

California Bureau of State Audits
MEMORANDUM NUMBER 1

To: Elaine M. Howle, State Auditor

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

Subject: Overview of Proposed Regulations Related to the Voters FIRST Act

Date: July 31, 2009

Introduction

The Voters FIRST Act (the “Act”)¹ approved by the voters at the November 4, 2008 general election as Proposition 11, requires the State Auditor to initiate an application process for the Citizens Redistricting Commission (the “commission”) on a decennial basis. The commission, composed of fourteen members, is responsible for redrawing district lines for the State Senate, Assembly, and Board of Equalization based on decennial census information. To serve as a member of the commission, an applicant must be a registered California voter who has voted in two of the last three statewide general elections and has been continuously registered with the same political party, or no political party, for at least five years immediately prior to selection. Additionally, an applicant cannot have a conflict of interest as defined by the Act.

The Act requires the State Auditor to select an Applicant Review Panel (the “panel”) that will review the applications of persons wishing to serve on the commission. The State Auditor selects the panel by randomly drawing the names of three auditors from a pool of qualified independent auditors who are licensed by the State Board of Accountancy and have 10 or more years of experience working as an independent auditor.

Under the Act, the panel evaluates all of the applications submitted by applicants who meet the Act’s eligibility requirements, and based on that evaluation identifies a pool of 60 of the most qualified applicants. This pool of 60 applicants must consist of three subpools of 20 applicants each, with one subpool comprised of applicants registered with the state’s largest political party, another subpool comprised of applicants registered with the state’s second largest political party, and a third subpool comprised of applicants not registered with either of the state’s two largest political parties. The panel sends a list of the names of the 60 applicants to specified leaders in the Legislature who may strike the names of not more than eight applicants from each of the subpools. The legislative leaders are then required to return the remaining names to the State Auditor, who randomly draws from the remaining names in each of the subpools the names of three applicants registered with the largest political party, three applicants registered with the second largest political party, and two applicants not registered with either of the two largest

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

political parties. These applicants become the first eight members of the commission, and they select an additional six applicants to serve on the commission from those remaining in the three subpools.

Proposed Regulations

The Act provides few specifics regarding the application process, the work of the panel, and the selection of commissioners by the State Auditor.² To implement the provisions of the Act in a way that provides guidance and clarity to potential applicants and to the general public, the Bureau of State Audits (the “bureau”) proposes a set of regulations to guide the process. The regulations adopted by the bureau to implement the Act will be located in title 2, division 10, of the California Code of Regulations. As an overview, the proposed regulations will implement provisions of the Act related to the following subject areas:

- The creation and operation of the panel.
- The institution of a comprehensive outreach program designed to increase voter awareness of the opportunity to serve on the commission and to increase the likelihood that the pool of applicants will reflect the state’s diversity.
- The establishment of an application process.
- The method for screening applicants to ascertain whether they meet the eligibility requirements for serving on the commission.
- The process for evaluating applicants to identify a pool of 60 of the most qualified applicants who will be finalists for selection to the commission.
- The procedure for transmitting a list of the names of the 60 finalists to specified legislative leaders, who may strike up to 24 names from the list.
- The process for randomly drawing eight applicants to serve as the first eight members of the commission.

The proposed regulations are organized into three subchapters as follows:

- Subchapter 1, which includes proposed regulations 60800 to 60828, sets forth definitions that provide further clarity on various words and phrases used in the Act and the regulations, including definitions related to the following:
 - Ability to be impartial.
 - Appreciation for California’s diverse demographics and geography.
 - Conflicts of interest.
 - Diversity.

² In crafting these regulations we received expert advice and assistance from the Center for State and Local Government Law at Hastings Law School, include advice and assistance from Professors Michael Salerno and David Jung. In addition, in crafting the regulations pertaining to the qualifications of commissioners, we consulted with redistricting expert, Timothy Hodson, Ph.D Director of Center for California Studies at California State University, Sacramento.

- Most qualified applicants.
- Qualified independent auditor.
- Randomly draw.
- Relevant analytical skills.
- Subchapter 2, which includes proposed regulations 60830-60836, provides, among other things, further clarification and guidance on:
 - Formation of the panel, including selection and removal of panel members.
 - The duties of panel members.
 - Panel administration.
 - Panel meetings and voting.
- Subchapter 3, which includes proposed regulations 60840-60855, provides, among other things, further clarification and guidance on:
 - Outreach to potential applicants.
 - The general requirements of the application process and the particular requirements for each of the five phases of the application process.
 - The publication of the names of the applicants in the applicant pool.
 - Opportunities for the public to submit comments about the applicants.
 - Requests for reconsideration of bureau and panel decisions.
 - The applicant name-striking process.
 - Random drawing of the first eight commissioners.
 - Filling commission vacancies.

Conclusion

As the Act provides few specifics regarding the application process, the work of the panel, and the selection of commissioners by the State Auditor, the bureau is proposing a set of regulations to guide the bureau's implementation of the Act and to provide guidance and clarity to potential applicants and the general public. This memorandum is the first of a series of seven. The remaining six memoranda will explain in greater detail why we believe the regulations described above are necessary.