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October 8, 2012

County Clerk/Registrar of Voters (CC/ROV) Memorandum # 12295

TO: All County Clerks/Registrars of Voters

FROM: Jana M. Lean
Jana M. Lean
Chief, Elections Division

RE: General Election: Natural Disaster/Emergency Procedures

Should a natural disaster or other emergency occur on or close to Election Day, elections officials may encounter issues that could affect their ability to conduct an election in compliance with state law.

The California Elections Code provides a number of legal options California elections officials and the Governor can exercise in the case of an emergency.

The Secretary of State's office has created the attached document for elections officials to use as a resource should they be confronted with a natural disaster or other emergency.

This document may be found on the Secretary of State's website at www.sos.ca.gov/elections/elections-pub-res.htm under "Emergency Procedures."

If you have any questions, please feel free to contact Robbie Anderson at robbie.anderson@sos.ca.gov or (916) 653-1690.

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Emergency Situations That May Affect The Conduct of Elections in California – October 2012

In the event of a natural disaster or other emergency that may affect the ability to conduct an election in compliance with state law, there are legal options California elections officials and the Governor can exercise.

The following information does not replace any existing emergency or disaster plans already established by the State and county elections officials. Rather, it is a menu of election-related actions that can be taken depending on the circumstances of a particular natural disaster or other emergency. In any emergency situation, it is vital that the Governor, the Secretary of State, the Legislature, local elections officials, and the public communicate clearly and frequently.

A. Actions Permitted Under Existing Law

The California Elections Code gives local elections officials and voters some flexibility should an issue arise shortly before or on Election Day.

- Any vote-by-mail voter may vote in person at the county elections office on or before the close of the polls on Election Day. (Elections Code § 3018(a))

- Elections officials may set up satellite voting locations with 14 days notice or, in the case of a declared emergency or disaster in a county, 48 hours notice. A waiver of this law would be required if a satellite voting location has to be established less than 48 hours before the start of Election Day voting. (Elections Code § 3018(b))

- Elections officials may designate a replacement polling place as late as on Election Day. The new polling place must be as close as possible to the original polling place, and a notice must be posted at the original polling place directing voters to the new location. If there is sufficient time, the elections official must also mail a notice to affected voters. (Elections Code § 12281)

- Elections officials may create a new polling place in any contiguous precinct if one cannot be created within a specific precinct. (Elections Code § 12327)

- If one or more poll workers do not show up for work at the opening of the polls on Election Day, voters who are present at the polling place, and any members of the precinct board who are present, may appoint a voter to fill any vacancy. (Elections Code § 12313)

- A precinct inspector may appoint a voter to replace any poll worker who cannot perform his or her duties on Election Day. (Elections Code § 12314)

- A majority of the remaining poll workers may appoint a substitute if a precinct inspector cannot perform his or her duties on Election Day. (Elections Code § 12315)

- If there are not enough ballots at a polling place, each county has alternative voting procedures that have been approved by the Secretary of State. (Elections Code § 14299) These procedures may be found on the Secretary of State's website at www.sos.ca.gov/elections/ccrov/pdf/2012/october/12293jl.pdf.

- Existing laws require the county elections official to begin processing voted ballots and deliver those ballots to receiving centers as soon as possible after the polls close. Should some event cause a delay in the processing and return of voted ballots, Elections Code section 15213 allows the elections official to direct that the ballots be counted at the precinct. If the ballots are to be counted at the precinct, the procedures are set forth in Elections Code sections 15270 through 15281.

B. Actions Not Permitted Under Current Law

Under Government Code § 8571, the Governor has the authority to declare a state of emergency and issue an executive order waiving or suspending certain laws.

Government Code § 8567 authorizes the Governor during a declared state of emergency to make, amend, and rescind orders and regulations that have the force of law necessary to carry out a State Emergency Plan.

Following are the most likely election scenarios during an emergency or disaster, and the laws the Governor may wish to waive or suspend.

1. Extend Voting Times and Accept Ballots After the Deadline

If a polling place must be moved using existing law, voting hours may be need to be extended, which would require either a gubernatorial executive order or a court order.

If voting hours are extended by a court order, Elections Code § 14402.5 requires that all votes after 8:00 p.m. be cast on provisional ballots. If there is a statewide court order, the Governor may waive the provisional ballot requirement for votes cast after 8:00 p.m.

If the Governor wants to extend voting hours or accept vote-by-mail ballots beyond 8:00 p.m. on Election Day without a court order, the following laws may need to be waived or suspended.

- Elections Code § 14212 requires polls to be open from 7:00 a.m. to 8:00 p.m. on Election Day.
- Elections Code § 14213 requires the precinct board to proclaim aloud that the polls are open before receiving any ballots.
- Elections Code § 14401 requires the precinct board to proclaim aloud that the polls are closing before closing them. When making the proclamation, anyone in line waiting to vote must be allowed to vote.
- Elections Code § 14402.5 requires that, if voting hours are extended by a court order, all votes after 8:00 p.m. be cast on provisional ballots.
- Elections Code § 3017(a) and (d) and Elections Code § 3020 require all vote-by-mail ballots to be received before the close of the polls on Election Day.

2. Permit Out-of-County Voting

If the Governor wants to allow voters to return vote-by-mail ballots or to cast ballots outside of the county where they are registered to vote, the following laws may need to be waived or suspended.

- Elections Code § 3017(a) and 3018 require a voted vote-by-mail ballot to be returned to any polling location, elections office, or satellite location within the county where the voter is registered to vote.
- Elections Code § 3020 requires county elections officials to receive vote-by-mail ballots by the time the polls close on Election Day.
- Elections Code § 14279 allows a voter to apply for and receive a ballot only in that voter's precinct. Elections Code § 14311 provides an

exception to this law to allow a voter to apply for a provisional ballot outside the home precinct but within the home county.

- Elections Code § 14310 sets the rules for provisional voting and handling of those ballots.

3. Require the Election to be Conducted Entirely by Mail

If the Governor wants to eliminate polling places altogether and conduct the entire election by mail, the following laws would need to be amended by the Legislature.

- Elections Code § 4000 provides conditions for conducting an all-mail-ballot local, special, or consolidated election. This section does not apply to statewide elections, so legislative action would be required.

Elections Code § 4100 through 4108 provide the procedures for conducting an all-vote-by-mail election. These sections can be used as a model to establish a statewide all-vote-by-mail election.

- Elections Code § 1500 sets election dates for all-mail-ballot elections.

4. Cancel and Reschedule the Election

In the case of emergency or disaster, Government Code § 8571 gives the Governor has the power to cancel and reschedule an election.

To reschedule an election, the Governor would need to waive Elections Code § 12000 and establish a new election date.

Elections Code § 15101 permits elections officials to begin processing vote-by-mail ballots seven business days before Election Day. If the election might be cancelled, it is advisable that this law be waived at least seven business days before Election Day to ensure that vote-by-mail ballots that have already been cast are not prematurely counted and reported.

5. Close the Polls and Transport Ballots

The following Elections Code sections set procedures that must begin upon the closure of polls. County elections officials have procedures for returning ballots and polling place supplies in the event of an emergency or disaster. If these procedures cannot be followed at the time polls close, the following laws may need to be waived or suspended.

- Elections Code § 14420 requires precinct workers to begin processing ballots as soon as the polls close.

- Elections Code § 14433 requires that, if ballots are counted at the precinct, the precinct board must immediately transmit to the county elections office an unsealed statement that shows the voting results for that polling place.

- Elections Code § 14421 requires precinct workers to deliver ballots and other materials as soon as possible to county elections offices.

- Elections Code § 14430 requires precinct workers to return all supplies to county elections offices as soon as possible after the polls are closed.

- Elections Code § 14431 requires all voted, spoiled, canceled, or unused ballots to be sealed in one or more packages.

- Elections Code § 14432 requires tally sheets, rosters of voters, the copy of the index used as the voting record, the challenge list, and the assisted voters list be sealed in one or two packages.

- Elections Code § 14434 requires the items noted in Elections Code § 14432 to be delivered unopened without delay to the county elections office.

6. Change the Canvass Procedures

Elections Code § 15150 requires county elections officials to begin the semifinal official canvass as soon as the polls close. In the event of an emergency or disaster during the seven days before the election or on Election Day, Elections Code § 15101 may also need to be waived.

If the official canvass and transmission of results have begun pursuant to Elections Code §15150 and 15151, then the following laws may need to be waived or suspended:

- Chapter 3 (Semifinal Official Canvass) Elections Code 15150-15290
- Chapter 4 (Official Canvass) Elections Code 15300-15376
- Chapter 5 (Announcement of Results) Elections Code 15400-15402
- Chapter 6 (Determination of Elected or Nominated Candidates) Elections Code 15450-15490
- Chapter 7 (Duties of the Secretary of State) Elections Code 15500-15505