

January 2017

LEGAL ALERT ON THE IMPACT OF SENATE BILL NO. 415 ON SCHOOL BOARD ELECTIONS

Senate Bill No. 415 (Hueso), which will go into effect on January 1, 2018, will necessitate changes to local election dates for some governing boards. This Legal Alert seeks to notify school board members of the changes that may be needed in light of SB 415.

CSBA would like to thank the attorneys at School & College Legal Services for their assistance with this legal alert.

Senate Bill No. 415

Senate Bill No. 415 (SB 415), which was signed into law in 2015 but will go into effect on January 1, 2018, limits the ability of local governments to hold their elections on non-statewide election dates starting in 2018. Specifically, school districts must hold their elections on a scheduled statewide election date (in even-numbered years) if the district's voter turnout for a regularly-scheduled local election in that district was at least twenty-five percent (25%) less than the average local voter turnout for the previous four statewide general elections.¹ When a school board consolidates its election, the term of office of all then incumbent school board members shall be extended accordingly. (Cal. Elec. Code § 10404.5(g).)

California Election Law and School District Elections

Under California law, statewide elections may only occur on the first Tuesday after the first Monday in June in each even-numbered year (when the State holds its Primary Election) and the first Tuesday after the first Monday in November in each even-numbered year (when the State holds its General Election). (Cal. Elec. Code § 1001.) Local elections may occur on these two statewide election dates but also on the following four dates:

- (a) the first Tuesday after the first Monday in November in each *odd-numbered* year;
- (b) the first Tuesday after the first Monday in June in each *odd-numbered* year;
- (c) the first Tuesday after the first Monday in March in each *odd-numbered* year; and
- (d) the second Tuesday of April in each *even-numbered* year.

¹ As of January 2017, those dates include: (1) November 8, 2016; (2) November 4, 2014; (3) November 6, 2012; and (4) November 2, 2010.

(Elec. Code § 1000; Elec. Code § 1300 *et seq.*)²

School districts, by contrast, are typically limited to only one of the four *non*-statewide election dates. Specifically, districts are generally limited to holding school board elections “on the first Tuesday after the first Monday in November of each succeeding odd-numbered year.” (Educ. Code § 5000.)³ However, a school board may also pass a resolution to move its election to the same day as a statewide primary or general election. (Cal. Elec. Code § 1302(b).) Under SB 415, many districts now *must* pass such a resolution to change their school board election date.

Applicability of SB 415

School districts should first determine whether they need to change their election date under the new law. School districts that already hold elections in even years on one of the two statewide election dates need not be concerned with SB 415. For districts holding elections on non-statewide election dates (i.e., in odd-numbered years or in April in even-numbered years), the rest of this alert describes the duties of school districts and some of the issues arising out of the implementation of SB 415.⁴

SB 415 prohibits a local government from holding an election other than on a statewide election date if holding an election on a “nonconcurrent date”⁵ has previously resulted in “significant decrease in voter turnout”⁶. Districts that have not experienced a significant decrease in voter turnout therefore are not required to move their election dates, but may still choose to do so. Those districts must also continuously monitor their election turnout as explained below.

A school district whose 2017 election results in a significant decrease in turnout must take action to consolidate its future elections with a statewide election. SB 415 took effect on January 1, 2016, so arguably the first nonconcurrent election that school districts must use to determine whether there is a significant decrease in voter turnout will be the April 2016 election or any election held in 2017. Although this is a reasonable interpretation of the new law, we note that SB 415 states that a school district “shall not hold 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.” Unfortunately, the Legislature did not

² Charter cities are not limited to the local election dates, but may hold elections on a date of their own choosing, subject to limitations. (See Cal. Elec. Code §§ 10101 *et seq.*)

³ An exception for some school districts is found in Education Code section 5200, which permits unified school districts that are coterminous with or include a chartered city within their boundaries to hold their elections on dates pursuant to the city’s charter.

⁴ For school districts with elections governed by a city charter, the district should consult legal counsel.

⁵ The term “nonconcurrent date” is used in the legislation, and refers to election dates other than statewide general or primary elections (i.e. local elections that are not held concurrently with the statewide elections).

⁶ A “significant decrease in voter turnout” is defined as voter turnout for a regularly scheduled election that is at least 25% less than the average local voter turnout for the previous four statewide general elections.

give additional guidance regarding whether a local agency must look back at previous elections, and if so, how many elections are subject to the voter turnout analysis.

We therefore suggest school districts with nonconcurrent elections review their past several elections and, if any election in the past several years, especially a more recent one, has resulted in a significant decrease in voter turnout as defined by SB 415, prepare and approve a plan by January 1, 2018 to move their election date to a statewide election date.⁷

If your school board does not support moving its election date until the results of a post-2015 election do not meet the voter turnout threshold, please be conscious of the potential risk that a lawsuit may be brought by individuals against the district to change the district's election date. If successful, plaintiffs would be entitled to recover reasonable attorneys' fees and litigation expenses paid for by the district.

Please note: Districts whose initial review of their election returns leads them to conclude that they do not need to change their election cycle should continue to monitor voter turnout in their districts on both statewide and non-statewide election dates because any "significant decrease" in voter turnout in future elections would require changing their election date.

Implementing SB 415

A school district with voter turnout below the SB 415 threshold must develop a plan by January 1, 2018, to consolidate its local election with the statewide election not later than the November 8, 2022 statewide election.

As recommended above, affected school districts should take action to consolidate a future election with a statewide election (i.e. change the date of the future local elections to coincide with one of the two statewide elections). Multiple districts have already passed the resolutions to do so in response to SB 415. Resolutions must be submitted to the board of supervisors not later than 240 days prior to the date of the currently scheduled election of the district.⁸ (Cal. Elec. Code § 10404.5(a).) Following approval of the resolution by the county board of supervisors in each county where the district has territory, the school board must notify all registered voters (at the district's expense) of the change of election date.

A school district's plan must be adopted by January 1, 2018, or a lawsuit may be brought against the district and the court may order "appropriate remedies, including the imposition of concurrent election dates for future elections and the upgrade of voting equipment or systems to do so." (Cal. Elec. Code § 14053.) Additionally, as noted above, a successful lawsuit would entitle the plaintiff to recover reasonable attorneys' fees and litigation expenses paid for by the district.

⁷ The most conservative approach would be for a district to pass a resolution to move its election date if *any* previous election going back to the district's first noncurrent election date, resulted in a significant decrease in voter turnout.

⁸ Districts with a November 7, 2017 election date that are seeking to consolidate their elections must adopt a resolution requesting the change before March 12, 2017.

Board Member Terms

SB 415 does not directly address changing the length of elected officials' terms when changing the election date, but the issue is addressed in the California Elections Code Section 1302(b): after the initial election of governing board members in any school district, the election of board members for the district may be established, upon the adoption of an appropriate resolution by the school board, to regularly occur on the same day as the statewide direct primary election, the statewide general election, or the general municipal election as set forth in Elections Code Section 1301. Pursuant to Elections Code section 10404.5(g), when a governing board consolidates its election pursuant to Elections Code section 1302(b), the term of office of all then incumbent school board members shall be extended accordingly. (Cal. Elec. Code § 10404.5(g).) As such, school boards with odd-numbered year elections, with the assistance of legal counsel, should prepare a resolution extending the terms of each of its members to the next even-numbered year following the expiration of their current term.