



## **OFFICE OF THE SECRETARY OF STATE**

### *Statement of Need and Reasonableness*

## **Proposed Rule Governing Presidential Primary Election Administration Local Government Expense Reimbursement, Minnesota Rules, 8215; Revisor's ID Number R-04620**

### **Introduction**

In 2016, the Minnesota Legislature passed a law creating a Presidential Nomination Primary system in Minnesota beginning in 2020. As part of that legislation, the Office of the Secretary of State was granted rulemaking authority in order to provide the procedures to implement the Presidential Nomination Primary. In 2019, the legislature amended the Presidential Nomination Primary law to give the Office of the Secretary of State authority and discretion to approve the reimbursement of additional expenses related to the Presidential Primary in addition to those expenses explicitly enumerated in statute for reimbursement. The Office of the Secretary of State is engaged in a rulemaking to clarify and provide certainty around those additional expenses that will be eligible for state reimbursement.

A Request for Comments was published in the State Register on August 5, 2019, and a number of responses were received. The Request for Comments was also sent to a broad spectrum of interested parties pursuant to a Notice Plan described in this Statement of Need and Reasonableness ("SONAR"). The Secretary's staff used the comments received in response to the Request for Comments as well as comments and suggestions received prior to the rulemaking in the form of a statewide survey of county election officials to draft the proposed rules.

### **Alternative Format**

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or audio file. To make a request, contact Samm Bonawitz at the Office of the Secretary of State, 180 State Office Building, 100 Rev. Dr. Martin Luther King, Jr. Boulevard, Saint Paul MN 55155, [samm.bonawitz@state.mn.us](mailto:samm.bonawitz@state.mn.us), 651-201-1334, 651-215-0682 (fax). TTY users may call the Minnesota Relay Service at 711.

## **Statutory Authority**

*Minnesota Statutes*, section 207A.11, Laws 2016, chapter 162, section 9, requires the Office of the Secretary of State to adopt rules to implement the provisions of *Minnesota Statutes*, chapter 207A, establishing a presidential primary election in Minnesota. *Minnesota Statutes*, section 207A.15, subd. 2, as amended by Laws 2019, 1<sup>st</sup> Spec. Sess., Chap. 10, Article 4, section 8, broadened the categories of reimbursable local expenses to provide the Secretary of State with discretion to approve additional expenses eligible for local reimbursement.

The Secretary's statutory authority to adopt rules governing election administration and voting is set forth in:

Minnesota Statute, section 207A.11, paragraph (c), which provides:

(c) The secretary of state must adopt rules to implement the provisions of this chapter. The secretary of state shall consult with the party chairs throughout the rulemaking process, including seeking advice about possible rules before issuing a notice of intent to adopt rules, consultation before the notice of comment is published, consultation on the statement of need and reasonableness, consultation in drafting and revising the rules, and consultation regarding any modifications to the rule being considered.

Under these statutes, the Secretary of State has the necessary statutory authority to adopt the proposed rules.

## **Regulatory Analysis**

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) below quote these factors and give the Office's response.

**“(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule”**

The proposed rules will affect and benefit multiple classes of persons including voters, election officials and local governments, the major political parties, and the Office of the Secretary of State. While local governments and the Office of the Secretary of State will bear costs associated with the administration of a Presidential Nomination Primary, the costs associated with the Presidential Nomination Primary are imposed by statute.

***Classes of Persons Benefiting and Affected by the Proposed Rules***

**Eligible voters and major political parties** will benefit from the proposed rule because the counties and municipalities administering the Presidential Nomination Primary will be assured that they will have adequate resources to implement statutorily mandated responsibilities that serve the voters, making for a more efficient and accessible voting experience.

**Election officials and local governments** will benefit from the proposed rule because the proposed rule will allow counties and municipalities to be reimbursed for expenses related to the administering of the Presidential Nomination Primary. This will allow counties and municipalities to reliably administer the Presidential Nomination Primary without significantly impacting their county or municipal budget.

The **Office of the Secretary of State** will benefit from the proposed rule because it increases clarity for the Office, counties, and municipalities, by providing clear categories of expenses that are eligible for reimbursement. This clarity will also ensure an efficient and comprehensive post-election reimbursement process, a process which is mandated in statute to be administered by the Office of the Secretary of State.

***Classes of Persons Bearing the Costs of the Proposed Rule***

It is important to note that the costs associated with these rules are associated not with the rules themselves, but the legislation mandating the enactment of a Presidential Nomination Primary.

The **Office of the Secretary of State**, for example, will bear some of the costs of the proposed rules. The Office will incur staff costs, for example, to process additional reimbursements. Because the Office is already responsible for facilitating these reimbursements, there will be no additional costs associated with the Presidential Nomination Primary rules proposed in this process. Further, the clarity provided to both the Office of the Secretary of State and to local governments in these rules will ensure that the reimbursement process is efficient both for the Office of the Secretary of State and for all of Minnesota's local governments submitting requests for reimbursements.

**Election officials and the local governments for whom they work** may bear some costs related to requesting reimbursements. However, because local governments are already being asked to submit requests for reimbursement under Minnesota Statutes 207A.15, there will be no additional costs imposed by this rule in preparing these requests, and the clarity provided by the proposed rule will reduce confusion while increasing efficiency and consistency in the reimbursement process. This has the potential to reduce the administrative costs to local governments in the request for reimbursement process.

**“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”**

The Secretary of State will be required to process the additional reimbursements outlined within the proposed rules, but because the passage of the Presidential Nomination Primary law already requires the Secretary of State to process reimbursements, any additional costs imposed by the proposed rules would be negligible. Further, as described above, the clarity provided by this rule may ultimately reduce the administrative costs of the reimbursement process.

Minnesota Statutes 207A.15 gives the Secretary of State authority to approve other expenses related to the administration of the Presidential Nomination Primary. The proposed rule simply clarifies what categories of expenses the Secretary of State will be approving in addition to the expenses already allowed in statute. Because of this, the proposed rule does not bear any additional costs or any additional impact on state or local revenues, nor will the proposed rule cause any other state agency to incur costs. Instead, the proposed rule provides guidance and clarity to define the categories of expenses eligible for reimbursement in addition to what is already included in law.

**“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”**

While state and local governments will bear the costs associated with the administration of a Presidential Nomination Primary, the costs associated with the Presidential Nomination Primary are imposed by statute, not the proposed rules. Minnesota Statutes 207A.12, paragraph (a) states:

(a) Except as otherwise provided by law, the presidential nomination primary must be conducted, and the results canvassed and returned, in the manner provided by law for the state primary.

The proposed rule outlines categories of expenses eligible for reimbursement, allowing local governments to administer the Presidential Nomination Primary without risking the financial stability of their county or municipality. These categories were determined in part with the help of a statewide survey of county election officials, to ensure the most accurate listing of financial needs of election officials throughout the state.

**“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”**

The Office solicited feedback from local election administrators to best determine the expenses related to the administration of the Presidential Nomination Primary for the purpose of the proposed rule. Because of the specificity of Minnesota’s Presidential

Nomination Primary and election laws, short of any legislative changes, there are no alternatives to limit the costs of the Presidential Nomination Primary. During the 2019 legislative session, the Office worked in partnership with counties and cities to encourage the Legislature to adopt statewide mail balloting for the Presidential Nomination Primary due to the cost and administrative burden of the Presidential Nomination Primary. This would have significantly decreased the costs associated with the Presidential Nomination Primary. Unfortunately, the Legislature did not pass any such bill.

The Office of the Secretary of State did consider using an ad hoc approval method for additional expenses, but ultimately declined that approach because it could be perceived as unpromulgated rulemaking and because such an approach would not give local governments certainty around what expenses would or would not be approved for reimbursement. Further, as described in the rule section of the analysis, the Office of the Secretary of State carefully considered the reasonable scope of additional expenses that should be approved in the rule, after consultation with all 87 counties in Minnesota and their consultation with townships and cities within their jurisdiction.

**“(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”**

Costs associated with complying with the proposed rule are limited, as counties and municipalities are already statutorily required to request reimbursement with the Secretary of State. The costs associated with the proposed rules are required as a result of the Presidential Nomination Primary law, and are not imposed by the rules themselves.

**“(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals”**

The proposed rule language is in direct response to the Presidential Nomination Primary law as amended by Laws 2019, 1<sup>st</sup> Spec. Sess., Chap. 10, Article 4, section 8, which broadened the categories of reimbursable local expenses by providing the Secretary of State with discretion to approve additional expenses eligible for local reimbursement. Without this proposed rule, there would be no administrative guidance for the categories of expenses eligible for reimbursement for the counties and municipalities administering the Presidential Nomination Primary. Counties and municipalities conducting elections would not have the assurance that these expense categories would be approved for reimbursement, and would be unable to plan their county or city budget accordingly.

**“(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference”**

Nothing in the proposed rule is in conflict with federal regulations. Various federal laws and regulations govern election administration, but the proposed changes do not conflict with nor modify any federal regulation or law.

**“(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. . . . ‘[C]umulative effect’ means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”**

The primary purpose of the proposed rule is to bring the Presidential Nomination Primary rules in line with current Minnesota law and increase clarity in the rules for election administrators and other units of local government. Because the proposed rule clarifies the Presidential Nomination Primary reimbursement process to ensure compliance with recently enacted state law, this consideration is not applicable.

### **Commissioner of Management and Budget Review**

As required by Minn. Stat. § 14.131, the Secretary of State has consulted with the Minnesota Management and Budget agency. Minnesota Management and Budget was provided a copy of the proposed rule revisions as well as the draft SONAR. The Office of the Secretary of State will supplement the record with any formal response from the Minnesota Management and Budget.

In this portion of the SONAR, there usually appears a discussion of the fiscal impact and benefit of the proposed rules on local government. However, because the proposed rules directly impact local government and as the impact and benefits are addressed throughout the SONAR, both in the Regulatory Analysis preceding this section and in the rule-by-rule analysis, that information is not repeated here.

### **Cost of Complying for Small City or Small Business**

As required by Minn. Stat. § 14.127, the Office has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small city or small business and the Office has determined that it will not. The Office has made this determination after analyzing the proposed rules in relation to the underlying statutory obligations.

As discussed in the Regulatory Analysis section of the SONAR, there are significant costs associated with administering the Presidential Nomination Primary but those costs are imposed by the enabling legislation and not the administrative rules.

## **Determination About Rules Requiring Local Implementation**

As required by Minn. Stat. § 14.128, subd. 1, the Office has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The Office has determined that they do not because elections in Minnesota are governed by federal and state laws. Thus, no local ordinance or local regulatory changes are required.

## **Performance Based Rules**

Minnesota Statutes, sections 14.002 and 14.131, require that the SONAR describe how the Office, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the Office in meeting those goals. The proposed rules are specifically designed to clarify the Presidential Nomination Primary's reimbursement process in accordance with the Presidential Nomination Primary law as amended by Laws 2019, 1<sup>st</sup> Spec. Sess., Chap. 10, Article 4, section 8, which broadened the categories of reimbursable local expenses by providing the Secretary of State with discretion to approve additional expenses eligible for local reimbursement, with specific emphasis in the most efficient and accurate way to achieve the goals of the Presidential Nomination Primary law. Details of these considerations can be found in the rule-by-rule analysis.

## **Additional Notice**

Minnesota Statutes, section 14.131, requires a description of the agency's efforts to provide additional notification under § 14.14, subd. 1a, to persons or classes of persons who may be affected by the proposed rule, or an explanation why these efforts were not made.

The following is: (1) a description of the Office's Additional Notice Plan and (2) an explanation of why the Office believes the Additional Notice Plan complies with Minn. Stat. § 14.131, i.e., why the Additional Notice Plan constitutes good faith efforts to seek information by other methods designed to reach persons or classes of persons who might be significantly affected by the proposal.

The Additional Notice Plan is to send a copy of the Proposed Amendments to Rules and the Statement of Need and Reasonableness for those Proposed Amendments, the Dual Notice, and a transmittal letter to the following persons by electronic mail wherever possible and by United States mail where electronic mail addresses are unavailable:

All members of the following legislative committees with policy oversight in this area of law:

House Government Operations Committee  
House Elections Subcommittee  
Senate State Government Finance and Policy and Elections Committee

Chairs and Ranking Minority Members of the following legislative committees with fiscal oversight in this area:

House State Government Finance Committee  
House Ways and Means Committee  
Senate State Government Finance and Policy and Elections Committee  
Senate Finance Committee

House and Senate Leadership from the Majority and Minority Caucuses

Governor Tim Walz

Former Secretaries of State:

Mark Ritchie  
Mary Kiffmeyer  
Joan Anderson Growe  
Arlen Erdahl

Chairs of Minnesota's major political parties:

Democratic-Farmer-Labor Party  
Grassroots-Legalize Cannabis Party  
Legal Marijuana Now Party  
Republican Party of Minnesota

Chairs of Minnesota's minor political parties:

Green Party of Minnesota  
Independence Party of Minnesota  
Libertarian Party of Minnesota

The following election attorneys:

David Asp  
Jay Benanav  
Daniel Cragg  
Julia Dayton Klein  
Matthew Haapoja

Jeffrey Holth  
Erick Kaardal  
Rebecca Kanninen  
Fritz Knaak  
John Knapp  
Reid LeBeau  
Eric Magnuson  
William Mohrman  
Richard Morgan  
Michael Murphy  
Charles Nauen  
Jared Reams  
Steven Reitenour  
Vince Reuter  
Brian Rice  
Virginia Stark  
Tony Trimble  
Alan Weinblatt  
David Zoll

Representatives of voting equipment and service vendors:

Clear Ballot Group, Inc.  
Democracy Live  
Dominion Voting System Corp.  
Election Systems & Software, Inc.  
Everyone Counts, Inc.  
Synergy Graphics  
Hart Intercivic, Inc.  
Knowink  
Data Card  
Election Administrators  
SOE Software

Representatives of local government associations:

Association of Minnesota Counties  
League of Minnesota Cities  
Minnesota Association of County Officers, and all Minnesota County Auditors  
Minnesota Association of Townships  
Minnesota School Boards Association  
Minnesota County Attorney Association

Representatives of public-interest groups or government agencies:

AARP  
ACLU of Minnesota  
Catholic Charities  
Citizens for Election Integrity Minnesota  
Center of the American Experiment  
Common Cause Minnesota  
Education Minnesota  
FairVote Minnesota  
League of Women Voters of Minnesota  
Minnesota Advocates for Human Rights  
Minnesota Board on Aging  
Minnesota Citizens Concerned for Life  
Minnesota Council of Nonprofits  
Minnesota Department of Veteran's Affairs  
Minnesota Majority  
Minnesota Taxpayers League  
Minnesota Voters Alliance  
Minnesota Public Interest Research Group  
Minnesota School Employees Association  
TakeAction Minnesota

Representatives of the following groups and agencies and organizations of people with disabilities:

Arc Minnesota  
Minnesota Commission Serving Deaf, Deaf-Blind and Hard of Hearing People  
Minnesota Disability Law Center  
Minnesota State Council on Disability  
National Alliance for the Mentally Ill - Minnesota  
National Federation of the Blind

Representatives of the following groups and agencies representing communities of color in Minnesota:

Asian Americans Advancing Justice  
Council on American-Islamic Relations Minnesota  
Council on Asian-Pacific Minnesotans  
Council for Minnesotans of African Heritage  
Council on Latino Affairs  
Hmong American Partnership  
Immigrant Law Center

International Institute of Minnesota  
Karen Organization of Minnesota  
Minnesota Indian Affairs Council  
Minneapolis Urban League  
NAACP – Minneapolis  
NAACP – St. Paul  
Native Vote Alliance of Minnesota  
Somali Action Alliance

The Office of the Secretary of State believes that this Additional Notice Plan complies with the statute because the notice materials – described above – provide the principal representatives of the affected parties with ample notice and opportunity to provide suggestions, proposals, and comments regarding possible rule amendments.

The listed persons and organizations receiving the Notice together represent the vast majority of persons interested in these rules. They frequently comment on (or make) public policy. They represent the major and minor political parties in Minnesota and a number of different positions on the spectrum of political thought, and will adequately represent the views of a diverse group of Minnesota citizens, which is a central purpose of the rulemaking process. They represent:

Policymakers, especially in the Legislature, who have oversight of this subject matter area;  
Political parties;  
Local governments and elections administrators;  
Former Secretaries of State;  
Lawyers with expertise in elections matters; and  
Public-Policy groups and agencies representing a spectrum of populations and views held within the general public.

The Notice Plan also includes giving notice required by statute. The Office will send the proposed rules and Notice of Intent to Adopt to everyone who has registered to be on the Office's rulemaking mailing list under Minn. Stat. § 14.14, subd. 1a. The Office will also give notice to the Legislature per Minn. Stat. § 14.116.

## **List of Witnesses**

The Office anticipates having the following witness testify in support of the need for and reasonableness of the rules at the public hearing:

David Maeda, Director of Elections, Office of the Secretary of State

## Rule-by-Rule Analysis

The Secretary is proposing amendments to the current Presidential Nomination Primary rules in response to the Presidential Nomination Primary law. The proposed additional rule part and the reasoning behind the Office of Secretary of State's determination that this rule is needed and reasonable is outlined below.

### **8215 Presidential Nomination Primary**

Pursuant to 2016 Minnesota Laws, Chapter 162, section 9, the Office of Secretary of State is required to adopt rules to implement the Presidential Nomination Primary. The Office has consulted with election officials who would be administering the Presidential Nomination Primary throughout each stage of the rulemaking process. This consultation included a statewide survey of county elections officials, soliciting input for the costs associated with the administration of the Presidential Nomination Primary throughout the State. The Office is recommending the promulgation of the proposed rule following these discussions.

The key components of the Presidential Nomination Primary statute are as follows:

- Unless otherwise provided by the Presidential Nomination Primary law, the Presidential Nomination Primary is required to be conducted in the same manner as the state primary;
- The Presidential Nomination Primary will take place on the first Tuesday in March of a presidential election year, unless the major party chairs agree on a different date by March 1 of the previous year (which they have not);
- Only major parties are eligible to participate in the Presidential Nomination Primary;
- Each major party must have a separate ballot;
- The chair of each party must submit a list of candidates that will appear on the party's ballot no later than 63 days before the date of the Presidential Nomination Primary;
- The chair of each party has the option of including on the ballot language that would allow a voter to indicate a preference for having delegates to the party's national convention remain uncommitted or contain a space for a write-in vote;
- Just as with a regular primary, registered voters will be able to vote at their polling place on Presidential Nomination Primary day or by absentee up to 46 days before Presidential Nomination Primary day;
- In order to vote in the Presidential Nomination Primary a voter must request a specific party's ballot to vote and will be given a ballot containing only that party's candidates;
- Voters living in a vote-by-mail jurisdiction will receive a ballot for each major party participating in the Presidential Nomination Primary, but are only permitted to return one voted ballot;

- A voter’s choice of party ballot will be recorded in the Statewide Voter Registration System and will be provided to the chairs of the major parties as required by statute; and
- The Secretary of State has the authority to approve and administer expenses related to the administration of the Presidential Nomination Primary.

The Office of the Secretary of State adopted administrative rules in 2018 to help clarify the vast majority of the administrative components of the Presidential Nomination Primary law. However, since the legislature in 2019 made amendments to the Presidential Nomination Primary law, specifically as it relates to the reimbursement of expenses related to the Presidential Nomination Primary, the proposed rule is designed to provide additional clarity to elections administrators regarding the categories of expenses approved by the Secretary of State for reimbursement for the Presidential Nomination Primary.

Proposed rule part **8215.0700** is needed and reasonable to clarify and provide guidance regarding the categories of expenses approved by the Secretary of State for reimbursement for the Presidential Nomination Primary. This proposed rule is needed and reasonable in light of the Presidential Nomination Primary law as amended by Laws 2019, 1<sup>st</sup> Spec. Sess., Chap. 10, Article 4, section 8, which broadened the categories of reimbursable local expenses by providing the Secretary of State with discretion to approve additional expenses eligible for local reimbursement. *See* Minn. Stat. § 207A.15.

**Subpart one** of this rule part provides that unless otherwise permitted by law, the categories of expenses approved for reimbursement are listed within subpart two. This is needed and reasonable to clarify that there are expenses approved for reimbursement in current statute, and the items listed in subpart two are only those *additional* items approved for expense reimbursement. *See* Minn. Stat. § 207A.15. This subpart ensures that local governments are clear that they can seek reimbursement for both the explicitly enumerated statutorily approved expenses and the items identified by the Office of the Secretary of State in this rulemaking as additional approved expenses.

**Subpart two** of the rule part lists expense categories eligible for reimbursement. These are needed and reasonable because they give counties and municipalities administering elections clear guidance and expectations regarding what expense categories will and will not be reimbursed. Minnesota election law states that “[e]xcept as otherwise provided by law, the Presidential Nomination Primary must be conducted, and the results canvassed and returned, in the manner provided by law for the state primary.” Minn. Stat. § 207A.12. There are considerable costs associated with the addition of a new state primary election, but with the assurance provided in subpart two, election administrators will be able to administer the election reliably and according to statute without significantly impacting their local budget. The categories of expenses eligible for reimbursement under subpart two were included in

consultation with counties and municipalities administering the election, and include all necessary and reasonable expenses for the administration of a statewide election, including:

- Reimbursement of the **costs associated with distributing and processing ballots for absentee, military and overseas, and mail voters** is needed and reasonable considering the growing popularity of absentee and mail voting, a method of voting made available to voters by law. Not including these costs would result in counties and municipalities being left with significant costs to cover, that would ultimately likely be passed on to their local taxpayers.
- Reimbursement of the **costs associated with preparation of an absentee voting location as a polling place**, as well as the **costs associated with preparation of electronic voting systems for absentee polling places** is needed and reasonable to remain consistent with the statutory provision regarding reimbursement for the preparation of polling places. The limited costs that may be reimbursed under this category are mirrored with the statutory limit of \$150 per polling place for polling place preparation on election day, and \$100 per polling place for electronic voting systems preparation on election day.
- Reimbursement of the **costs for the distribution and publication of statutorily mandated public notices** are needed and reasonable to allow counties and municipalities to comply with state law. Distributing and publicizing the statutorily mandated public notices is necessary and reasonable to administer the Presidential Nomination Primary, and is mandated by statute.
- Reimbursement for **mileage for travel associated with delivering materials and traveling between polling places and government buildings on election day**, as well as **parking reimbursement for election judges on election day** is needed and reasonable to ensure that local election workers are able to deliver polling place equipment, and troubleshoot various issues at the polling place without personally covering the cost of their mileage and parking, or placing this burden on the county or municipality. This is especially necessary in parts of the state where an election administrator could be driving many hours between polling places, or more densely populated cities that have significant parking fees near the polling place.
- Reimbursement for **costs associated with car or truck rental fees related to the transportation of election equipment or polling place materials** is needed and reasonable to allow counties and municipalities to transfer large amounts of equipment and supplies to and from the polling place. Many election administrators rent vehicles specifically for this purpose, and without the rental of an additional vehicle would have no way to efficiently bring equipment and materials to the polling place.
- Reimbursement for the **costs for purchasing and distributing materials for additional election judge trainings or guidance specific to the Presidential Nomination Primary**, as well as **compensation for election judges completing additional training**, are needed and reasonable in order to ensure that Minnesota's election workers are

properly trained with adequate care and resources so that the new statewide election is administered as efficiently as possible.

- Reimbursement for the **costs associated with ensuring the security and safety of the public at the polling place** is needed and reasonable in order to make sure voters are able to get to the polling place safely, and stay at the polling place without concerns of their safety or security. Due to the unpredictability of March weather, the Office is committed to making sure that voters are able to safely vote at the polling place, and election workers have a safe and secure work environment.
- Reimbursement of **costs associated with the physical storage of Presidential Nomination Primary records** is needed and reasonable because state law requires all election records be stored for at least 22 months from the date of the election. See Minn. Stat. 204B.40. With the Presidential Nomination Primary being a new election counties and municipalities are being asked to administer, many election jurisdictions will need additional storage space to accommodate the additional election and its records, in order to remain compliant with state law.
- Reimbursement of **costs associated with supplies purchased for the assembly and support of the polling place** is needed and reasonable in order to accommodate the needs of a functional polling place. Each county and municipality has differing needs for their polling place depending on the equipment used, number of registered voters, and number of election judges. The Office is committed to making sure items purchased to assemble or support the polling place for the Presidential Nomination Primary are reimbursed as they are necessary for the administering of elections, and they are needed in order to fulfil statutorily mandated responsibilities of the counties and municipalities.
- Reimbursement of **costs associated with securing communications at the polling place** is needed and reasonable in order to ensure secure and timely transmission of precinct reports on election day. The reimbursement of these costs is also needed and necessary to ensure that counties and municipalities using electronic poll books have the necessary connections between the poll books on election day.

**Subpart three** of the rule part is needed and reasonable to ensure that reimbursements for the expense categories listed in subpart two are consistent with the statutory provisions regarding the certification of costs for local reimbursements for the Presidential Nomination Primary.

## Conclusion

Based on the foregoing, the proposed rules are both needed and reasonable.

11/5/2019

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*Steve Simon*

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Steve Simon  
Secretary of State

## Office of the Minnesota Secretary of State

**DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number R-04620**

**Proposed Amendment of Rules Governing Presidential Nomination Primary Election Administration Local Government Expense Reimbursement, *Minnesota Rules*, 8215; Revisor ID R-04620**

**Introduction.** The Office of the Minnesota Secretary of State intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on Thursday, December 12, 2019 the Office will hold a public hearing at the Office of Administrative Hearings at 600 Robert St N, St Paul, MN 55101, starting at 9:30 a.m. on Tuesday, December 24, 2019. To find out whether the Office will adopt the rules without a hearing or if it will hold the hearing, you should contact the agency contact person after 4:30 on December 12, 2019 and before December 24, 2019.

**Agency Contact Person.** Submit any comments or questions on the rules or written requests for a public hearing to the agency contact person. The agency contact person is: Samm Bonawitz at the Office of the Minnesota Secretary of State, 180 State Office Building, 100 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, MN 55155; Phone 651-201-1334; Email [samm.bonawitz@state.mn.us](mailto:samm.bonawitz@state.mn.us). TTY users may call the Office of Secretary of State at 711.

**Subject of Rules and Statutory Authority.** The proposed rules govern the categories of expenses eligible for local reimbursement for the Presidential Nomination Primary. The Office is proposing rules that prescribe and expand upon the categories of expenses that are reimbursable to local jurisdictions administering the Presidential Nomination Primary. The statutory authority to adopt the rules is *Minnesota Statutes*, section 207A.11, Laws 2016, chapter 162, section 9, which requires the Office of the Secretary of State to adopt rules to implement the provisions of *Minnesota Statutes*, chapter 207A, establishing a presidential primary election in Minnesota. *Minnesota Statutes*, section 207A.15, subd. 2, as amended by Laws 2019, 1<sup>st</sup> spec. sess., chap. 10, article 4, section 8, broadened the categories of reimbursable local expenses to provide the Secretary of State with discretion to approve additional expenses eligible for local reimbursement. A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed.

**Comments.** You have until 4:30 p.m. on Thursday, December 12, 2019, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change that you desire. Any comments that you have about the legality of the proposed rules must also be made during this comment period.

**Request for a Hearing.** In addition to submitting comments, you may also request that the Office hold a hearing on the rules. You must make your request for a public hearing in writing, which

the agency contact person must receive by 4:30 p.m. on Thursday, December 12, 2019. You must include your name and address in your written request. In addition, you must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the agency cannot count it when determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

**Withdrawal of Requests.** If 25 or more persons submit a valid written request for a hearing, the Office will hold a public hearing unless a sufficient number of persons withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

**Alternative Format/Accommodation.** Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

**Modifications.** The Office might modify the proposed rules, either as a result of public comment or as a result of the rule hearing process. It must support modifications by data and views submitted to the agency or presented at the hearing. The adopted rules may not be substantially different than these proposed rules unless the Office follows the procedure under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the Office encourages you to participate in the rulemaking process.

**Cancellation of Hearing.** The Office will cancel the hearing scheduled for Tuesday, December 24, 2019, if the agency does not receive requests for a hearing from 25 or more persons. If you requested a public hearing, the agency will notify you before the scheduled hearing whether the hearing will be held. You may also call the agency contact person at 651-201-1334 after Thursday, December 12, 2019 to find out whether the hearing will be held.

**Notice of Hearing.** If 25 or more persons submit valid written requests for a public hearing on the rules, the Office will hold a hearing following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The Office will hold the hearing on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. Administrative Law Judge James Mortenson is assigned to conduct the hearing. Judge Mortenson's Legal Assistant, Sheena Denny, can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone 651-361-7900 and fax 651-539-0310 or sheena.denny@state.mn.us.

**Hearing Procedure.** If the Office holds a hearing, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules. You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. At the hearing the Administrative Law Judge may order that this five-day comment period is extended for a longer period but not more than 20 calendar days.

Following the comment period, there is a five-working-day rebuttal period when the agency and any interested person may respond in writing to any new information submitted. No one may submit **new** evidence during the five-day rebuttal period. The Office of Administrative Hearings must receive all comments and responses must be submitted to the Administrative Law Judge no later than 4:30 p.m. on the due date. All comments or responses received will be available for review at the Office of the Secretary of State and on the Office's website at <http://www.sos.state.mn.us/about-the-office/rulemaking-data-practice/rulemaking/>. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 to 14.20. You may direct questions about the procedure to the Administrative Law Judge.

The agency requests that any person submitting written views or data to the Administrative Law Judge before the hearing or during the comment or rebuttal period also submit a copy of the written views or data to the agency contact person at the address stated above.

**Statement of Need and Reasonableness.** The statement of need and reasonableness summarizes the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is now available from the agency contact person. You may review or obtain copies for the cost of reproduction by contacting the agency contact person or on the Office's webpage at <http://www.sos.state.mn.us/about-the-office/rulemaking-data-practice/rulemaking/>

**Lobbyist Registration.** *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Ask any questions about this requirement of the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 1-800-657-3889.

**Adoption Procedure if No Hearing.** If no hearing is required, the agency may adopt the rules after the end of the comment period. The Office will submit the rules and supporting documents to the Office of Administrative Hearings for a legal review. You may ask to be notified of the date the rules are submitted to the office. If you want either to receive notice of this, to receive a copy of the adopted rules, or to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

**Adoption Procedure after a Hearing.** If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date that the Administrative Law Judge's report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date that the agency adopts the rules and the rules are filed with the Secretary of State by requesting this at the hearing or by writing to the agency contact person stated above.

**Order.** I order that the rulemaking hearing be held at the date, time, and location listed above.

11/6/2019

Date



Steve Simon  
Secretary of State

1.1 **Secretary of State**1.2 **Proposed Permanent Rules Relating to Presidential Nomination Primary; Local**  
1.3 **Expense Reimbursement**1.4 **8215.0700 LOCAL REIMBURSEMENTS.**

1.5 Subpart 1. Eligibility determination. Except as otherwise provided by law, before  
1.6 the secretary of state reimburses a county or municipality for an expense incurred to  
1.7 administer the presidential nomination primary that is not specifically authorized by  
1.8 Minnesota Statutes, section 207A.15, subdivision 1, paragraph (a), the secretary of state  
1.9 must determine that the expense is approved for reimbursement under subpart 2.

1.10 Subp. 2. Eligible expenses. For purposes of Minnesota Statutes, section 207A.15,  
1.11 subdivision 2, the following expenses related to administering the presidential nomination  
1.12 primary incurred by a county or municipality are approved for reimbursement:

1.13 A. costs, including envelopes, printing, postage, and associated courier fees related  
1.14 to the distribution and processing of military and overseas voter ballots and ballot materials;

1.15 B. costs, including envelopes, printing, postage, and associated courier fees related  
1.16 to the distribution and processing of mail ballots and ballot materials;

1.17 C. costs, including envelopes, printing, postage, and associated courier fees related  
1.18 to the distribution and processing of absentee ballot materials;

1.19 D. costs, including envelopes, printing, and postage, for distribution of absentee  
1.20 ballot applications for voters on the permanent absentee list, as described in Minnesota  
1.21 Statutes, section 203B.04, subdivision 5;

1.22 E. costs associated with preparation of an absentee voting location as a polling  
1.23 place, not to exceed \$150 per polling place;

1.24 F. costs associated with preparation of electronic voting systems for absentee  
1.25 polling places, not to exceed \$100 per polling place;

2.1 G. costs for distribution and publication of statutorily mandated public notices;

2.2 H. mileage for travel associated with delivering materials and traveling between  
2.3 polling places and government buildings on election day;

2.4 I. costs for purchase of materials for any additional election judge training specific  
2.5 to the presidential nomination primary;

2.6 J. compensation for election judges completing required election judge training  
2.7 for preparation for the presidential nomination primary, not to exceed three hours;

2.8 K. compensation for election judges completing required health care facility  
2.9 training, not to exceed one hour;

2.10 L. parking reimbursement for election judges on election day;

2.11 M. costs associated with car or truck rental fees related to the transportation of  
2.12 election equipment or polling place materials;

2.13 N. costs, including envelopes, printing, and postage, for the distribution of election  
2.14 judge materials;

2.15 O. costs associated with ensuring the security and safety of the public at the polling  
2.16 place;

2.17 P. costs, including storage rental fees, associated with the physical storage of  
2.18 presidential nomination primary records for at least 22 months from the date of the election,  
2.19 as prescribed in Minnesota Statutes, section 204B.40;

2.20 Q. costs associated with supplies purchased for the assembly and support of the  
2.21 polling place; and

2.22 R. costs, including secured Internet and phone connections, associated with  
2.23 securing communications at the polling place.

- 3.1           Subp. 3. **Reimbursement amount.** The secretary of state must not reimburse a county  
3.2 or municipality for an amount exceeding the actual documented cost of an item listed in  
3.3 subpart 2.