



COUNTY OF SAN MATEO INTERDEPARTMENTAL CORRESPONDENCE

To: Honorable Board of Trustees, San Mateo-Foster City School District
From: Kathryn E. Meola, Chief Deputy County Counsel
Subject: Q&A re: moving school district trustee elections to even-numbered years
Date: May 19, 2016

We write to provide additional information regarding new legislation affecting the timing of elections for school board trustees and members of the County Board of Education.

We previously alerted you to the passage of SB 415, which will require many school districts to change how they elect board members. The law effectively requires school districts currently holding elections in odd numbered years to analyze their voter turnouts and, if warranted, to consider changing their elections to even numbered years by 2022. If the district's assessment shows the jurisdiction has a turnout for its regular trustee elections lower than $\frac{3}{4}$ of the jurisdiction's turnout at statewide general elections taking place in even numbered years (with turnout measured in a way more particularly described in the law and summarized in our March 22, 2016 memo to you), then the jurisdiction must develop, by 2018, a plan to change its elections to November of even numbered years.

Which districts must switch their elections to even-numbered years?

The legislation prohibits districts from holding trustee elections, beginning in 2022, on dates other than the statewide general election if holding the election during odd-numbered years has previously resulted in a significant decrease in voter turnout. This effectively requires all districts that currently conduct their regular elections on any date other than the statewide election date (June or November of even-numbered years) to *measure the turnout rate* for their most recent elections, and determine whether there is a "significant decrease in voter turnout" when district elections are held on dates other than the statewide general election dates.

If you are currently holding all of your regular elections on statewide general election dates (again, June or November of even-numbered years), you need do nothing further.

How do we determine whether our current elections have a “significant decrease in voter turnout?”

You should look at the average of the voter turnout (as a percentage of eligible voters) for voters in your district during the four most recent November election dates during even numbered years (these are “statewide general election,” as defined by section 1200 of the California Elections Code).

We are informed that these are always the highest voter turnout elections, and we understand that San Mateo County typically has an approximate voter turnout of 70% for these statewide general elections. (Note: your district may not have had anything on the ballot in those November-even-year elections, but you look at the voter turnout for those elections among voters who live in your jurisdiction anyway.)

This analysis of the prior four statewide elections will establish a baseline voter turnout for your district even if no district trustee election, parcel tax election, or bond measure was on the ballot for those election dates. Then, you must look at whether the actual voter turnout (again, as a percentage of eligible voters) for the district’s trustee elections is a “significant decrease” from the statewide general election baseline during any of the last four elections, which is defined as are “at least 25 percent less” than the baseline average. Put another way, have any of your district’s odd-year trustee elections resulted in a voter turnout that is less than 75% of the average turnout at the even-year elections, which are almost always the most highly voted amongst the same pool of voters? This condition will likely be satisfied since off-year elections typically do not net a turnout at least $\frac{3}{4}$ of the even year elections.

What if the analysis shows our turnout is greater than $\frac{3}{4}$ of the average for statewide general elections?

You need do nothing further. The further requirements of the law are only triggered if the turnout is $\frac{3}{4}$ or less than the baseline. However, if your turnout changes in the future, SB 415 may be triggered.

What if our analysis of prior election turnouts shows that our elections have less than $\frac{3}{4}$ of the turnout of the statewide general elections in our jurisdiction?

If the district's assessment shows the district has a turnout for its regular elections lower than the $\frac{3}{4}$ requirement, then the jurisdiction must change its elections to June or November of even-year elections. Such changes must occur by 2022, with a plan having been adopted by 2018 to implement such a change.

Who conducts this analysis of election turnout?

At the present time, we have heard no indication that the Registration & Elections Division of the County Clerk-Assessor-Recorder will itself conduct these assessments of turnout, but the law does not require any particular person to perform the analysis. You can utilize your own staff, or engage a political consultant or demographer to perform the work on your behalf and produce a report.

Keep in mind that the measurement is trickier than just looking at ballots cast: you have to count the votes cast by voters eligible to vote in your district that occur in elections in which your district may have nothing on the ballot. In other words, you need to aggregate the vote tallies for precincts that are within your district and look at the turnout in the elections from only those precincts. You can contact the Registration & Elections Division to obtain voter turnout information.

How do we get our Board terms to sync up with even year elections?

As noted in our prior memo to you, SB 415 itself merely provides that affected districts with a significant decrease in voter turnout must adopt "a *plan* to consolidate a future election with a statewide election." Cal. Elections Code § 14052(b). The new law does not provide any specific mechanism for such a "plan to consolidate;" it merely requires the districts to develop such a plan if necessary. Our March 22, 2016 memo referenced the potential for trustees to plan to serve a three-year term in order to synchronize with the statewide general election, but that is merely one kind of "plan to consolidate," and there may be other ways to plan such a consolidation. It is, however, a way of implementing the law entirely by actions solely within the trustees' own control. Your Board could adopt a plan that involves mid-term resignations or attrition combined with a special election to be held on the next statewide general election. This does not happen automatically, however. It would need to be in the context of a voluntarily-adopted "plan" under SB 415, and such a plan involving the voluntary resignations of board members may not be feasible or desirable for all boards.

Another option, which would require the consent and cooperation of others, would utilize procedures, in effect since 1996, which allow a school district to *voluntarily* initiate a change in its election dates with the consent of the County Board of Supervisors.

Specifically, Section 10404.5 of the California Elections Code requires (1) the passage of a district resolution; (2) a notification to all other school districts in the County; (3) factual findings (relating mostly to the practicality of adding another election to the statewide ballot) and the concurrence of the County Board of Supervisors; and (4) notification to all affected voters (at the district's expense). Once completed, however, this process means "the term of office of all then-incumbent members of that governing board or county board of education shall be *extended* accordingly." *See* Cal. Elections Code § 10404.5(g) (emphasis added). (A slightly different procedure is provided for a community college district board in Cal. Elections Code § 10405.7.)

This will likely be the preferred option of most school districts, at it involves the least risk.

What is required of a school district or county board of education to utilize the process that extends the board terms by a year?

Cal. Elections Code § 10404.5 provides a multi-step process. First, the governing board of the school district or county board of education must adopt a resolution to establish a new election day and submit the resolution to the County's Board of Supervisors not later than 240 days prior to the date of the currently scheduled election. The resolution must propose a new election day occurring, roughly speaking, at least 1 month and no more than 12 months subsequent to the district's current election date. Next, the Board of Supervisors must notify all school districts and the county board of education of the receipt of a resolution to consolidate, and must request input from each district on the effect of consolidation. The Board of Supervisors may also request a report from the elections official on the cost-effectiveness of the proposed action. Then, the Board of Supervisors gives public notices of the meetings in which the resolution is to be considered for adoption, and has 60 days from the date of submission to 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. If the proposed action is approved by the Board of Supervisors, the elections official has 30 days to mail a notice to all registered voters of the districts affected by the consolidation of the approval of the resolution. The mailing is at the expense of the school district or if applicable, the county board of education.

Can we voluntarily move to even-year elections without going through the analysis called for by SB 415?

Yes. Your board could initiate a change in its election dates under Cal. Elections Code § 14052(b) without analyzing whether the current election date is causing a significant decrease in voter turnout. You will need to follow the procedures outlined above, including Board of Supervisors approval, but you do not need to analyze your current turnout.

If you wish to initiate a voluntary change in election dates under this procedure, please consult your school deputy for the appropriate resolution.

Are some districts holding their elections in even years already?

Yes. The following eleven school districts already hold their elections in November of even-numbered years: Bayshore Elementary School District; Brisbane Elementary District; Cabrillo Unified School District; the County Board of Education; Jefferson Union High School District; La Honda-Pescadero Unified District; Las Lomitas Elementary District; Menlo Park City Elementary District; Pacifica School District; Ravenswood City Elementary District; and South San Francisco Unified District. The remaining fourteen school districts hold their elections in November of odd-numbered years.

Are we required to schedule our bond measures or parcel tax elections differently as a result of this law?

No. This law does not apply to special elections.

JCB:tjf