

Local Government Law Bulletin

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SECTION 5 OF THE FEDERAL VOTING RIGHTS ACT: A CHECKLIST

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SECTION 5 of the federal Voting Rights Act of 1965 (42 U.S.C. § 1973c) requires any political subdivision covered by the act to secure prior federal approval of "any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting different from that in force or effect on November 1, 1964." (With respect to the two North Carolina counties added by the 1975 extension of the Act, the cut-off date is November 1, 1972.) Federal approval may be secured in either of two ways: (1) most commonly, by the failure of the U.S. Attorney General to object to the change within 60 days after it is submitted to him; or (2) by a declaratory judgment in an action brought by the political subdivision in the federal district court for the District of Columbia. (Some 98 per cent of all submissions to the Attorney General are approved.) Without federal approval, the qualification, prerequisite, standard, practice, or procedure may not be enforced.

Since, under the act, submission to the Attorney General is first the responsibility of the subdivision's "chief legal officer," the requirements of this federal statute are of interest to city and county attorneys in the 41 North Carolina counties that are subject to it. This Local Government Law Bulletin provides three checklists to aid local attorneys in dealing with this legislation: (1) the 41 counties subject to Section 5 of the Voting Rights Act; (2) the types of local governments and agencies whose actions must be submitted for federal approval; and (3) the kinds of actions for which federal approval is required.

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1. NORTH CAROLINA COUNTIES SUBJECT TO
SECTION 5 OF THE VOTING RIGHTS ACT

Since 1965

Anson	Gates	Onslow
Beaufort	Granville	Pasquotank
Bertie	Greene	Perquimans
Bladen	Guilford	Person
Caswell	Halifax	Pitt
Camden	Hertford	Robeson
Chowan	Harnett	Rockingham
Cleveland	Hoke	Scotland
Craven	Lee	Vance
Cumberland	Lenoir	Union
Edgecombe	Martin	Washington
Franklin	Nash	Wayne
Gaston	Northampton	Wilson

Since 1975

Jackson

Swain

2. LOCAL GOVERNMENTS AND AGENCIES
SUBJECT TO SECTION 5

The U.S. Supreme Court and the U.S. Attorney General have taken an expansive view of the sorts of actions that require federal approval under Section 5. In keeping with that tendency, the Court has also taken an expansive view of the kinds of local governments and agencies whose actions are subject to federal approval. In general, if a government or agency may take an action that is subject to the act, then the government or agency is subject to the act whenever it takes that action. The following governments and agencies, then, are either definitely subject to the act or probably subject to it.

Definitely Subject

Counties	(Allen v. State Board of Elections, 393 U.S. 544, 22 L.Ed.2d 1 [1969])
Cities	(U.S. v. Board of Commissioners of Sheffield, Alabama, 435 U.S. 110, 55 L.Ed.2d 148 [1978])
School boards	(Dougherty County, Georgia, Board of Education v. White, 58 L.Ed.2d 269 [1978])

Probably Subject

Local election boards	(See, Allen v. State Board of Elections, 393 U.S. 544, 22 L.Ed.2d 1 [1969])
Local agencies with authority to make personnel rules	(See, Dougherty County, Georgia, Board of Education v. White, 58 L.Ed.2d 269 [1978])

3. KINDS OF ACTIONS SUBJECT TO SECTION 5

As noted above, the Supreme Court has taken an expansive view of the sorts of actions subject to federal approval under Section 5. In the Allen case, for example, the Court stated that "Congress intended to reach any state enactment which altered the election law of a covered state in even a minor way" (393 U.S., at 506). Thus the Court has extended the reach of Section 5 not only to actions that change election procedures but also to structural changes in local government and, most recently, to certain sorts of personnel regulations. Because the section extends to this variety of actions, the checklist set out below should be useful to the county or city attorney who seeks to comply with the federal statute.

It should be noted that a local government subject to Section 5 must seek federal approval not only of covered local actions but also of local acts of the General Assembly. While the state will seek the necessary approval of statewide enactments, it expects the affected local government to seek approval of a local act of the legislature that affects only that government.

This checklist is based on two sources--Supreme Court decisions and the regulations of the Attorney General, and the proper citation is given for each entry. The Court has directed, in Dougherty, that the Attorney General's regulations be accorded "particular deference" (58 L.Ed.2d, at 278). In addition, several of the entries carry only an Attorney General citation because their inclusion is so clear that no Court test has been necessary. The regulations are set out at 28 C.F.R. § 51.4 (1978).

Voting Machinery and Procedures

1. Changes in qualifications or eligibility for voting (Attorney General regulations);
2. Changes in procedures concerning registration, balloting, or informing or assisting citizens to register and vote (Attorney General regulations);
3. Changes in the location of polling places (Perkins v. Matthews, 400 U.S. 379, 27 L.Ed.2d 476 [1971]);
4. Changes in write-in voting rules (Allen v. State Board of Elections, 393 U.S. 544, 22 L.Ed.2d 1 [1979]);
5. Alterations in vote-counting methods (Attorney General regulations).

Candidacy and Issues

1. Alterations affecting a person's ability to become a candidate or hold public office (Attorney General regulations);
2. Changes in eligibility and qualification procedures for independent candidates (Hadnott v. Amos, 394 U.S. 358, 22 L.Ed.2d 336 [1969]);
3. Changes in employee regulations that affect employees' ability to run for public office (Dougherty County, Georgia, Board of Education v. White, 58 L.Ed.2d 269 [1978]);
4. Changes in filing fees (cf. Dougherty County, Georgia, Board of Education v. White, 58 L.Ed.2d 209 [1978]);

5. Changes in the offering of issues and propositions for voter approval (Attorney General regulations).

Governing Boards and Other Elected Officials

1. Changes from an at-large to a district method, or from a district to an at-large method for electing a governing board (Allen v. State Board of Elections, 393 U.S. 544, 22 L.Ed.2d 1 [1969]; Attorney General regulations);
2. Changes in length of terms of elected officials (Attorney General regulation);
3. Making elected positions into appointed positions (Allen v. State Board of Elections, 393 U.S. 544, 22 L.Ed.2d 1 [1969]).

Boundary Changes

1. Redistricting or reapportionment (Beer v. U.S., 425 U.S. 130, 47 L.Ed.2d 629 [1976]);
2. Annexation (Perkins v. Matthews, 400 U.S. 379, 27 L.Ed.2d 476 [1971]).