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May 4, 2018

County Clerk/Registrar of Voters (CC/ROV) Memorandum # 18105

TO: All County Clerks/Registrars of Voters

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

RE: Primary 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 publication entitled, "Procedures and Guidelines for Voting in a State of Emergency or Natural Disaster" can be found on the Secretary of State's website at www.sos.ca.gov/elections/publications-and-resources/voting-emergency-natural-disaster/ on the Publications and Resources webpage.

The Secretary of State's office has created the attached document as a summary of the statutory authority and executive orders that are pertinent should a natural disaster or other emergency arise that could affect the ability to conduct an election in compliance with state law. Please consult Chapter 6 of "Procedures and Guidelines for Voting in a State of Emergency or Natural Disaster" for more information.

If you have any questions, please feel free to contact Robbie Anderson at Robbie.Anderson@sos.ca.gov or (916) 695-1566.



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**Statutory Authority and Executive Orders Related to
Natural Disasters or Emergencies
May 2018**

In 2014, the Secretary of State, in consultation with county elections officials, created Procedures and Guidelines for Voting in a State of Emergency or Natural Disaster. These Procedures and Guidelines, which have been updated based upon changes in law and lessons learned after each election, can be found on the Secretary of State's website at www.sos.ca.gov/elections/publications-and-resources/voting-emergency-natural-disaster/, were intended to be a model for elections officials to use for the creation of their own natural disaster/emergency procedures.

The information provided below has been updated, and serves as a reminder of the legal options available to California elections officials and the Governor should a natural disaster or other emergency occur that affects the ability to conduct an election in compliance with state law.

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 Current Law

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

- After the 7th day before the election, any voter who, for specified reasons is unable to go to the polls, may request in a written statement, signed under penalty of perjury, that a ballot be delivered to him or her. (Elections Code § 3021)
- 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) Please note that this provision does not apply to elections conducted using vote centers.
 - 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) Please note that this provision does not apply to elections conducted using vote centers.
 - 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 <http://elections.cdn.sos.ca.gov/ccrov/pdf/2016/may/16137jl.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 section 8571, the Governor has the authority to declare a state of emergency and issue an executive order waiving or suspending certain laws.

Government Code section 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 laws the Governor may wish to waive or suspend during an emergency or disaster.

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 the Governor extends voting hours or accepts 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 section 14212 requires polls to be open from 7:00 a.m. to 8:00 p.m. on the day of any election.
- Elections Code section 14213 requires the precinct board to proclaim aloud that the polls are open before receiving any ballots.
- Elections Code section 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 section 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 section 3017(a) and (d) and Elections Code section 3020 require all vote-by-mail ballots that are personally delivered to be received before the close of the polls on Election Day. Vote-by-mail ballots that are mailed must be postmarked on or before Election Day and received by the county elections office no later than 3 days after Election Day.

2. Permit Out-of-County Voting

Elections Code section 14313 provides that upon the declaration of a state of emergency by the Governor, and the issuance of an executive order, emergency workers outside of their home precincts may cast a provisional ballot that is identical to the provisional ballots offered to other voters in that county.

If the Governor wants to allow all 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 sections 3017(a) and 3018 require a voted vote-by-mail ballot to be returned to any polling location within the state, at the office of the voter's county elections office, or satellite location within the county where the voter is registered to vote.
- Elections Code section 3020 requires county elections officials to receive personally delivered vote-by-mail ballots by the time the polls close on Election Day. Vote-by-mail ballots that are mailed must be postmarked on or before Election Day and received by the county elections office no later than 3 days after Election Day.
- Elections Code section 14279 allows a voter to apply for and receive a ballot only in that voter's precinct. Elections Code section 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 section 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 section 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 sections 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 section 1500 sets election dates for all-mail-ballot elections.

4. Cancel and Reschedule the Election

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

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

Elections Code section 15101 permits elections officials to begin processing vote-by-mail ballots ten business days before Election Day. If an election is cancelled or rescheduled, it is advisable that this law be waived at least ten 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 section 14422 allows an elections official to direct a precinct board to seal the ballot container prior to the closing of the polls so voted ballots may be retrieved early for delivery to a receiving center or central counting place.
- Elections Code section 14420 requires precinct workers to begin processing ballots as soon as the polls close, or upon receipt of ballots retrieved before the closing of the polls pursuant to Elections Code section 14422.
- Elections Code section 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 section 14421 requires precinct workers to deliver ballots and other materials as soon as possible to county elections offices.
- Elections Code section 14430 requires precinct workers to return all supplies to county elections offices as soon as possible after the polls are closed.
- Elections Code section 14431 requires all voted, spoiled, canceled, or unused ballots to be sealed in one or more packages.
- Elections Code section 14432 requires tally sheets, rosters of voters, the copy of the voter list used as the voting record, the challenge list, and the assisted voters list be sealed in one or two packages.
 - In the event an electronic roster of voters or an electronic voter list is used, the electronic devices(s) and the electronic media containing voter information must be secured and returned as well.
- Elections Code section 14434 requires the items noted in Elections Code section 14432 to be delivered unopened without delay to the county elections office.

6. Change the Canvass Procedures

Elections Code section 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 ten days before the election or on Election Day, Elections Code section 15101 may also need to be waived.

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

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