

Public Labor & Deployment

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AALRR Alert



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Cities and Special Districts' Election Consolidation Plans Must Be Adopted by January 1, 2018

An important deadline is approaching for certain cities and special districts that hold off-cycle elections. Under the new California Voter Participation Rights Act ("Act"), political subdivisions that hold elections on a date other than a statewide election date and have experienced a significant decrease in voter turnout must adopt a plan by January 1, 2018 to consolidate their future elections with a statewide election not later than the November 8, 2022 statewide general election.

Summary of the California Voter Participation Rights Act

The Act became effective on January 1, 2016 by the addition of sections 14050-14057 to the California Elections Code. However, the Act will not be fully operational until January 1, 2018. The Act prohibits political subdivisions such as cities and special districts from holding an election other than on a statewide election date "if holding an election on a nonconcurrent date has previously resulted in a significant decrease in voter turnout." Elec. Code § 14052(a). The statewide election dates are the days of the June primary and November

general election, both of which are held only in even-numbered years. The Act defines a "significant decrease in voter turnout" as voter turnout for a regularly scheduled election in a political subdivision that "is at least 25 percent less than the average voter turnout within that political subdivision for the previous four statewide general elections." Elec. Code § 14051(b).

If a city or special district adopts a plan by January 1, 2018 to consolidate its elections with a statewide election to occur no later than November 8, 2022, it may continue to conduct off-cycle elections prior to the date of such statewide election without the risk of liability under the Act. Elec. Code § 14052(b). This is the "safe harbor" provision of the Act.

Real World Effects of the Act

Most off-cycle elections exhibit a significant decrease in voter turnout compared with on-cycle elections. In October 2013, the research and policy group Greenlining Institute examined voter turnout in various California cities. It compared four on-cycle City of San Diego elections

with four off-cycle City of Los Angeles elections. Voter turnout in San Diego ranged from 32.5 to 69.4 percent, while voter turnout in Los Angeles ranged from 8.3 to 23.1 percent. Disparities also were reported between on-cycle elections for the City of San Jose versus off-cycle elections for the City of San Francisco and between on-cycle elections for the small city of Lake Forest versus off-cycle elections for the small city of Livermore. Hernandez, Jose (2013). *Research Brief: Odd-Year vs. Even-Year Consolidated Elections in California*. The Greenlining Institute. The California Assembly Committee's

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analysis of the Act states that “in practice, this bill may force almost all local jurisdictions to hold their regularly scheduled elections at the same time as statewide elections.”

Application to Charter Cities

It is unclear whether the Act applies to charter cities. Charter cities are generally exempt from state laws regarding municipal affairs such as election methods. However, they are not exempt from laws concerning matters of statewide concern, so long as the law is also reasonably related to resolving the statewide concern(s) and is narrowly tailored to avoid unnecessary interference with municipal affairs. If the Act is viewed not just as a device to boost voter turnout and lower election costs, but as a law that goes to the integrity of the electoral process or serves as a way to lessen discrimination against minority voters, it will likely be considered a matter of statewide concern and apply to charter cities. Charter cities have asked the State Attorney General’s Office to clarify whether the Act applies to them; the Attorney General has not yet issued a response.

If the Act is found to be applicable to charter cities, a plan adopted pursuant to the “safe harbor” provision should include a timeline for the submission of a proposed charter amendment regarding election consolidation to the voters. Elec. Code § 9255; Gov. Code § 34450 et seq., and Cal. Const., art. 11, § 3.

Changing a Council or Board Election Date

Cities that wish to consolidate an election with a statewide election must submit a request to their county board of supervisors at least 88 days before the election. Elec. Code § 10403. The adoption of a city ordinance to consolidate its election with a statewide election date shall result in the increasing or decreasing of the terms of office by no more than 12 months. Elec. Code § 10403.5.

The deadline for special districts to submit an election consolidation request to their county board of supervisors is 240 days before the election. Elec. Code § 10404(b) (2). Approval of a special district’s election consolidation request shall result in the extension of the terms of office of governing board members whose terms would have, prior to the adoption of the resolution, expired prior to that election, but not beyond December 31 of the year following the year in which the consolidation request is approved. Elec. Code § 10404(i).

The county board of supervisors must approve the city or special district’s resolution requesting consolidation, unless it finds the ballot style, voting equipment, or computer capacity cannot handle additional elections or materials. Elec. Code §§ 10403.5 and 10404.

Before January 1, 2018, cities and special districts must at the very least consider adopting a plan to change

their elections to a statewide election date no later than the statewide general election held in November of 2022. Most public entities that hold off-cycle elections suffer at least a 25 percent decrease in voter participation relative to participation in statewide elections.

Consequences

If a political subdivision fails to comply with the Act by January 1, 2018, local citizens have the right to file a lawsuit against it. The Act gives courts broad powers to award injunctive and monetary relief, including ordering the political subdivision to hold its elections concurrently with a statewide election date; ordering upgrades to election equipment or the systems supporting election equipment; ordering a county board of supervisors to approve a political subdivision’s request to consolidate its elections with a statewide election date; and awarding prevailing plaintiffs attorney’s fees and costs, including expert witness fees.

Conclusion

The deadline for political subdivisions to adopt a plan to consolidate their elections with a statewide election date is approaching. We are available to help cities and special districts assess their options and develop a course of action to comply with the Act.