

21st Biennial Election Law Seminar For County Chairs



Financing Primary Elections

RULES, STATUTES, LEGISLATION

Impacting the Financing of Primary Elections

Laws/Rules Affecting Primary Finance

Texas Election Code

Chapter 31,
Subchapter
D (election
service
contract
provisions)

Chapter 51,
Subchapter
B (election
equipment
and
supplies
regarding
primaries)

Chapter
123,
Subchapter
B (election
equipment
leases for
primaries)

Chapter 173
(primary
finance
provisions)

TEC Chapter 31 – Elec Service Contracts

31.093 – Duty to Contract

- The county election officer must contract with the party if requested

31.100 – Contracted Expenses

- Must provide itemized estimate (payments will be paid directly by SOS)
- Election officer cannot be personally compensated or charge for statutory responsibilities, e.g., early voting (except for ballots and the EVBB)
- Regular employee compensation cannot be assessed to the contract
- Can only charge for actual incurred costs
- A 10% general supervision fee may be applied to actual contract costs

TEC Chapter 51 – Election Supplies

51.035 – County-owned Equipment

The county
election officer
must furnish
available
county-owned
ballot boxes and
voting booths

Equipment
must be
distributed to
the parties
equitably

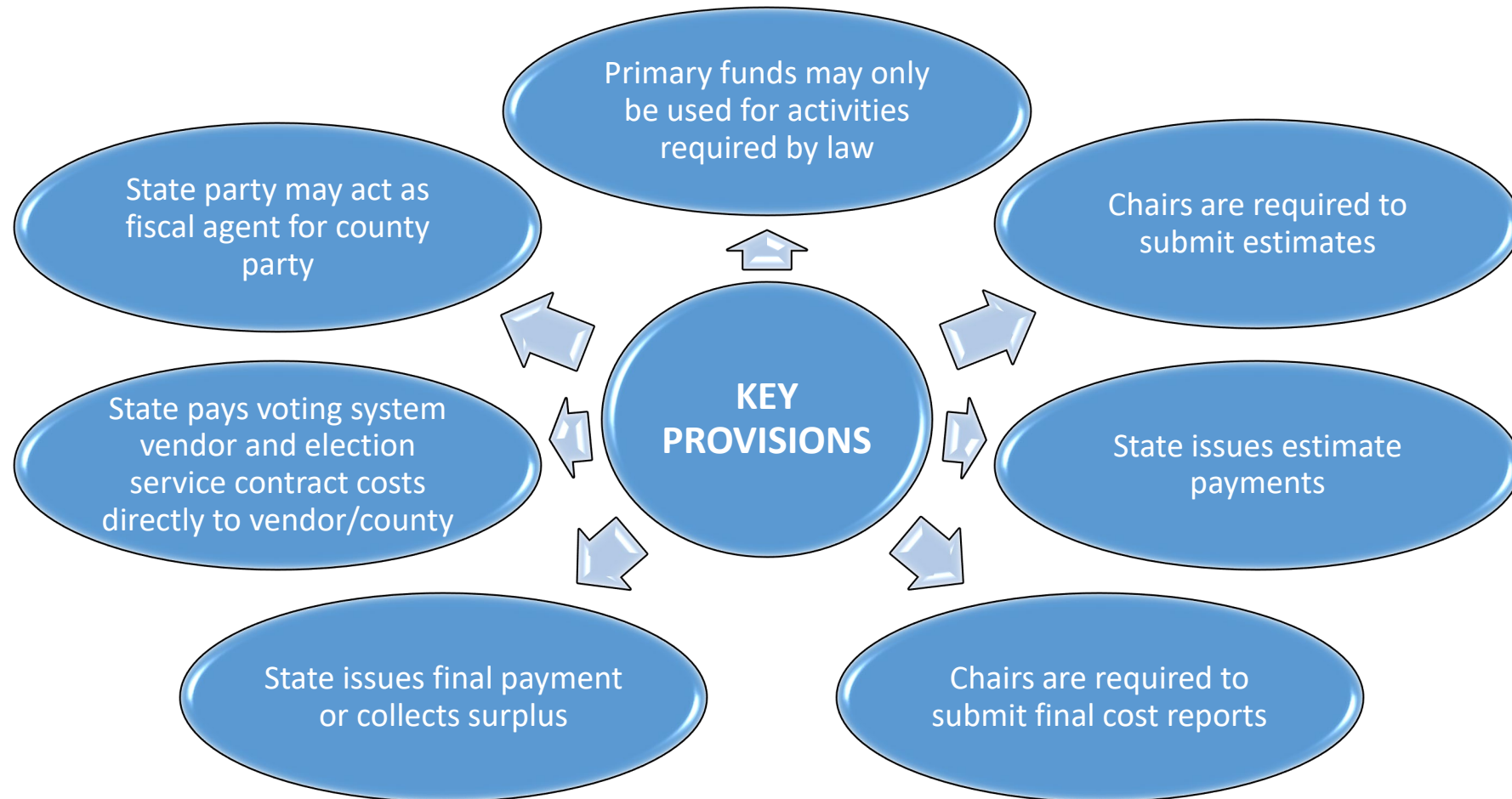
A fee may not
be assessed

TEC Chapter 123 – Voting Systems

123.033 – Equipment Acquisition for Primary

- May lease from the county or other source
- County may impose reasonable restrictions and conditions
- Maximum rate is \$5 per unit of equipment
- Additional charges (subject to limitations set forth in TEC 31.100) -
 - Transportation to and from the polling location
 - Equipment preparation
 - Operating central counting station

TEC Chapter 173 – Primary Election Financing



Legislative Changes / Proposed Rule Updates

TAC §81.101

Change: Adjusted so Vendors don't have to submit estimates

Reason: As a practice, Vendors don't always submit estimates

TAC §81.107

Change: Enforces final cost report submission requirements

Reason: Increase compliance and speed up the review process

TAC §81.116

Change: Immaterial change to formula formatting

Reason: Formula got inadvertently changed

TAC §81.120

Change: Includes up to two hours of compensation before polls open

Reason: Response to SB 1052

Rules Affecting Primary Finance

Texas Administrative Code

Title I, Chapter 81, Subchapters F and G
(SOS primary finance rules)

Primary Fund Account

- Filing fees
- Estimate payments from SOS
- Contributions intended for Primary use

[§81.102](#)
Primary Funds
Defined

[§81.103](#)
Primary Fund
Bank Account

- Account for filing fees and state payments
- Funds shall not be comingled
- Revenue for primary may not be used to pay for previous primary bills

- Chair or authorized agent must sign checks
- Only chair may sign \$1000+ checks, admin personnel, sole-source vendors
- No rubber stamp signature

[§81.104](#)
Signature on
Checks; Funds
Authorization

[§81.105;](#)
[§81.106](#)
Checks;
Deposits

- No payments to “cash” or “bearer” except chair comp - No payments from primary fund to party as contributions
- Deposit filing fees and keep list

Primary Fund Records

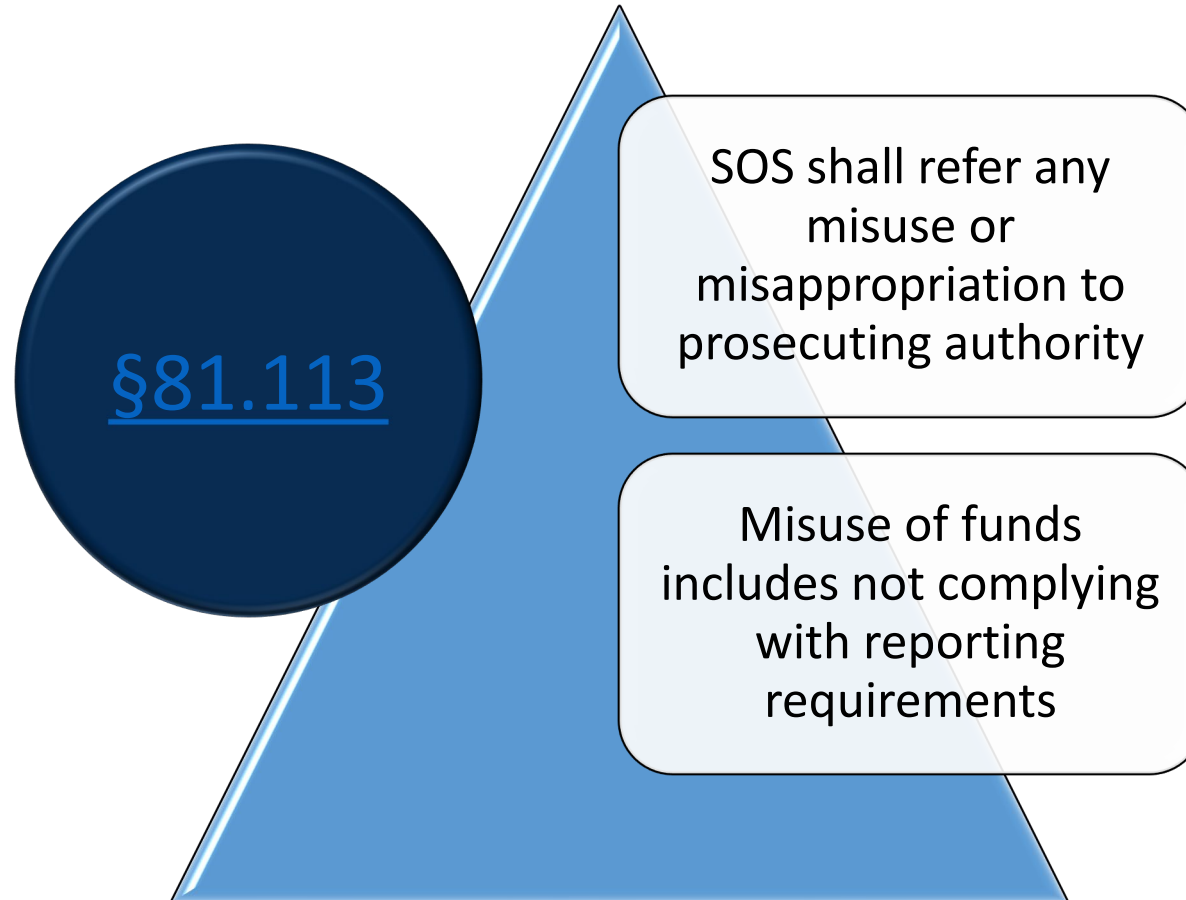
§81.107

- Records must be retained for 22 months or following the conclusion of litigation, whichever is later
- Chair must submit records with report to SOS
- If chair does not submit, chair compensation may be withheld

§81.108

- Outgoing chair shall transfer records to incoming chair within 30 days of new term beginning
- Payments are issued to the county party chair, not an individual
- Incoming chair and outgoing chair are responsible for completing FCR and making final payments

Misuse of State Funds



Conflicts of Interest

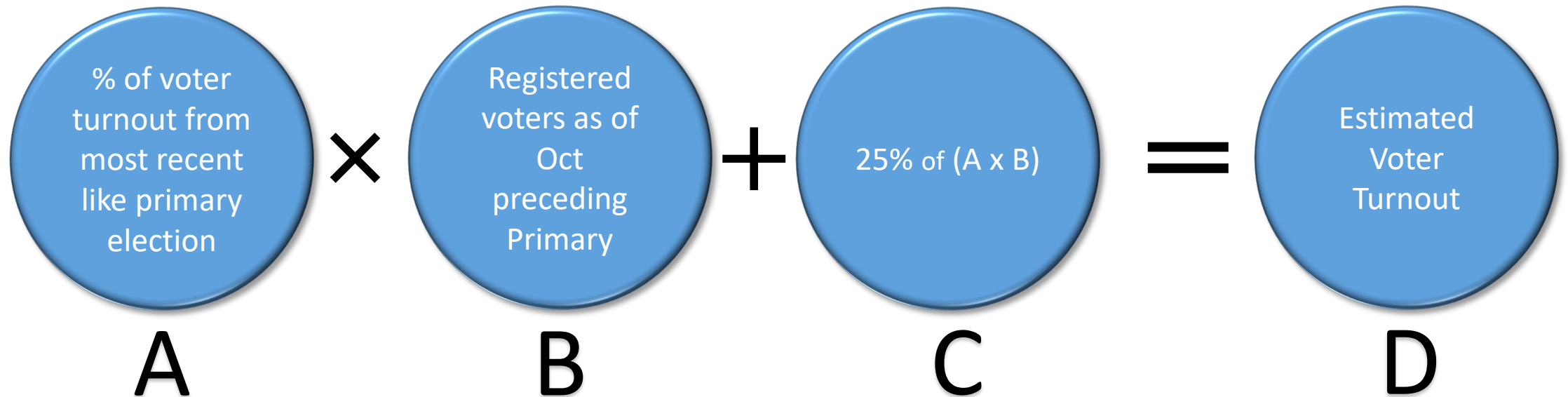
§81.114

No disbursements may be made to chair personally or an entity in which or business the county chair or chair's family has financial interest

For purposes of this section, "family" is defined as individuals related within the third degree of consanguinity

Discounted expenditures, such as reduced rate for leasing space, does not exempt the cost

Planning for the Primary



[§81.116](#)

Planning for the Primary

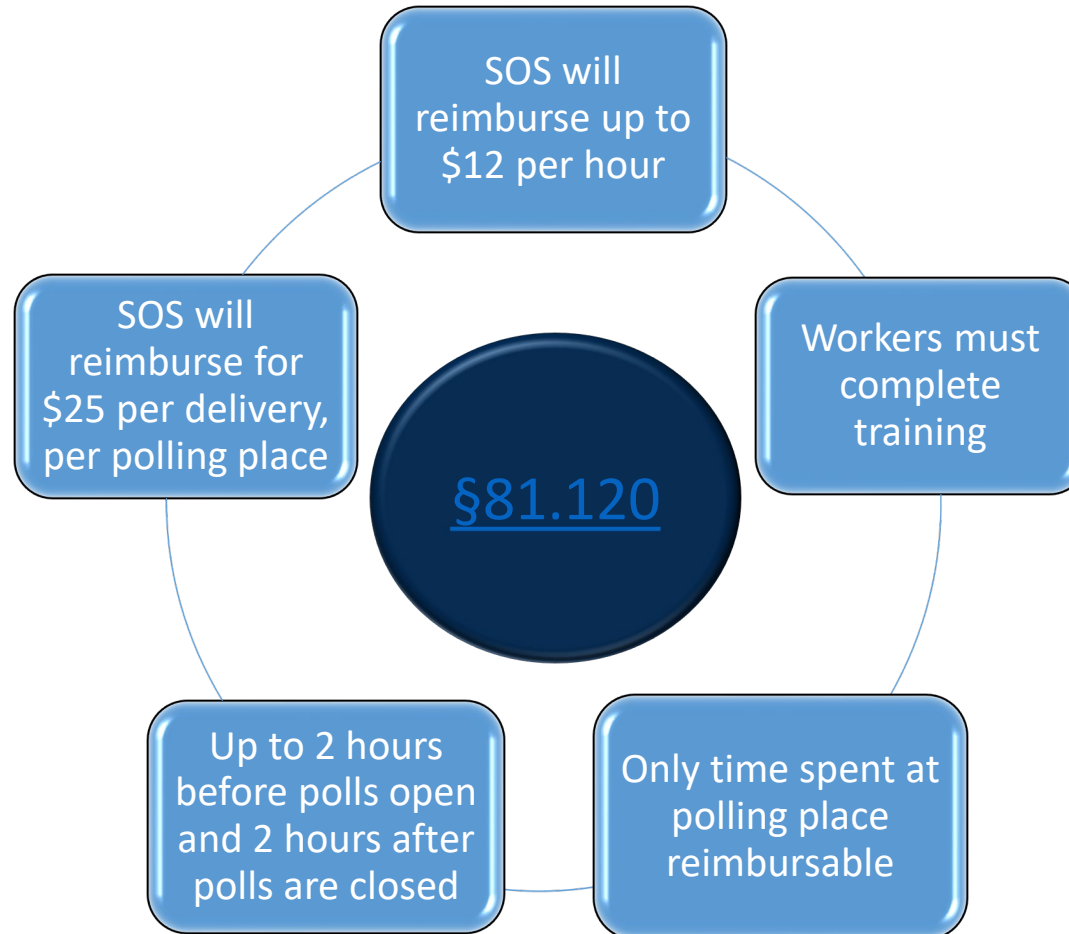
The formula in [§81.117](#) may be used to calculate number of workers per polling location

The formula in [§81.124](#) may be used to calculate number of ballots per polling location

The formula in [§81.125](#) may be used to calculate number of DRE's or ballot counters per polling location

Use your judgement—these formulas are simply a starting point for estimating figures for the Primary

Compensation for Election Day Workers



Legal Fees

[§81.134](#)

- Lawsuit related to candidate's name on the ballot
- Lawsuit related to negligent or wrongful acts not eligible
- Only legal fees up to State Bar rates will be reimbursed



- Within 30 days of service of process
- Must be in writing via mail, email or fax
- Must include style and cause number, attorney, summary, hourly rate and estimate

- Invoices, pleadings, docket sheets, judgements and orders
- Invoice listing hours and hourly rate
- All documents submitted become subject to Public Information Act

- Chair submits relevant documents to SOS
- SOS reviews submission
- SOS makes determination of compensability and reasonableness of legal fees and expenses

Primary Payables – Election Day

§81.109

Only expenses legally necessary for and directly related to the conduct of the Primary

More on this in Financing Primary Elections

Primary Payables

[§81.129](#) – Office rental
for Primary and Runoff
(if applicable)

[§81.122](#) – Office
personnel for Primary
office; tax penalties
may not be paid with
Primary Funds

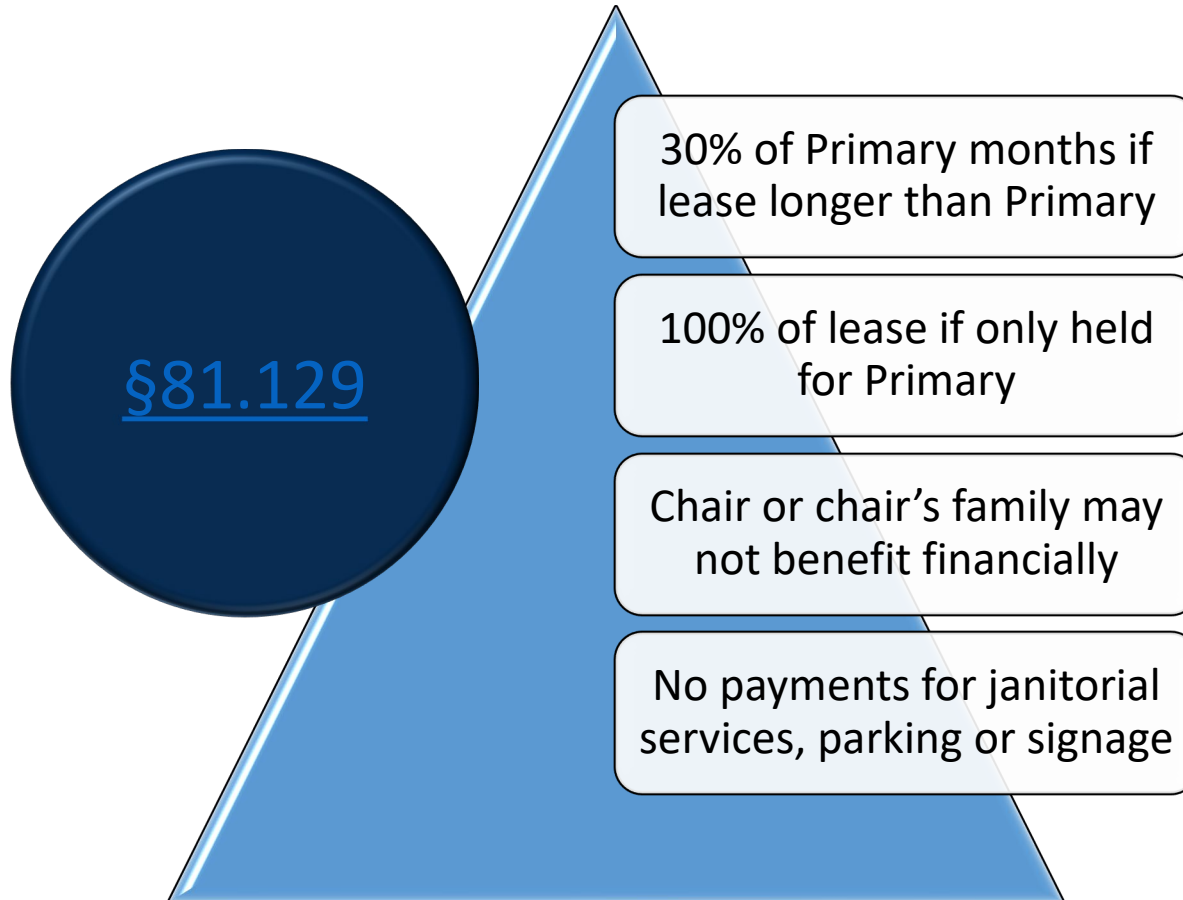
[§81.128](#) – Telephone
line and utilities in
Primary office

[§81.128](#) – Postage to
mail notice of
appointment and
checks to workers

[§81.130](#) – County-
owned equipment at
\$5 per complete unit
of equipment

[§81.127](#) – Computer
for Primary; must be
used for two cycles;
serial number must be
submitted to SOS

Primary Payables – Office Rental



Primary Payables – Admin Personnel

No member of the county chair's family may be paid an administrative salary from Primary Funds

Wages may only be paid starting November 1st and going to the last day of the month in which Primary or Runoff is held

§81.123

Primary Non-Payables

Public building
personnel,
utilities or other
expenses
prohibited

Public building used
as polling place if
the building is
normally open that
day

Election notices
except for public
testing notice

Convention
expenses

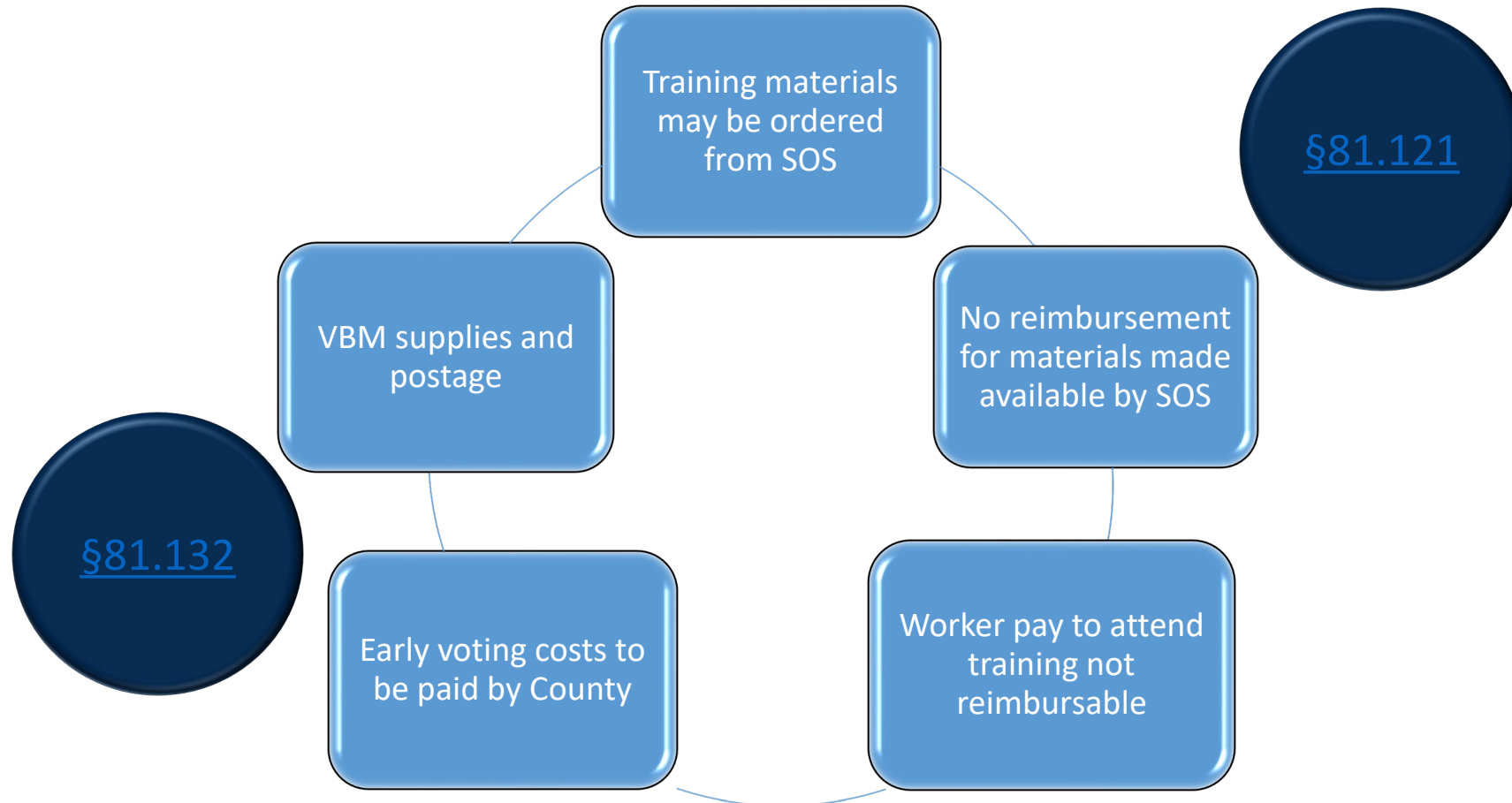
Food or drink
items

Stationary not
related to conduct
of election

Voter registration
drives or get-out-
the-vote campaigns

[§81.109](#)

Primary Non-Payables



APPROPRIATIONS

Impacting the Financing of Primary Elections



Appropriated Funds Presidential Cycles

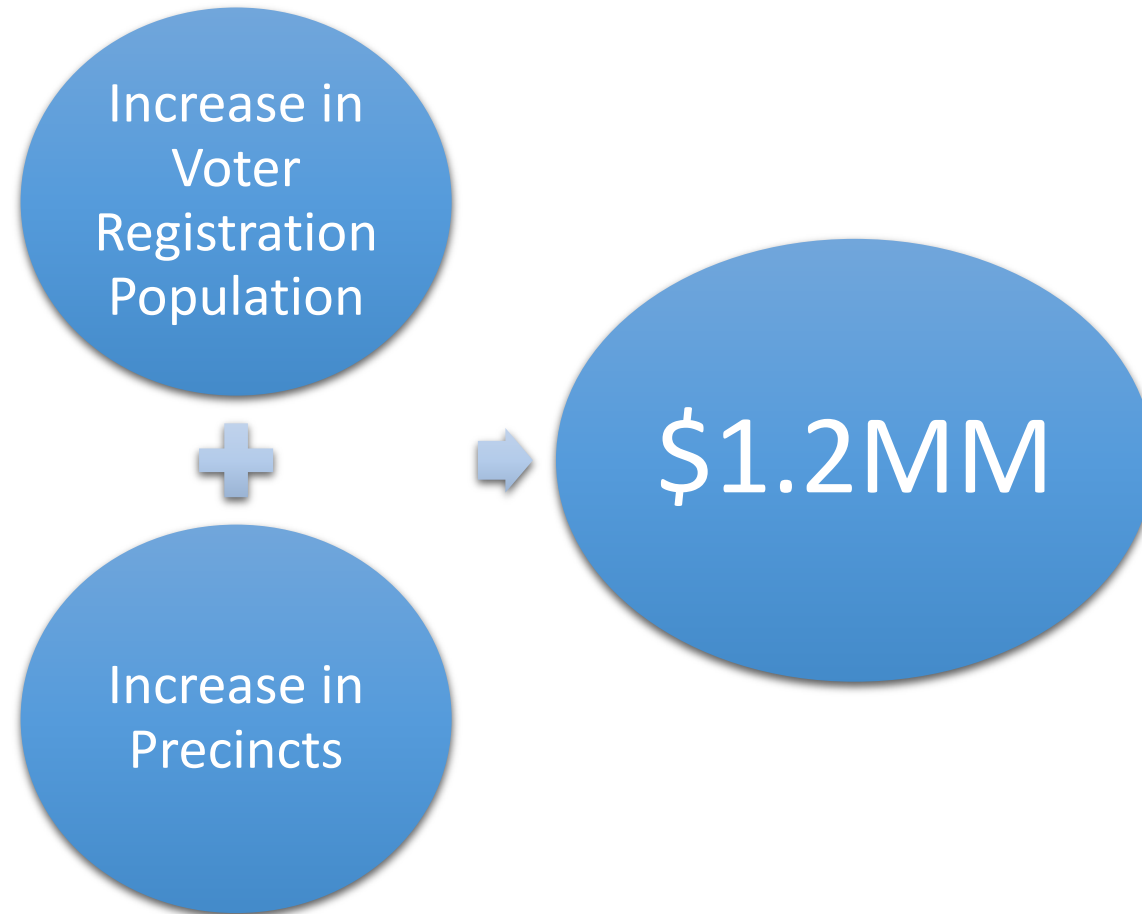
2020-2021

- \$18,598,600

2024-2025

- \$17,148,875

Estimated Cost Increases



Other Potential Cost Increases

Four Additional
Hours Per Worker

Average hours is 14, Increase to 18

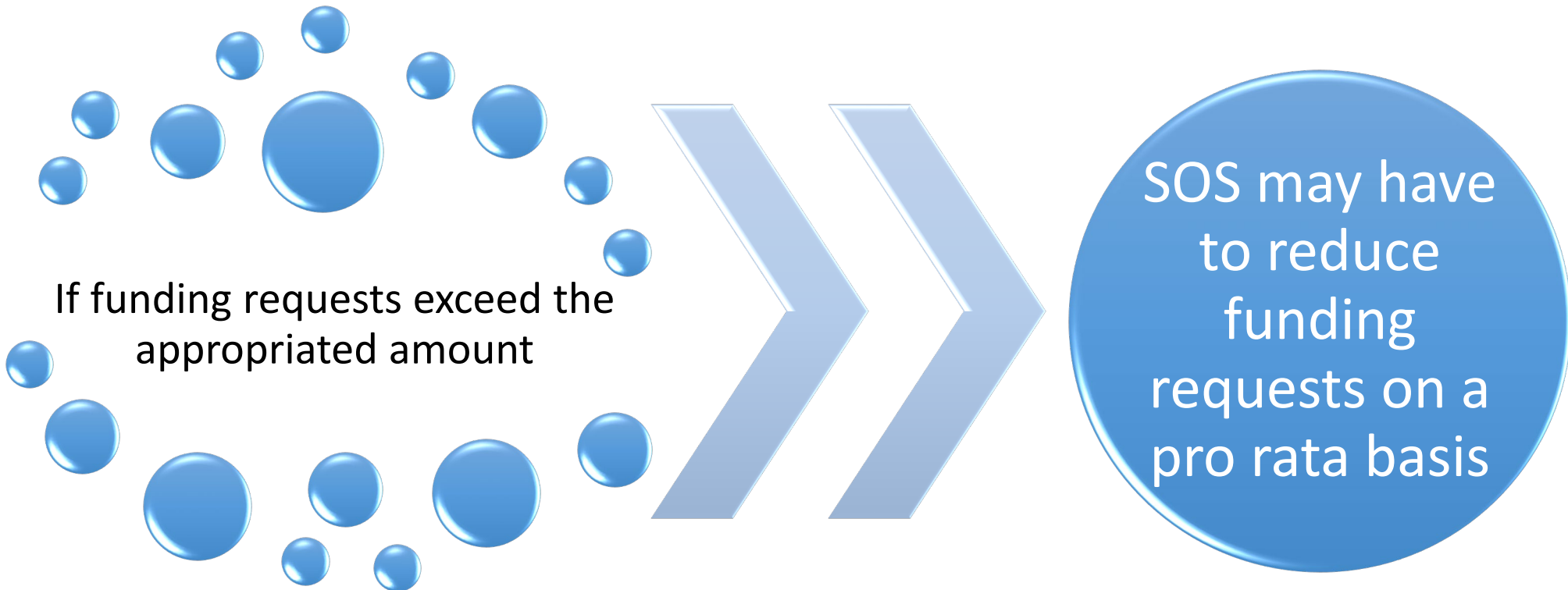
- **\$2MM**

10% Increase in
Workers

Roughly 4100 workers at 18 hours

- **\$900k**

Sec. 173.001(d) – What we want to AVOID



When would the funds be prorated?

SOS would have to wait until all reports are filed after the primary and runoff elections, if applicable

This is not practical so what else can be done?

The deadline to file the final cost report is 8/31/2024

Sec. 173.082 – Review of Estimates

SOS will review the reasonableness and necessity of expenses

SOS may apply controls to measure reasonableness, e.g., excessive cost increases

Parties can raise additional funds for their election

Contact Election Funds Management



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