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# MAJOR LEGISLATION & TREATIES

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## 1. Constitutional Law

### **The Act on Temporary Special Provisions for the Election Date, etc. of Council Members and Heads of Local Governments following the Great East Japan Earthquake**

Law No. 2, March 22, 2011 (Effective on March 22, 2011). 7 clauses and 2 supplementary provisions.

#### **Background:**

The Great East Japan Earthquake (referred to below as “the Earthquake”) which occurred on March 11, 2011 had a great influence on the politics, economy, and society of our country. The elections of council members and heads of some local governments were also greatly influenced by “the Earthquake.”

In April, 2011, what is called “a Toitsu Chiho-Sen” was due to be carried out. In our country, there is a political and legal custom that specified local elections are to be jointly carried out according to a certain specified schedule set by the national law, and this is called “a Toitsu Chiho-Sen (a unified local election.)” The unified local election which was

due to be carried out in 2011 was set to be carried out with regard to council members and heads of some prefectures on Sunday, April 10, and to be carried out with regard to the same posts of some cities, wards, towns, and villages on Sunday, April 24, based on the Act on Temporary Special Provisions for the Election Date, etc. of Council Members and Heads of Local Governments (Law No. 68, 2010) (referred to “the Act on a unified local election”). It was the first time for a unified local election since the Democratic Party became the governing party, and the elections of the heads of big cities, such as Tokyo and Osaka, were also included, so this unified local election attracted nationwide attention.

Each prefecture of the Tohoku district in particular suffered serious and widespread damages from “the Earthquake”. About the election date for the municipal corporations of these areas where the smooth execution of such election office work is difficult, special provisions are provided by this law. In addition, the Act on Temporary Special Provisions for the Election Date, etc. of Council Members and Heads of Local Governments upon the Tohoku-Pacific Ocean Earthquake, which was the original name of this law was changed when a series of situations, such as an earthquake and tsunami, and an accident at a nuclear power plant occurred, and was later called the Great East Japan Earthquake.

### **Main Provisions:**

#### **Special provision for election date (Art.1 relation)**

Elections of council members and heads of the specified cities, towns and villages and the specified prefectures where the Minister of Internal Affairs and Communications specified that it was accepted to be difficult to elect properly on the date which “the Act on a unified local election” had set because of the damage of “the Earthquake”, and specially designated cities, towns and villages and specially designated prefectures where the Minister of Internal Affairs and Communications admitted that it was difficult to elect on the date which the Public Offices Election Law had set for the same reason as mentioned above (these local government are referred to as “specified preferences, etc.” in this article) are carried out on the exceptional election date provided by a cabinet order before December 31, 2011.

On the occasion of the specification of a “specified prefecture, etc.,”

and the planning of the exceptional election date, the Minister of Internal Affairs and Communications has to hear the opinion of the election administration committee of the prefecture concerned, and has to respect that opinion. Moreover, in expressing an opinion, the election administration committee of the prefecture concerned has to hear the opinion of the election administration committees of the cities, towns and villages concerned, and has to respect these opinions.

### **Special provision of the term of office (Art.2 relation)**

The term of office of council members and heads of local governments, such as “specified prefectures, etc.” where the term of office will expire by a day before the exceptional election date from enforcement of this law is made into the period up to the day preceding the exceptional election date.

### **Double election (Art.4 relation)**

An election of council members and head of “specified prefectures, etc.” is held simultaneously. This is the same also about the cities, wards, towns, and villages.

### **Delegation to cabinet order (Act.7 relation)**

Any necessary measures for the enforcement of this law shall be specified by a cabinet order. About the matter which cannot fully be carried out depending on the regulations of the Public Offices Election Law, regulation by a special cabinet order can be placed about the election of those other than the “specified prefectures, etc.”

### **Special case about population (Supplementary Provisions relations)**

If a local government ordinance provides so, a number of seats for council members of “specified prefecture, etc.” shall be determined based on the population by the result of the national census in 2005.

### **Editorial Note:**

In order to cope with “the Earthquake” which brought about destructive damage, the national government enacted various kinds of special measures laws and special exemption laws. This law is the law

which specified some special provisions about the local elections and the term of office of the local government in the Tohoku district which suffered serious damage especially. A specification of the concrete “specified prefectures, etc.” and a decision of the exceptional election date were made to be provided by a cabinet order as the law specifies. From May to July, 2011, the Ministry of Internal Affairs and Communications that has the jurisdiction over election office work performed the specification of “specified prefectures, etc.” for Fukushima Prefecture, Iwate Prefecture, and Miyagi Prefecture, whose damage was especially serious, and a partial place in Ibaraki Prefecture three times. Moreover, the specification of specially designated cities, towns and villages was also performed in May and afterwards.

A few local governments which had lost almost any administrative function also existed, so it was more difficult than usual to carry out a proper implementation of the election in some areas. It is necessary to provide such a special provision for local elections. However, the suffrage is the right peculiar to Japanese protected by Article 15 of the Constitution, and then, a special case like this law should be restrictively applied, since the legitimacy of the government which plays a large role at the time of the disaster is primarily collateralized by the election itself. A deed like the City of Urayasu (Mayor, Hideki Matsuzaki) which made impossible the vote in the election of council members of Chiba Prefecture, which was to be performed on April 10, in the Urayasu constituency, due to refusing the election office work in this district without being based on any provisions of law, had both constitutional and statute problems.

To be sure, under a great disaster like “the Earthquake”, it is not easy for a local government to perform suitable election work smoothly in accordance with some modern constitutional principles of election, for instance, which maintain the secrecy of the vote or prevent fraudulent ballots. On the other hand, the election in a stricken area is also the important business which bases the directivity of development of the revival from a disaster. Making a system for collateralizing implementation of all possible elections under a state of emergency is desired.