

**California Bureau of State Audits**  
**MEMORANDUM NUMBER 6**

To: Elaine M. Howle, California State Auditor

From: Janis Burnett, Staff Counsel  
Sharon Reilly, Chief Counsel

Subject: Proposed Regulations 60842(a), 60843(a) and 60847(a): Electronic Applications

Date: July 31, 2009

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**Introduction**

The Voters FIRST Act (the “Act”)<sup>1</sup> requires the State Auditor to implement an application process to select members of the Citizens Redistricting Commission (the “commission”) that will redraw the boundaries of California’s legislative and Board of Equalization districts based on decennial census information. Under express terms of the Act, the application process must be open to all registered California voters in a manner that promotes a diverse and qualified applicant pool.” The Act requires the State Auditor to initiate the application process by January 1, 2010 (and each year thereafter ending in zero), establish the Applicant Review Panel (the “panel”) that will evaluate the applications to identify a pool of 60 of the most qualified applicants, submit the names of the those 60 applicants to specified legislative leaders who may strike up to 24 of the names, and conclude the application process no later than November 20, 2010 (and each year thereafter ending in zero), by randomly drawing the names of the first eight members of the commission from those that remain in the pool of 60.

As part of implementing the application process, the State Auditor must make a number of decisions about the details of the process that are not addressed in the Act. Some of the more important details are the design of the application materials and the format of those materials. A particularly significant detail, and the one that is the subject of this memorandum, is the extent to which the application materials will be available and transmitted in an electronic format rather than a paper format. For the reasons set forth in this memorandum, including the overall efficiency of the application process, we believe that, except where the law requires otherwise,<sup>2</sup> all application materials should be produced and transmitted in an electronic format. Consistent with that view, we are proposing regulations that specify the application materials shall be produced and transmitted in an electronic format.

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<sup>1</sup> The Voters FIRST Act is contained in Article XXI of the California Constitution and Government Code, sections 8251 through 8253.6.

<sup>2</sup> As discussed later in this memorandum, we recognize that in some individual cases, the reasonable accommodation requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.) may require some limited use of paper applications.

## Background

The Act provides that any registered voter who has voted in at least two out of the last three statewide general elections, has been registered for the preceding five years with the same political party or unaffiliated with any political party, and does not have a conflict of interest as described in the Act is eligible to be a commission member. In an attempt to anticipate how many applications the bureau may receive, bureau staff consulted with Professor of Statistics, Geetha Ramachandran, PhD, California State University, Sacramento. As this is a new process without prior data points to rely on, Dr. Ramachandran opined that the bureau could receive as few as one application and as many as seventeen million applications. Seventeen million is the approximate number of registered voters in the state.<sup>3</sup>

The Act, as mentioned earlier, also requires the State Auditor to initiate an application process that “promotes a diverse and qualified applicant pool.” We believe this provision requires the State Auditor to undertake outreach efforts to encourage members of the public to submit applications, and the public comments that we received during the bureau’s interested persons meetings held earlier this year support that view. These outreach efforts will be designed to create a more diverse and qualified applicant pool by increasing awareness of the application process. We hope and believe that these efforts will lead to a large number of applicants for the panel to consider.

In addition, for the State Auditor’s staff at the Bureau of State Audits (the “bureau”) and for the panel to properly evaluate the eligibility and qualifications of the applicants, the application materials will have to obtain a considerable amount of information from each applicant. An applicant will need to show that he or she satisfies the voting requirements for serving as a commission member and is free from any disqualifying conflict of interest. Further, to aid the panel in its selection of applicants, an applicant will need to submit information related to the applicant’s qualifications, including specific information regarding his or her relevant analytical skills, ability to be impartial, and appreciation for California’s diverse demographics and geography. Applicants will also be required to submit additional materials in support of their applications, including letters of recommendation, for the panel’s review.

Moreover, as the application process is intended to be as transparent and open to the public as possible, we plan to post the application materials received from each applicant on a dedicated website, and to allow the public to submit written comments about each applicant’s application. This will require bureau staff to devote significant effort to ensuring that materials are promptly and properly posted.

The Act establishes several statutory deadlines that the State Auditor, the panel and the commission must meet to perform their duties. More specifically, section 8252, subdivision (c) requires the State Auditor to publicize the names of applicants who do not have conflicts by August 1, 2010 and each year thereafter ending in zero. Section 8252, subdivision (e) requires the panel to submit the 60 names to legislative leaders not later

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<sup>3</sup> <http://www.sos.ca.gov/admin/press-releases/2008/DB08-104.pdf>.

than October 1, 2010, and each year ending in the number zero thereafter. The legislative leaders must exercise their strike no later than November 15, 2010, and each year ending in zero thereafter.<sup>4</sup> Section 8252, subdivision (d) requires the State Auditor to randomly draw 8 names from the names returned from legislative leadership not later than November 20, 2010, and each year ending in the number zero thereafter. These deadlines are essential to ensuring that the commission is up and running in time for the United States Census data that the commission will use for redistricting. Census data should be available no later than April of the year following the year the census is conducted, so for the 2010 United States Census, data should be available in April of 2011. Under California Constitution, Article XXI section 2, subdivision (g), the commission must approve three final maps that separately set forth the district boundaries for the Senate, Assembly, and Board of Equalization no later than September 15, 2011, and in each year ending in the number one thereafter. Thus, in crafting the proposed regulations relating to the application review and selection process we were mindful that we needed a process that assists meeting those deadlines.

Thus, for the application process to be completed by the statutory deadline, once the application process begins, it must proceed at a rather rapid pace, with the applicants and bureau staff having very limited amounts of time to do what they must do as the process moves along. Specifically, as explained in the Memorandum to the State Auditor date July 31, 2009, relating to the application process (Memorandum Number 7), applicants will be required to submit application materials, including an initial application, a supplemental application, supporting materials, and letters of recommendation within rigid deadlines. Bureau staff will have to make initial application forms available to potential applicants, screen the initial applications that have been submitted, post the applications on the bureau's website, invite eligible applicants to submit supplemental application forms and supporting materials, make the supplemental application forms available to applicants, post the supplemental application materials on the bureau's website, collect written comments from the public about the applicants, afford the applicants an opportunity to provide written responses to the public comments, post the comments and responses on the bureau's website, and deliver the application materials to the panel members, all within a period of approximately 120 days, so that the panel will have adequate time to review the applications.

Taking into account all of the considerations discussed above, we face the significant likelihood of having to process a large number of applications, containing a large amount of information, within a short amount of time. To do that, and still perform its other duties of conducting audits and investigations, we need to utilize the most efficient methods at its disposal for receiving and processing the application materials it receives. Thus we recommend crafting the application process so that it requires application materials to be completed and transmitted electronically because that will allow the us to achieve that efficiency for the reasons stated below.

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<sup>4</sup> § 8252(e).

## **Electronic Applications Promote Efficiency**

By creating application forms in an electronic format, posting the forms on the bureau's website, and setting up the forms so that they are to be completed and submitted through the bureau's website, voters will be able to apply to serve on the commission as soon as the forms are available, 24 hours per day, seven days per week, throughout the application periods. No time is lost while applicants wait to receive forms by mail or the bureau waits to receive the completed forms and other materials from the applicants. In addition, due to the instantaneous speed of electronic communication, this should avoid many of the disputes that can arise regarding whether an application has been submitted by a particular deadline.

Applications in an electronic format are much easier to organize, store, and otherwise process than applications in a paper format. They therefore require much less handling by bureau staff members, and the information on the applications may be transferred to databases and organized with far less of an expenditure of staff time and much less of a likelihood that information will be lost or garbled through human error associated with transferring information.

Having the applications in an electronic format will also be a tremendous boost to the ability of bureau staff to promptly post application materials on the bureau's website. Application materials in a paper format would have to be transferred to an electronic format to be posted, taking up significant staff resources, and inevitably delaying the posting of the materials. With the materials existing in an electronic format when they are received, that problem is eliminated.

## **Additional Considerations**

We considered whether requiring applicants to submit an electronic application would exclude potential applicants from the application process. As part of our consideration of that issue, we contacted Stacey Aldrich, Acting State Librarian, to assess the availability of computers for use by applicants at local libraries. The information she provided indicated that every local library provides public access to computers. Potential applicants who do not have a computer at home would therefore be able to submit application materials at a library. To inform potential applicants about this option, we would publicize information about public access to computers during the application periods. Given the availability of public access computers in every local community, we believe that requiring an electronic application would not present access issues for able-bodied applicants.

In addition, we consulted with a redistricting expert, Dr. Timothy A. Hodson, Ph.D, Executive Director of the California State University Center for California Studies, regarding the analytical skills required for redistricting. The redistricting expert highlighted the importance of computers to the redistricting process and identified the ability to work with sophisticated software as a relevant analytical skill for redistricting. We also noted that the Act contains a specific requirement that the Legislature "take all

steps necessary to ensure that a complete and accurate computerized database is available for redistricting and that procedures are in place to provide the public ready access to redistricting data and computer software for drawing [district] maps.”<sup>5</sup> Based on the opinions of the redistricting expert and the language of the Act, we believe that a certain level of comfort with computers and computer software is essential to serving as an effective commissioner, so requiring the use of a computer to submit application materials is not likely to exclude from the application process any viable candidates for the commission.

Finally, bureau staff considered the environmental consequences of a paper application process and reviewed information regarding the State’s policies on the use of paper.<sup>6</sup> The California Integrated Waste Management Board’s website offers many suggestions about how to reduce the use of paper.<sup>7</sup> Among those suggestions is reducing the use of paper by using electronic communications.<sup>8</sup> After considering the environmental concerns, in addition to the other concerns and considerations discussed above, we determined that requiring electronic applications is the best approach to addressing the issues raised in this memorandum.

### **Reasonable Accommodation**

We recognize that reasonable accommodations may be required under the Americans with Disabilities Act of 1990 (“the ADA”)<sup>9</sup> for applicants who, because of a disability, are unable to complete and submit an application online. The bureau will therefore respond to requests for paper applications as a reasonable accommodation of a disability on a case-by-case basis.

### **Proposed Regulations**

To implement our recommendation that application materials must be submitted in an electronic format, we are proposing the following regulations:

#### **Proposed Regulation 60842. General Requirements Applicable to Every Phase of the Application Process**

This regulation sets forth requirements that are common throughout the different phases of the application process. Subdivision (a) of the regulation establishes that in the absence of circumstances requiring a reasonable accommodation under the ADA, all applications must be submitted in the electronic format prescribed by the bureau.

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<sup>5</sup> § 8253(b).

<sup>6</sup> <http://www.ciwmb.ca.gov/WPIE/Paper/default.htm>

<sup>7</sup> <http://www.ciwmb.ca.gov/BizWaste/OfficePaper/QuickTip.htm>

<sup>8</sup> Id.

<sup>9</sup> 42 U.S.C. §§ 12101, et. seq.

### **Proposed Regulation 60843. Phase I Application**

This regulation provides guidance regarding the content of and process for submitting the application that is to be submitted during Phase I of the application process. Subdivision (a) of the regulation establishes that in the absence of circumstances requiring a reasonable accommodation under the ADA, all applications submitted during Phase I of the application process must be submitted in the electronic format prescribed by the bureau. However, the regulation allows a limited exception for the submission of letters of recommendation, as the format of such letters may be beyond an applicant's control.

### **Proposed Regulation 60847. Phase II Application**

Similar to the preceding regulation, this regulation provides guidance regarding the content of and process for submitting the supplemental application that is to be submitted during Phase II of the application process. Subdivision (a) of the regulation establishes that in the absence of circumstances requiring a reasonable accommodation under the ADA, all supplemental applications and supporting materials submitted during Phase II of the application process must be submitted in the electronic format prescribed by the bureau. However, the regulation allows a limited exception for the submission of letters of recommendation, as the format of such letters may be beyond an applicant's control.

### **Conclusion**

Given the large number of applications we may receive, the amount of information that must be included in the applications, and the limited time that we have to process the applications, requiring the submission of application materials in an electronic format is necessary to the successful functioning of the application process and is consistent with the intent of the Act.