



Election Related Changes from Senate Bill 100

The federal Military and Overseas Voter Empowerment Act (MOVE Act) was passed by Congress in October 2009. Provisions of that law require balloting materials be available to be mailed or emailed not later than the 45th day before election day. Under the prior primary election system, this deadline could not be met for the primary run-off election. Senate Bill (SB) 100 moves the primary run-off election date to the fourth Tuesday in May to accommodate the MOVE Act requirements.

Primaries are held in even-numbered years and require the use of county election personnel and equipment. As a result of the change in the primary run-off date, in even-numbered years, the primary run-off will overlap with the May uniform election cycle. Many school districts have joint-elections with cities on that date. In holding their elections, local entities often rely on the county to provide support, often by contracting with the county for use of electronic voting equipment. ***Some counties will not be able to assist in local elections because of primary run-off responsibilities, which will include the use of the counties' electronic voting equipment.*** SB 100 specifically provides that in an even-numbered year, a county elections administrator is not required to enter into a contract to furnish election services for a political subdivision other than a county holding an election on that date. This is an exception to an elections administrator's duty to contract under Texas Election Code section 31.093.

SB 100 does permit school districts to adopt a resolution by no later than December 31, 2011, to change the length of terms for members of the board of trustees. The resolution must provide for staggered terms of either three or four years. If such a change is made, it will go into effect at the district's first regular election held after January 1, 2012.¹

Q: Our elections are every year on the uniform election date in May. Are we required by law to move our election?

A: No. The law does not directly require you to move your election date. It is possible, however, because of practical issues regarding the county's responsibility to conduct the primary run-off election, that your district may find it advantageous to move its election date.

Q: Our elections are in November of even-numbered years with the county. Do we need to do anything?

A: No. You may continue to conduct elections as you do now.

¹ Note that both SB 100 and HB 1545 amend the Texas Election Code to grant certain local governmental entities the authority to move their elections from the May to the November uniform election date. Such a change must be made by December 31, 2012. Because the provision in SB 100 that gives school boards the authority to change the length of trustee terms changes the Texas Education Code and refers specifically to school board trustee terms, we advise districts to comply with this earlier deadline.

Q: Our elections are in November of even-numbered years with the county, but we have a local community college district election in May. Can we move our election date to May to hold a joint election with the community college district?

A: The answer is unclear. SB 729 amends the existing joint election law to permit a school district to conduct its joint election with a community college district. Outside of SB 729, however, legislative intent is generally to move elections from May to November; not November to May. Even if a move from November to May were legally permissible, you would still have to deal with the primary run-off issues if you moved to a May election cycle. Consult your school attorney about any proposed change to your election date.

Q: We are in a small county and currently have a joint election with the city in May. Do we need to change?

A: Perhaps not, depending on the circumstances in your county. Many local jurisdictions use electronic voting systems provided by the county in order to comply with Texas Election Code section 61.012(a)(1), which requires accessible systems for disabled voters. For small counties, Texas Election Code section 61.013 limits the number of electronic voting devices that are required.

- Counties with a population of less than 2,000 are exempt from the requirement of providing accessible electronic voting systems.
- Counties with a population of 2,000 or more but less than 5,000 must provide at least one accessible electronic voting system on election day.
- Counties with a population of 5,000 but less than 10,000 must have at least one accessible electronic voting system on election day and during the period of early voting.
- Counties with a population of 10,000 but less than 20,000 may provide fewer accessible voting stations if they are granted a waiver by the Secretary of State. The entity must show an *undue burden*, which means increased costs of at least 25% as compared to the costs of the last general election held by the subdivision before January 1, 2006. The waiver request must be submitted no later than the 90th day before the date of the election.

As a result, if you are in a small county, it may be possible that the county will have sufficient devices available to both conduct the run-off election and assist you with your May general election. You should contact county election officials as soon as possible to determine if sufficient devices will be available.

Q: We are a suburban district in a large county. What options do we have as a result of the new law?

A: You have several options to consider. Texas Education Code section 61.012(a)(1) requires an accessible system for each polling place. Because of the primary run off, counties may not have sufficient devices to meet demand. Districts must work with the county and their joint election partners to determine if they will be able to meet the requirement for such devices in

each polling location. If the county is unable to provide the necessary voting equipment, the district has several choices:

1. Local entities could maintain their current joint election cycle and work together to fund the lease or purchase of the required voting equipment.
2. Local entities could keep their May joint elections, but change to four-year terms in odd-numbered years. Remember, the joint election requirement remains in effect, so this option requires a joint election partner, such as a city or community college district to agree to this schedule.
3. Finally, school districts may move their elections to November of even-numbered years and adjust members' terms accordingly.

Q: If our district decides to move our election and change our terms, when should we do this?

A: Before the end of 2011. A change in the terms of office of elected officials must be precleared by the federal Department of Justice. The preclearance process normally requires 60 days. The Texas Secretary of State commonly recommends a 75-day window to insure a timely response. Therefore, we recommend the district pass a resolution of this nature by mid-October 2011. This will allow sufficient time to have the resolution approved by the Department of Justice prior to the December 31, 2011 deadline.

Q: Did SB 100 move the date to order an election?

A: Yes. The deadline to order an election is now the 78th day before the election for elections held on the date of the general election for state and county officers (i.e., November elections in even-numbered years), and the 71st day before the election for elections held on a uniform date other than the date of the general election for state and county officers (i.e., all May elections and November elections in odd-numbered years).

Q: Did SB 100 change the deadlines for filing an application for a place on the ballot?

A: Yes. The deadline to file an application for a place on the ballot is now the 78th day before the election for elections held on the date of the general election for state and county officers (i.e., November elections in even-numbered years), and the 71st day before the election for elections held on a uniform date other than the date of the general election for state and county officers (i.e., all May elections and November elections in odd-numbered years).

It is critical for school districts to work with their county and municipal election officials as soon as possible to determine a course of action.

If you have any questions regarding this change in law, please contact your school attorney or TASB Legal Services at 800.580.5345.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is neither an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. It is important for the recipient to consult with the district's own attorney in order to apply these legal principles to specific fact situations.