra effort to contact voters who forget to sign their vote-by-mail ballot envelopes and collect their signatures, or notify voters if their vote-by-mail ballot is rejected. But not all counties do so and legislation seeking to require uniform and equal treatment of all California voters is often not successful if it's likely to create a new state-mandated local program.

In recent years, numerous laws have been enacted that permit, but do not require counties to provide certain services to voters such as weekend voting opportunities and the ability to request a vote-by-mail ballot by phone. Some counties offer paid postage on vote-by-mail ballot return envelopes, while most do not. Many offer online tools to help voters track their ballots 24 hours a day while others have very basic web sites and require voters to do business with their county election office only during regular business hours.

An analysis of 36 counties' November 2014 election costs, obtained from the CACEO Election Costs Database (http://results.caceoelectioncosts.org), found wide variation in how much counties reported spending on elections, ranging from $0.85 to nearly $11 per registered voter in direct costs.

These variations in Californians' voting experiences result in unequal voting opportunities. One way to level the playing field and ensure all Californians enjoy equal voting rights wherever they live is for the state to provide ongoing support to the counties to help fund the cost of elections. By providing funding to support election administration, the state can ensure more equal treatment of voters.

Many counties in the state also face a critical need to update their voting equipment. Most counties purchased new voting equipment in 2002-2006. Those systems, while primarily paperbased, optical-scan voting systems, still depend on a considerable amount of computer software and hardware to operate. It has become increasingly difficult for counties to maintain these systems as they age and replacement parts are no longer available, which is why they are in need of updating. The U.S. Department of Homeland Security and FBI concluded in late 2016 that Russian civilian and military intelligence services sought to interfere in the 2016 U.S. Presidential election by hacking one political party's email accounts - another powerful reminder of why it is important to deploy and maintain secure and up-to-date voting systems. Additionally, counties planning to move to the newly-enacted "vote center" model need additional equipment to provide voters with countywide voting opportunities.

This proposal was developed to provide a solution to the state-local election funding and governance impasse and create a mechanism whereby the state can enact election laws that protect all voters' rights equally while ensuring counties have the resources they need to comply with those laws.

Currently the state owes $76 million for past election mandate payments and accumulates $32.7 million annually in potential new debt to counties if/when the mandates suspension is lifted. By providing an alternative funding source and requiring recipients to refrain from seeking reimbursements, this proposal will help reduce the accumulating mandates debt.

Proposal: We propose to seek legislation to do the following:

1) Establish a funding formula in state law that requires the state to pay 50% of local governments' statewide election costs, to sunset after seven years with the possibility of extension.

    A. Why 50%? There are four types of contests that can appear on a ballot: federal; state; county; and local. Counties are already able to recover election costs from local governments. But federal and state election contests are essentially an unfunded mandate on county government. Because the federal government is unlikely to ever cover its "real estate" on the ballot, the state should cover these costs as well. Also, in a true "ballot real estate" model, if counties could charge the state for the cost of running its portion of contests on the ballot, the amount would likely exceed 50%, given the number of statewide propositions, officeholders, legislative and political parties' contests decided in California elections.

    B. A 2016 California Forward survey of election costs found that of the 27 states responding, the overwhelming majority – 70% – have a "hybrid" funding model with election costs and responsibilities divided among the state and local governments. Examples include: Colorado, where the state reimburses local governments at a rate of $.80-$.90 per voter; Louisiana, where the state pays 75% of election costs; Arizona, where the state reimburses local government at a rate of $1.25 per registered voter; and Minnesota, where the state reimburses cost based on the amount of space its contests comprise on the ballot. (See "Investing in California's

Democracy: Building a Partnership for Performance" online at http://cafwd.org/pages/investing-in-democracy.)

C. Based on November 2014 CACEO election costs data, the average amount spent by counties per voter (including indirect costs) was $6.60. If the state pays half this cost, with 19.4 million registered voters, the annual amount would be $64 million. (Although counties conduct two state elections in one calendar year, these elections occur in two different state fiscal cycles.)

D. The funding agreements will stipulate counties agree to a "maintenance of effort" and to use the funds to supplement, not supplant existing local funding.

2) Funds will be allocated based on number of registered voters.

A. The reason for going with registered voters is because that number is the number by which counties prepare their election supplies, from voting equipment to ballots. It is not based on turnout because that is likely to be impacted by factors beyond the control of the county elections office. But having more people register would be seen as beneficial and could incentivize counties to expand their numbers of voters.

B. Counties that receive funds will be required to conduct routine maintenance of voter registration data.

3) To ensure funds provided by the State are earmarked for election purposes only, the funding will be provided on a reimbursement basis, with counties applying for funding from the State prior to election departments submitting their departmental budgets to county boards of supervisors for approval.

A. County election departments will know how much state funding they are entitled to when developing their budgets; boards of supervisors will provide those funds up front to cover the amount the State will provide and counties will be reimbursed within two state fiscal cycles after the reimbursement request is made.

B. Counties will be required to report to the State on their fund expenditures so that the State can audit the funding program.

4) Funds can be used to support any direct state election costs, including but not limited to printing and counting ballots, staffing polling places, educating and serving voters, complying with state laws, providing vote-by-mail services and acquiring the equipment needed to facilitate the voting process.

A. Indirect costs, such as office equipment and overhead, will be eligible for State reimbursement as well if requested.

B. The auditing/reporting process will ask counties to provide measurable outcomes of how the state funds were spent.

C. The funding will incentivize programs that improve the voting process, such as plain language use, translation improvements, accessibility, early voting, voter lookup tools, paid postage, web site accessibility, information sharing between counties, improved election accounting practices and the use of performance metrics.

5) The state will reimburse up to three dollars for every one dollar counties spend on voting equipment purchases.

A. This provision is included to operate similarly to the funding requirements of Proposition 41 and the Help America Vote Act (HAVA), as a way to ensure counties make sound equipment purchases. Of the state funding the county is eligible to request, if it wants to use it for voting equipment, it must match the state dollars on a 3:1 basis. For example, if a county's elections budget is $3 million, it will be eligible for a total $1.5 million from the state per year. If that county wanted to spend $1 million on new voting equipment, $750,000 of its state funds can be applied toward that purchase, with the county spending $250,000.

B. "Voting equipment" includes any equipment used to facilitate the casting and counting of ballots.

C. Counties will apply for funding and will be eligible to get funding requests approved year-round. Counties will need to obtain and spend their funding within three years of approval of funding requests.

D. The goal is to give counties the ability to build up funds to help make major purchases, but to have a closing date on funding periods for accounting and auditing purposes.

6) Counties that apply for funds agree in doing so to comply with all mandated state election laws and not seek reimbursement or make claims through the state's mandates reimbursement process.

A. The laws covered through the acceptance of funds and how those laws are modified over time/as needed has to be worked out – can't be set in time to comply with laws at time law was written. The funding mechanism needs to be tied to election mandates that come in the future, too.

7) The funds will be distributed by the State Controller, with oversight and compliance provided by the Secretary of State and the Department of Finance.

A. Annual funding will be provided to the Secretary of State to facilitate oversight and compliance.

B. Some additional oversight/compliance will be provided by Department of Finance.

C. The funding process will be developed in collaboration with the Department of Finance, CACEO, legislative election committees, the Governor's office, and stakeholders in the voter advocacy and local government sectors.

D. The Secretary of State will develop and provide a standard reporting form for counties to use to ensure consistent accounting and reporting across counties (possibly utilizing the existing reporting structure in place at the State Controller's Office).

E. The Secretary of State will be responsible for monitoring program costs over time and reporting to the Legislature and Governor bi-annually on whether the state funding amount provided is sufficient or needs review.

F. Fund oversight staff will publish updates and reports showing which counties have qualified for how much funding and how it will be, and has been spent (similar to Prop. 41 request and reporting process).

G. The program will be independently evaluated by the Department of Finance and the Legislative Analyst's Office**,** which will be responsible for issuing a written report no later than December 31 of the program's sixth year, assessing the overall fund status, distributions and expenses, and funding recipients' measurable outcomes. This evaluation will include consultation with all the groups listed in 7C above.