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**CALIFORNIA ASSOCIATION OF
CLERKS AND ELECTION OFFICIALS**

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March 25, 2009

Office of Administrative Law
Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

Dear Reference Attorney:

On behalf of the California Association of Clerks and Election Officials (CACEO) I am writing to convey our serious concerns regarding the Proposed Emergency Regulations submitted on March 24, 2009 by California Secretary of State Debra Bowen regarding the Post Election Manual Tally, (PEMT).

The Proposed Regulations, as drafted, run the risk of potentially costing counties, and ultimately the state, millions of dollars. The Secretary has quoted an estimated cost of \$20,000 to \$680,000 on Form STD 399. This is based on costs incurred by counties in the June and November 2008 elections. We have serious concerns that these estimated costs are significantly understated in the event of a close outcome in one or more statewide contests, and further, do not take into consideration the costs incurred in connection with the many local elections occurring during the requested extension period, including the potential special vacancy election to be held in the 10th Congressional District.

On Form STD 399 it is indicated that funds to cover the understated estimated costs are to be requested in the 2009-10 Governor's Budget; however costs could be incurred in local elections immediately after adoption, as well as the May 19th Special Statewide Election (Fiscal Year 08-09). In addition, there are no guarantees that these funds will be provided in the final budget.


As written, the regulations call for a hand tally of a percentage of precincts in contests when the election night outcome is less than one half of one percent. In the event of any variance (any change between the election night outcome for a given precinct and the outcome of the manual tally for that precinct, that narrows the margin) the proposed regulations call for expanding the precincts to be hand tallied by blocks of 5%. It is likely in a very close statewide contest, based on election night results, that these regulations could potentially escalate to a 100% hand tally of all 25,000 precincts in the State of California. In such event, the potential PEMT costs for a single statewide contest could be as high as \$10 million, assuming \$400/precinct multiplied by 25,000 precincts in the state.

The costs of the PEMT in November, 2008, for the 19th Senate District contest in the County of Santa Barbara ran \$248,000, as shown on the spreadsheet attached to Form STD 399 submitted by the Secretary of State. These costs were incurred as a result of the original Emergency Regulations Adopted by OAL in October of 2008. At that time the Secretary of State estimated a statewide cost of \$20,000. Again, as shown on the spreadsheet attached to Form STD 399, statewide costs for that election alone exceeded \$680,000.

Further, it should be stated that these hand tallies are based on election night results and not on final results. The money expended on the PEMT is spent hand tallying contests, the results of which may not even be close when all ballots are counted. According to our calculations, 24% of the ballots cast statewide are not included in the election night results. Also, the PEMT cannot change the outcome of an election. The PEMT has the potential for a huge outlay of public funds with no result.

Thank you for your consideration of our concerns. We respectfully request that the Proposed Emergency Regulations, as submitted not be approved, or that the appropriate funding be allocated. Should you have any questions, I can be reached at the address and/or phone number above.

Very truly yours,


Rebecca Martinez, President
California Association of Clerks
And Election Officials

c: The Honorable Debra Bowen, California Secretary of State.