



Consent _____
Staff/Consultant Reports 4J

Agenda Item _____
Date February 9, 2017

Agenda Summary Report

Handout item # 4J

To: Mark R. Williams, General Manager *mw*
From: Susan McGuire, Administrative Services Manager *SM*
Mtg. Date: February 9, 2017
Re: Possible Change in District Election Date

BACKGROUND:

Staff received the attached email (Attachment 1) from the County of Marin Registrar of Voters office regarding a change in the timing of elections which may impact the District. The District's Board members are elected to four year terms on a staggered basis so that three members are elected in one cycle and two in another. The most recent election was in 2015 when Murray and Schriebman were elected. The next election is scheduled for November 2017, when Clark, Elias and Greenfield are up for election.

Staff has consulted with District counsel on the requirement for changing the election date and they have drafted a memo (Attachment 2) for the Board members to consider.

STAFF RECOMMENDATION:

A matter for Board determination.

FISCAL IMPACT:

Unknown at this time, for the most recent contested election in 2013 the cost was \$22,851. However staff is concerned that if many jurisdictions change to even year election cycles the cost may be much higher.

PERSON TO BE NOTIFIED:

Marin County Registrar of Voters

Susan McGuire

From: Miller, Dan <DanMiller@marincounty.org>
Sent: Monday, January 23, 2017 4:45 PM
To: Miller, Dan
Cc: Roberts, Lynda
Subject: Changing date of election
Attachments: Senate Bill 415.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

COURTESY NOTICE TO SPECIAL DISTRICTS

This is a courtesy notice regarding the California Voter Participation Rights Act (SB 415) which was signed into law in 2015.

Please check with your legal counsel to find out how this impacts your special district. We can provide the turnout data you may require.

Commencing January 1, 2018, this bill would prohibit a political subdivision from holding an election other than on a statewide election date if holding an election on a non-concurrent date (i.e. November of odd years) has previously resulted in voter turnout being at least 25% less than the average voter turnout within the political subdivision for the previous 4 statewide general elections.

If a special district wishes to move their 2017 general election to 2018, a resolution proposing a new election cycle must be adopted by the governing board of the special district and submitted to the county board of supervisors for each county in which the district has territory no later than ***March 10, 2017***—240 days prior to the currently scheduled district election as required in Elections Code section 10404.

Pursuant to SB 415, special districts may instead decide to adopt a plan to change their election cycle to a statewide election beginning November 8, 2022. This plan must be adopted by ***January 1, 2018***.

NOTE: The new law authorizes a voter in a district that fails to comply with SB 415 to file a lawsuit to enforce the new law's requirements. A prevailing plaintiff can collect reasonable attorney's fees and court costs if court intervention is necessary.

Dan Miller
 Candidate & Filing Services

County of Marin
 Department of Elections
 PO Box E
 San Rafael, CA 94913
 415-473-6437 T
 415-473-6447 F
 415-473-6899 TTY
danmiller@marincounty.org
 Visit us on [Facebook](#)

Email Disclaimer: <http://www.marincounty.org/main/disclaimers>

Senate Bill No. 415

CHAPTER 235

An act to add Chapter 1.7 (commencing with Section 14050) to Division 14 of the Elections Code, relating to elections.

[Approved by Governor September 01, 2015. Filed with Secretary of State September 01, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 415, Hueso. Voter participation.

Existing law generally requires all state, county, municipal, district, and school district elections be held on an established election date. Existing law also establishes certain dates for statewide elections. Existing law requires any state, county, municipal, district, and school district election held on a statewide election date to be consolidated with a statewide election, except as provided.

This bill, commencing January 1, 2018, would prohibit a political subdivision, as defined, from holding an election other than on a statewide election date if holding an election on a nonconcurrent date has previously resulted in voter turnout for a regularly scheduled election in that political subdivision being at least 25% less than the average voter turnout within the political subdivision for the previous 4 statewide general elections, except as specified.

This bill would require a court to implement appropriate remedies upon a violation of this prohibition. The bill would authorize a voter who resides in a political subdivision where a violation is alleged to file an action in superior court to enforce this prohibition, and it would allow a prevailing plaintiff other than the state or political subdivision to collect a reasonable attorney's fee and litigation expenses, as provided.

BILL TEXT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Chapter 1.7 (commencing with Section 14050) is added to Division 14 of the Elections Code, to read:

CHAPTER 1.7. Voter Participation

14050.

This chapter shall be known and may be cited as the California Voter Participation Rights Act.

14051.

As used in this chapter:

(a) "Political subdivision" means a geographic area of representation created for the provision of government services, including, but not limited to, a city, a school district, a community college district, or other district organized pursuant to state law.

(b) "Significant decrease in voter turnout" means the voter turnout for a regularly scheduled election in a political subdivision is at least 25 percent less than the average voter turnout within that political subdivision for the previous four statewide general elections.

(c) "Voter turnout" means the percentage of voters who are eligible to cast ballots within a given political subdivision who voted.

14052.

(a) Except as provided in subdivision (b), a political subdivision 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.

(b) A political subdivision may hold an election other than on a statewide election date if, by January 1, 2018, the political subdivision has adopted a plan to consolidate a future election with a statewide election not later than the November 8, 2022, statewide general election.

14053.

Upon a finding of a violation of subdivision (a) of Section 14052, the court shall implement appropriate remedies, including the imposition of concurrent election dates for future elections and the upgrade of voting equipment or systems to do so. In imposing remedies pursuant to this section, a court may also require a county board of supervisors to approve consolidation pursuant to Section 10402.5.

14054.

In an action to enforce subdivision (a) of Section 14052, the court shall allow the prevailing plaintiff other than the state or political subdivision of the state, a reasonable attorney's fee consistent with the standards established in *Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49, and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. A prevailing defendant shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

14055.

A voter who resides in a political subdivision where a violation of subdivision (a) of Section 14052 is alleged may file an action pursuant to that section in the superior court of the county in which the political subdivision is located.

14056.

This chapter does not apply to special elections.

14057.

This chapter shall become operative on January 1, 2018.

MEMORANDUM

TO: Board of Directors LGVSD

FROM: David J. Byers, Esq. /Patrick M.K. Richardson District Counsel

DATE: February 6, 2017

SUBJECT: "Cal. Voter Participation Rights Act" -- SB 415/Elections Code Sec. 14051 et. seq.

BACKGROUND: The Legislature has passed SB 415 adding Sections 14051 et seq. to the Elections Code ("Cal. Voter Participation Rights Act"). **Effective January 1, 2018**, the law prohibits a "political subdivision"¹, i.e. the District, 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).

The operative phrase of § 14052 is whether there has been a "significant decrease in voter turnout." "Significant decrease in voter turnout" means the voter turnout for a regularly scheduled election in a political subdivision is **at least 25 percent less than the average voter turnout within that political subdivision for the previous four statewide general elections.**" (Elec. Code § 14052. From the figures provided by the Marin County – Registrar of Voter are the following voter turnout percentages [County versus LGVSD]:

	2008	2010	2012	2014	Ave.	75%
County	90.80%	76.17%	55.16%	60.10%	70.56%	52.92%
LGVSD	90.54%	76.65%	58.21%	62.52%	71.98%	53.99%

LGVSD ODD YR.	2005	2007	2009	2013	Ave.	75%
	69.2%	39%	35.1%	43.3%	46.65%	34.99%

If you compare the District's voter turnout percentage (for even years) to the County's average for the last four cycles there has not been a decrease in voter turnout [LGVSD - 62.52% in last election versus County's average of 70.56%, which exceeds the County average turnout of 52.92%. (75% threshold). If you compare the District against itself the District's average for the last four cycles was 71.98%, where the District's last voter turnout was 62.52%. This exceeds the District's 75% threshold (53.99%).

However, comparing the “Odd Year” voter turnout percentages, in the last election (2013), the District’s voter turnout (43.3%) was less than the County’s four-cycle threshold average of 52.92%. (75% threshold). If you compare the District’s Odd Year percentages against itself, the voter turnout for 2013 (43.3%) clearly falls below that of the District’s four year average 75% threshold (53.99%) for the even year statewide election cycles. However, compared against its own odd year election data (43.3% for 2013), the District did exceed its own 75% threshold average of 34.99%.

[Caveat: Counsel cannot vouch for the County’s methodology used to make the calculations].

CONCLUSION: Based on the above “voter turnout” results for past elections, the District would be required to move its Odd-Year Board elections to coincide with the even year statewide general election, with a resolution for a plan to change over the elections to be submitted by the District to the Board of Supervisors by January 1, 2018.

However, since the “Cal. Voter Participation Rights Act” is **NOT Effective until January 1, 2018** (§ 14057), it would not apply to any election held in 2017.

BUT, ultimately, as noted above, the law does require that by January 1, 2018, if the District intends to continue with odd-year elections for 2017, 2019 and 2021,, the District shall have adopted a plan to consolidate a future election with the statewide election no later than November 8, 2022. (Elec. Code § 14052(b)). Therefore, the District will eventually have to move its odd-year elections to match the state wide general election schedule, at the latest by the November 8, 2022 election.

It should be noted that § 14052 is unclear in its intent, whether the District would be required to consolidate its odd-year elections with the statewide general election cycle, even if the District’s average voter turnout had not “significantly decreased” or in fact increased over time.

Remedies: If the District is in violation of the provisions of the “Cal. Voter Participation Rights Act” a voter can bring a suit (§ 14055) and a court can order consolidation of the election date with the statewide election cycle. (§ 14053). Reasonable attorney’s fees and costs can be recovered by a prevailing party. However, the District cannot recover its attorney’s fee or costs if it were to prevail in such a suit, unless the court find the suit to be “frivolous, unreasonable, or without foundation.” (§ 14054).

Methodology for Consolidation: If and when the District decides to consolidate the odd-year elections with the regularly scheduled statewide general election date, the methodology for consolidation is provided in Elec. Code § 10404, which provides that for odd-year elections by “special districts.”ⁱⁱ

Elec. Code § 10404 provides for specific steps for the District to promulgate and transmit a resolution to the Board of Supervisors for consolidation of the District’s odd-year election dates with the statewide general election dates. Any resolution for consolidation must be submitted to the Board of Supervisors “**no later than 240 days prior to the date of the currently schedule district election.**” (§ 10404(b) (2)). For example, if the District were to desire to move this

year's election (an odd-year election) to next year's statewide general election date, the Board would have to transmit a resolution indicating the change in election cycle by March 10, 2017.ⁱⁱⁱ

OPTIONS:

1). If this year's election were moved to 2018 what would happen to those Board member whose terms would expire in 2017? Any Board member serving, whose term would expire prior to the election will continue in their office until their successor is elected and qualified; with the caveat that the person cannot serve beyond Dec. 31st of the year following the year that the request for consolidation is approved by the Board of Supervisors. (§ 10404(i)).^{iv} Meaning for the three seats up for election in 2017, these members would remain in office until the results of the November 6, 2018 election are known.

2). Likewise, if the Board left the 2017 intact, then the Board would have to adopt a plan to move the next election for the newly 2017 elected Board members from November 2021 to November 2022. This would add an additional year at the end of the newly elected members' terms in keeping with § 10404. In addition, as part of the consolidation plan, the Board would have to move the existing two Board members' who would be up for election in 2019 to November of 2020. Those members would have an additional year added to their term in keeping with § 10404.

Ultimately, the choice is whether the Board as currently constituted wishes to add a year to the current Board member up for re-election or add the additional year on the back end for the newly elected Board members (and those up for re-election in 2019).

Fiscal Impact of Election Year Change: At this time it is difficult to determine what the overall fiscal impact would be for either scenario, i.e., moving/consolidating the current 2017 election with the 2018 general statewide election versus leaving the 2017 election intact. Information from the County is that they have received only a couple of resolutions for consolidation. The County cannot provide any guidance on the fiscal impact of maintaining the 2017 election or immediately consolidating with the 2018 even year election cycle.

However, the District will be responsible for the County's costs in notifying all registered voters within the District of the consolidation plan. (§ 10404(f)).

The Board will also have to consider the non-fiscal ramifications.

COUNSEL'S RECOMMENDATION: Given that the District must comply with the "Act," it would be prudent to adopt a plan/resolution for consolidation with the statewide general plan. However, since Elec. Code §§ 14051, et seq. is not effective until **January 1, 2018**, the District is not required to change any currently scheduled elections for 2017 (odd-year), unless it chooses to do so voluntarily. However, as noted above, the District will have to come up with a consolidation plan by January 1, 2018. By adopting the plan for consolidation that allows for adding a year to the end of the terms of the newly elected 2017 Board members (and those whose terms expire in 2019), this would allow for compliance with the law and provide the District time to inform the District's voters of the upcoming change and the reasons underlying the change.

This recommendation, as noted above, does not take in account the fiscal impact of either scenario. Any information from the County could change the Board's analysis and decision on how to proceed.

Counsel requests that the Board provide direction on how it wishes to proceed.

ⁱ Elec. Code § 14051 (a), a "Political subdivision" means a geographic area of representation created for the provision of government services, including, but not limited to, a city, a school district, a community college district, **or other district organized pursuant to state law.**

ⁱⁱ Elec. Code § 10404 defines a "special district" as: " an agency of the state formed pursuant to general law or special act, **for the local performance of governmental or proprietary functions within limited boundaries,** except a city, county, city and county, school or community college district, or special assessment district.

ⁱⁱⁱThis based on 11/7/17 Election Date. The "240 days" actually falls on Sunday March 12, 2017. So the deadline is moved to the nearest previous business day (3/10/17) to be safe.

^{iv} Elec Code § reads as follows

(a) This section applies only to special districts electing members of the governing body in odd-numbered years. As used in this section, "special district" means an agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries, except a city, county, city and county, school or community college district, or special assessment district.

(b) Notwithstanding any other law, a governing body of a special district may, by resolution, require that its elections of governing body members be held on the same day as the statewide general election.

(1) The resolution setting the election shall also include dates that are consistent with the primary or general election with respect to nominations, notices, canvass of votes, certification of election, and all other procedural requirements of this code pertaining to the primary or general election.

(2) The resolution shall be submitted to the board of supervisors no later than 240 days prior to the date of the currently scheduled district election.

(c) The board of supervisors shall notify all districts located in the county of the receipt of the resolution to consolidate and shall request input from each district on the effect of consolidation.

(d) The elections official shall prepare and transmit to the board of supervisors an impact analysis of the proposed consolidation.

(e) The board of supervisors, within 60 days from the date of submission, shall approve the resolution unless it finds that the ballot style, voting equipment, or computer capacity is such that additional elections or materials cannot be handled. Prior to the adoption of a resolution to either approve or deny a consolidation request, the board or boards of supervisors shall each obtain from the elections official a report on the cost-effectiveness of the proposed action.

(f) Within 30 days after the approval of the resolution, the elections official shall notify all registered voters of the districts affected by the consolidation of the approval of the resolution by the board of supervisors. The notice shall be delivered by mail and at the expense of the district.

(g) Public notices of the proceedings in which the resolution is to be considered for adoption shall be made pursuant to Section 25151 of the Government Code.

(h) If a special district is located in more than one county, the special district may not consolidate an election if any county in which the special district is located denies the request for consolidation.

(i) If, pursuant to subdivision (b), a special district election is held on the same day as the statewide general election, those governing body members whose terms of office would have, prior to the adoption of the resolution, expired prior to that election shall, instead, continue in their offices until

their successors are elected and qualified, but in no event shall the term be extended beyond December 31 of the year following the year in which the request for consolidation is approved by the board of supervisors.

(j) If a board of supervisors approves the resolution pursuant to subdivision (e), the special district election shall be conducted on the date specified by the board of supervisors, in accordance with subdivision (a), unless the approval is later rescinded by the board of supervisors.

(k) If the date of a special district election is changed pursuant to this section, at least one election shall be held before the resolution, as approved by the board of supervisors, may be subsequently repealed or amended.