

Education Law

October 13, 2016

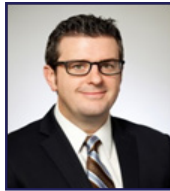
AALRR Alert



Warren S. Kinsler
Pasadena
626.583-8600
wkinsler@aalrr.com



Mark R. Bresee
San Diego
858.485.9526
mbresee@aalrr.com



David A. Soldani
Fresno
559.225.6700
dsoldani@aalrr.com



Tiffany M. Tran
Cerritos
562.653.3200
ttran@aalrr.com



Todd M. Robbins
Riverside
951.683.1122
trobbins@aalrr.com

District-Based Elections Affected by Amendments to the California Voting Rights Act

Assembly Bill 350, signed by Governor Brown on September 28, 2016, imposes changes to the process used by political subdivisions to establish district-based (or “by-trustee-area”) elections. The term “political subdivisions” includes school districts and community college districts. (Elec. Code § 14026(c).) AB 350’s impact is three-fold. First, political subdivisions must conduct public hearings to receive community input before and after drawing preliminary maps of the proposed trustee area boundaries. Second, the governing bodies of the subdivisions must consider community input regarding the order in which elections for individual trustee areas will be held. Lastly, AB 350 creates an administrative remedy prospective plaintiffs must exhaust before commencing litigation against a political subdivision for an alleged violation of the California Voting Rights Act of 2001 (CVRA).

The CVRA (Elec. Code § 14025, et seq.) prohibits an at-large elections system from being imposed or applied in a political subdivision in a manner that impairs the ability of a protected class to elect its preferred candidates or influence the outcome of an election. In an at-large elections system, voters

of the entire jurisdiction elect all members to the governing board. In a by-trustee-area elections system, a jurisdiction is divided into trustee areas and one governing board member is elected by only the registered voters in each trustee area. The by-trustee-area elections system is the only “safe harbor” from a CVRA lawsuit. A voter who is a member of a protected class may sue to enforce the CVRA. (Elec. Code § 14032.)

Part 1: Pre-Approval Public Hearings

Existing law requires a political subdivision to hold at least two public hearings on a proposal to establish its trustee area boundaries before the governing body may vote to approve or defeat the proposal at a subsequent public hearing. Effective January 1, 2017, AB 350 amends Elections Code section 10010 by requiring political subdivisions to do the following when establishing by-trustee-area elections systems:

1. Hold at least two public hearings to gather community input regarding composition of the trustee areas over a period of no more than 30 days.
2. Draw draft maps of the trustee area

boundaries and publish at least one map for consideration by the community.

3. If members of the governing body will be elected in their trustee areas at different times to provide for staggered terms of office, publish the potential sequence of the elections.
4. Hold at least two additional public hearings over a period of no more than 45 days to gather public input on the draft map(s) and the proposed sequence of elections, if applicable. The first version of the draft map(s) must be published at least 7 days before consideration at any further public hearings. If a draft map is revised at or following a public hearing, it must be published and made available to the public for

--> “While these amendments do not require a political subdivision to take ameliorative steps and settle a claim alleging its elections system violates the CVRA, AB 350 certainly encourages voluntary action.”

at least 7 days before adoption by the governing board.

Part 2: Community Input Regarding Order of Election of Governing Board Members

AB 350 was also intended to prevent political subdivisions from delaying implementation of by-trustee-area elections so that protected classes of voters are prevented from electing candidates of their choosing in an expedient manner. Amended Section 10010 is in part a response to a city's transition from at-large to voting-district (by-trustee-area) elections. According to the author of AB 350, scheduling elections for a minority-majority voting district in a midterm election year could affect voter turnout.

Under AB 350, political subdivisions that stagger terms of office must "take into account the preferences expressed by" members of the trustee areas prior to finalizing the order in which the trustee areas come up for election.

Part 3: Administrative Remedy for Alleged Violations of the CVRA

Current law does not provide a formal administrative remedy to process CVRA claims against political subdivisions. Amended Section 10010 will require prospective plaintiffs to send a written notice to the political subdivision stating that its election method may violate the CVRA. The political subdivision then has the option to take ameliorative steps to correct the alleged violation. In the meantime, the prospective plaintiff's ability to file suit is stayed. The amendment imposes a timeline for the

administrative remedy:

1. The prospective plaintiff must send written notice by certified mail to the clerk of the political subdivision asserting that the elections method may violate the CVRA. The prospective plaintiff is barred from suing under the CVRA within 45 days of the political subdivision's receipt of the written notice.
2. No later than 45 days after receiving the written notice, the political subdivision may, but is not required to, pass a resolution stating its intention to transition to by-trustee-area elections. The resolution must include the steps that will be taken to facilitate the transition and an estimated time frame for doing so.
3. If the political subdivision passes a resolution to transition to by-trustee-area elections, any prospective plaintiff is barred from commencing litigation under the CVRA within 90 days of the resolution's passage. A prospective plaintiff who sent written notice before the resolution was adopted may, within 30 days of adoption, demand reimbursement for the cost of the work product generated to support the written notice. The demand for reimbursement must be in writing and substantiated with financial documentation (e.g., a detailed invoice for demography services).
4. Within 45 days of receipt of the demand, the political subdivision must reimburse the prospective

plaintiff for reasonable costs claimed, or in an amount that is mutually agreeable to the parties, but not to exceed \$30,000. The \$30,000 cap applies regardless of the number of the prospective plaintiffs.

Significance: While these amendments do not require a political subdivision to take ameliorative steps and settle a claim alleging its elections system violates the CVRA, AB 350 certainly encourages voluntary action. AB 350 formalizes the process for developing trustee area maps and election plans. Unfortunately, the bill does not establish timelines for the various required steps, or account for involvement of the county committee on school district organization. AB 350 does not address the possibility of districts avoiding an expensive election on a change election methodologies, by seeking waivers from the State Board of Education or authorization from the Board of Governors of the California Community Colleges.

We are available to assist if you have any questions regarding the implications of AB 350, or other issues related to the California Voting Rights Act or the California Voter Participation Act.