



**To: Superintendent, Superintendent Secretary, and Council of School Attorneys Member Addressed**  
**From: TASB Legal Services**  
**Date: February 4, 2010**  
**Subject: Frequently Asked Questions Regarding May 2010 Trustee Elections**

For school districts preparing for May elections to elect school board trustees, the following are quick answers to frequently asked questions.

*For districts with November trustee elections, TASB Legal Services will issue additional guidance closer to the election.*

***Q: What is a good source for information about the May 2010 election?***

The Web Site of the Secretary of State's Elections Division provides a great deal of information for school districts, including a variety of forms with instructions:

[www.sos.state.tx.us/elections/laws/schoollaws.shtml](http://www.sos.state.tx.us/elections/laws/schoollaws.shtml).

The Elections Division has released the May 2010 Election Law Calendar, containing important information on the official deadlines relevant to the election:

[www.sos.state.tx.us/elections/laws/2010may.shtml](http://www.sos.state.tx.us/elections/laws/2010may.shtml).

Some important dates to remember for general trustee elections are:

- Deadline to post notice of the application period: **Thursday, January 7, 2010**
- First day to file an application for a place on the ballot: **Saturday, February 6, 2010**
- Deadline for ordering a general election: **Monday, March 8, 2010**
- Filing deadline: **Monday, March 8, 2010**
- Deadline for providing notice of the election to the county and voter registrar: **Tuesday, March 9, 2010**
- Deadline for declaration of write-in candidacy: **Monday, March 15, 2010**
- Deadline to publish notice of the election: **Thursday, April 8 – Wednesday, April 28, 2010**
- First day for early voting in person: **Monday, April 26, 2010**
- Last day for early voting in person: **Tuesday, May 4, 2010**
- Election Day: **Saturday, May 8, 2010**
- Canvass period: **Tuesday, May 11 – Wednesday, May 19, 2010**

***Q: What TASB resources offer more information about elections?***

For more information, check out TASB Policies BBA, BBB, BBBA, and BBBB.

***Q: Does our district have to hold a joint trustee election?***

Yes. Please remember that House Bill 1 (HB 1), passed during the Special Session of the 79th Texas Legislature, changed school district elections. Elections for school board trustees must now be held as joint elections on either: (1) the election date for the members of the governing body of a municipality (incorporated city) located in the school district, or (2) the general election date for state and county officers (November of even-numbered years).

***Q: What is a joint election?***

Joint elections are covered by Chapter 271 of the Texas Election Code. The law includes two requirements for holding joint elections:

1. Create a joint election agreement that sets out the terms of the joint election.
2. Share some common election-day polling places.

If you have a joint election with a city, you are not required to share every election-day polling place with the city. As long as you have at least one, you have a joint election. Practically, however, you may find that it is more efficient and economical to share more than one or all polling places with the city.

All other joint election choices are left to the entities involved in the election. Ballots, election workers, early voting hours and locations—these decisions are not prescribed by law. The school district and the city or county must negotiate these items. The law is flexible enough to allow you to structure your election to best serve your voters.

***Q: What happens if we plan a joint election with a city, but the city cancels its election?***

Many smaller cities, like small school districts, have cancelled their elections for many years. Once a school district enters into a joint election agreement to hold a joint election with a city, the requirements of HB 1 are satisfied. If the city cancels, the school district has done everything it can to comply with the new law. The district can hold its election in May without the city. This is not to say that a school district can purposefully avoid having a joint election with a city or county. However, if you have attempted to hold a joint election in good faith, you have fulfilled the requirements of HB 1.

***Q: Does the requirement to conduct joint elections affect when districts can hold bond elections?***

No. Texas Education Code section 11.0581 does not require bond elections to be held as joint elections with other political subdivisions. The joint election laws pertain only to school board trustee elections. However, if a district chooses to hold a bond election with the trustee election, the bond election will be covered by the same requirements as the trustee election.

***Q: When is the deadline for ordering the election?***

The deadline to order a general election is **Monday, March 8, 2010**.

The order must include:

1. The date of the election;
2. The offices or measures to be voted on;
3. The location of the main and each branch early voting polling place;
4. The dates and hours for early voting;
5. The dates and hours of any Saturday and Sunday early voting, if applicable; and
6. The early voting clerk's official mailing address.

***Q: When is the deadline to order a special election?***

Special elections to fill a vacancy should be ordered as soon as possible after the vacancy occurs. As a result, the special election deadlines are varied—the time for the board to order the election depends on when the vacancy occurs, and the filing deadlines depend on when the special election is ordered. If your district is holding a special election in May, please consult the Secretary of State's *May 2010 Election Law Calendar* and work with your local attorney in determining the deadlines for ordering the election and for candidate filings.

***Q: How do we provide notice of the election? Is that different from ordering the election?***

Some districts use the same or a similar document to order the election and publish notice of the election. However, by law, they are two different requirements, and using the same form is not required.

School districts must publish notice of the election at least once between **Thursday, April 8, and Wednesday, April 28, 2010**. This notice must be in a newspaper published in the territory that is covered by the election and is in the jurisdiction of the school district, or in a newspaper of general circulation in the territory if none is published in the jurisdiction of the school district.

Notice must include:

1. The type and date of the election;
2. The location of each polling place;
3. The hours the polls will be open;
4. The location of the main and each branch early voting polling place;
5. The regular dates and hours for early voting by personal appearance;
6. The dates and hours of any Saturday or Sunday early voting, if any; and
7. The early voting clerk's mailing address.

In addition to the newspaper notice, school districts must deliver notice of the election to the county clerk and voter registrar of each county in which the school district is located. This notice must be delivered no later than **Tuesday, March 9, 2010**.

Also, if a different polling place is being used in a precinct from the previous election held by the school district, notice must be posted at the entrance of the previous polling place informing voters of the current polling place location, if possible.

***Q: What is the first day a candidate can file for office? When is the filing deadline?***

**The first day to file an application for a place on the ballot is Saturday, February 6, 2010.** Candidates may file for office anytime from this date until the deadline, even if the election has not yet been ordered.

**The deadline to file an application to be placed on the ballot is 5:00 p.m., Monday, March 8, 2010.** A declaration of write-in candidacy must be filed no later than 5:00 p.m. of the fifth day after the date an application for a place on the ballot is required to be filed. This year, because the fifth day after the general filing deadline falls on a weekend, **the deadline for declaration of write-in candidacy is extended to 5:00 p.m., Monday, March 15, 2010.**

School districts are required to make applications available for potential candidates. Sample applications and other forms can be found in the *Secretary of State's Forms Manual*, available online at: [www.sos.state.tx.us/elections/forms/pol-sub/index.shtml](http://www.sos.state.tx.us/elections/forms/pol-sub/index.shtml).

***Q: What is the district's responsibility for verifying the information on a candidate's application?***

Once a candidate files an application with the school district, the district is responsible for reviewing the application to determine whether it complies with the legal requirements as to form, content, and procedure. In other words, are all the required sections completed, does the information listed make the person eligible to be a candidate, did the person sign the application, and was it filed on time in the right place? You have five days to review an application and determine whether it is legally sufficient.

If an application is not legally sufficient (e.g., it was filed after the deadline), the district is required to reject the application and immediately deliver to the candidate written notice of the rejection.

Additionally, if the information on the candidate's application indicates that the candidate is ineligible for the office (e.g., an address outside the district's boundaries is listed as the candidate's address on the application), or facts indicating that the candidate is ineligible are conclusively established by another public record (e.g., the district receives a copy of a felony conviction from which the candidate has not been pardoned or released), the district must declare the candidate ineligible. The Secretary of State's office advises that no public record conclusively establishes residency.

For more information on reviewing applications and the process for declaring candidates ineligible, see the Secretary of State's guidance regarding *Candidacy Filing*: [www.sos.state.tx.us/elections/laws/candidacy.shtml](http://www.sos.state.tx.us/elections/laws/candidacy.shtml).

***Q: What if one of the election deadlines falls during spring break? During another holiday?***

**Filing deadlines:** Since spring break is not an official state or federal holiday, a district cannot be "closed for spring break" and unable to observe election deadlines. If a deadline falls during spring break, a district must maintain regular office hours on that day and have a representative available on-site. On days that are filing deadlines, the representative should be on site until 5:00 p.m. to allow all candidates to file until that time. The Secretary of State cautions that, even if you also accept applications by mail and fax, you will have no reliable witness to say who has met the deadline if you do not have someone at the district at 5:00 p.m.

**Office hours:** From **Friday, March 19 – Thursday, June 17, 2010**, a district is required to have mandatory office hours. During this time, a representative of the district must keep the office open for election duties for at least 3 hours each day, during regular office hours, on regular business days. A regular business day means a day on which the school district's main business office is regularly open for business. This duty is usually performed by the early voting clerk, because the purpose of this requirement is to provide a location where voters can get information about the election.

**Early voting by personal appearance:** For early voting by personal appearance, if a school holiday falls on a day that is a federal or state holiday (such as Memorial Day), the school district is not required to be open to conduct early voting by personal appearance. However, if a school holiday falls on a day during the early voting period that is **not** a federal or state holiday, the school district is required to be open to conduct early voting. In some situations, such as for early voting, a district in a territory with fewer than 1,000 registered voters may limit office hours during spring break to three hours per day. Please check with the Secretary of State's office to determine whether your district needs to be open when an election deadline falls on a school holiday which is not a federal or state holiday.

***Q: When can an election be cancelled?***

Under certain circumstances, the Texas Election Code allows a school board to cancel an election and declare unopposed candidates “elected” to office:

**At-large elections:** The election may be cancelled if the number of candidates for at-large positions is the same or fewer as the number of at-large positions up for election. For example, if there are three positions up for election and three, two, or one candidates file, a board may declare those candidates elected, and cancel the election.

**Single-member district elections:** If a position is unopposed, the board may cancel the election within that single-member district only if there are no opposed at-large elections. The election would still be conducted for those single member districts with opposed candidates.



Under former law, a trustee election could not be cancelled if a proposition (such as a bond or rollback election) was also on the ballot. Senate Bill 1970, passed by the 81st Legislature, changed the law so that a special election (such as a bond or rollback election) held by a school board is considered to be a separate election with a separate ballot from the general election for trustees or another special election held at the same time. As a result, school districts can cancel trustee elections even if there is a proposition on the ballot.

School districts that cancel trustee elections in these circumstances will be required to include the offices and names of the candidates declared elected on the ballots used at the special election, even though no votes are cast in connection with the candidates. The offices and names should be listed separately after the measures or contested races under the heading “Unopposed Candidates Declared Elected.” The Secretary of State’s Office is a good resource for questions about this new legislation.

***Q: How do we cancel an election?***

After receiving the certification of unopposed status from the authority responsible for preparing the ballot, the board must take action in a properly-posted open meeting to cancel the election and declare the unopposed candidates elected. A copy of the order canceling the election should be posted during early voting and on election day at each polling place that would have been used in the election. Copies of the cancellation order can simply be posted on the polling place door.

The recommended first day that a general trustee election may be cancelled is **Tuesday, March 16, 2010**, as March 16 is the first day after both the filing and write-in deadlines have passed.

If the election is cancelled, the Texas Election Code requires the board to issue a Certificate of Election to each candidate who is declared elected in the same manner as required for a candidate elected at the election. The elections division of the Secretary of State's office advises that Certificates of Election are issued to unopposed candidates *after* election day, and the unopposed candidates are then sworn in just as candidates elected at an election.

A sample order of cancellation and the Certificate of Election can be found on the Secretary of State's Web Site at: [www.sos.state.tx.us/elections/forms/pol-sub/index.shtml](http://www.sos.state.tx.us/elections/forms/pol-sub/index.shtml).

***Q: What happens if no one files as a candidate for the school board?***

An election can be cancelled if no one files for positions up for election. After the election is properly cancelled, the board will meet to declare that vacancies exist for the positions. These vacancies are then filled in the usual manner for filling vacancies on the board. See Policy BBC(LEGAL).

***Q: When and by whom must the votes be canvassed?***

**Votes must be canvassed no earlier than the third day (Tuesday, May 11) or later than the eleventh day (Wednesday, May 19) after the election.** The canvass may not be conducted until the ballot board has verified and counted all provisional ballots, if a provisional ballot has been cast in the election AND counted all timely received ballots cast from addresses outside the United States, if a ballot by mail was provided to a person outside of the United States.

Two board members constitute a quorum for purposes of canvassing the election. The canvass must be done in a properly-posted open meeting, with notice of the canvass posted at least 72 hours continuously before the canvass is conducted. Please remember that, under the Open Meetings Act, no other school business can be conducted at this meeting unless there is a full quorum present.

The canvassing authority shall prepare tabulations for the following things:

1. For each candidate
2. Votes FOR each measure
3. Votes AGAINST each measure

Each tabulation should state: (1) the total number of votes received in each precinct; and (2) the sum of the precinct totals tabulated.

The Secretary of State's office recommends that the Certificates of Election be issued at the same time as the canvass. The presiding officer of the canvassing authority prepares the Certificates of Election.

After the election, **Monday, June 7, 2010**, is the deadline for filing electronic precinct-by-precinct returns with the Secretary of State's office. For more information, contact the Secretary of State's office at 800-252-8683.

A good practice for tracking election results from year to year is maintaining an election register. Keeping past results in a well-organized manner at the district's offices is an easy way to memorialize elections cancellations and election results and track term endings for current board members. Provisions regarding election registers are found in Texas Election Code section 67.006.

***Q: What is the "Statement of Elected/Appointed Officer"? How is it filed?***

All elected and appointed officers, including school district trustees, must file a statement declaring that the officer has not directly or indirectly paid, offered, or promised to give money or any valuable consideration, including employment, for votes at the election or as a reward for appointment. The Statement must be kept "with the official records" of the school district. The Statement can be found at Policy BBB(EXHIBIT).

***Q: When and by whom is the Oath of Office administered?***

The Oath of Office is found in Article XVI, Section 1(a) of the Texas Constitution. See Policy BBB(EXHIBIT). The Oath may be administered by a number of public officials, including: a notary public, a judge, or a justice of the peace. The Oath may be taken only after the Statement has been signed. The Oath of Office is filed with the president of the board of trustees.

Although it is common practice for newly-elected trustees to be sworn in during a board meeting, it is not legally required for these trustees to be sworn in during a board meeting or at any particular time. In fact, each newly-elected trustee may be sworn in by a person authorized to administer the Oath at any time after the necessary prerequisites have been satisfied.

***Q: Do incumbents that have been reelected have to re-file the Statement of Elected/Appointed Officer and take another Oath of Office?***

Yes, the Secretary of State's office advises that incumbent trustees do need to follow the same procedures after reelection as newly-elected trustees. Although an incumbent has previously served on the board, he or she is starting a new term of office and must complete the formal requirements for the new term.

***Q: Can all of this be done at the same meeting?***

Yes, it is possible to have new board members take office the night of the canvass, as long as the proper order of events is followed:

- Election is canvassed at an open meeting;
- Certificate of Election is issued to newly-elected officers;
- Statement of Elected/Appointed Officer is completed;
- Newly-elected officers take the Oath of Office; and
- Newly-sworn officers may assume office.

Many districts issue the Certificates of Election on the night of the canvass, but wait until the next regularly scheduled board meeting to have the newly-elected board members sign the Statement and take the Oath of Office.

***Q: When may newly-elected board members assume the duties of office?***

A new trustee may assume the duties of office only after he or she has executed the required Statement and taken the Oath of Office. Until that time, the predecessor trustee continues to hold office pursuant to the holdover doctrine. See Policy BBC(LEGAL).

***Q: When must officers of the board be selected?***

Section 11.061 of the Texas Education Code requires that the officers of the board be selected at the first meeting after the election and qualification of trustees (i.e., execution and filing of the required Statement and the Oath of Office). If the president and vice-president are no longer on the board after the election, the selection of officers is conducted by the person designated in local policy BDAA. If the district does not have such a policy, the secretary typically conducts an election of a temporary chair who then conducts the election of a new president; the new president conducts the elections of the remaining officers. If there is no secretary, then any board member (such as the most veteran member present) may assume the chair to conduct the election of a temporary chair who then conducts the election of a new president.

Reorganization of the board may take place at times other than right after an election. The attorney general has offered examples of situations that might necessitate reorganization at other times, such as when an officer of the board resigns and a new officer must be chosen. Op. Tex. Att’y Gen. No. MW-531 (1982).

TASB’s Leadership Team Services division has developed guidance on *Electing Board Officers* that board members may find useful during this process:

[www.tasb.org/services/lts/resources/archive\\_documents/qa\\_electing\\_bd\\_offic.pdf](http://www.tasb.org/services/lts/resources/archive_documents/qa_electing_bd_offic.pdf).

***Q: How, when, and by whom may an election be contested?***

Generally, any candidate in an election may contest the election by filing a petition in the appropriate district court and with the Secretary of State not earlier than the day after election-day and not later than the 30th day after the date the official result of the contested election is determined. (The deadline is the 10th day after the date the official result is determined if a runoff is necessary or will be necessary if the contestant prevails.) The contest may be based upon allegations that illegal votes were counted, or an election officer or other person officially involved in the administration of the election prevented eligible voters from voting, failed to count legal votes, engaged in other fraud or illegal conduct, or made a mistake.

***Q: Do we have to use handicap-accessible voting machines?***

Yes. The federal Help America Vote Act prompted the Texas Legislature to require that each polling place must provide at least one voting station that provides a practical and effective means for voters with physical disabilities to cast a secret ballot. See Policy BBB(LEGAL); Tex. Elec. Code Ann. § 61.012. As a result, you will be required to provide at least one accessible electronic voting system in each of your polling places. To obtain accessible voting equipment, a district may purchase a voting system directly from a vendor, lease the county's accessible voting system for your elections, or acquire a system by purchase, lease, or other means from any other source.



Texas Election Code section 61.013 relaxes this requirement for certain elections. For elections in which a federal office is not on the ballot, a smaller county or a political subdivision may not be required to provide an accessible machine in each polling place.

**The deadline to request this exemption from the Secretary of State's office is Monday, February 8, 2010.** For more information, including an application and instructions, see: [www.sos.state.tx.us/elections/laws/access.shtml](http://www.sos.state.tx.us/elections/laws/access.shtml).



House Bill 2524, passed by the 81st Texas Legislature, codified security and testing procedures for electronic voting that had been developed by the Secretary of State. Please ensure that your custodian of election records or joint election partner responsible for electronic voting systems is aware of the requirements in Texas Election Code chapter 129.

***Q: When must a preclearance be submitted to the U.S. Department of Justice?***

The Voting Rights Act of 1965 requires that any change in any “standard, practice, or procedure with respect to voting” be submitted to the U.S. Department of Justice for preclearance, including changes in election precincts, polling places, use of electronic voting machines, and various other actions. The purpose of a preclearance submission is for the governmental entity to certify to the U.S. Department of Justice that the voting change was not done for a discriminatory reason and does not affect voters in a discriminatory way. The Attorney General of the U.S. Department of Justice has 60 days in which to make an objection to a submitted change affecting voting.

If the board has not already reviewed actions since the last election to see if any changes must be submitted for preclearance, this should be done as soon as possible. If you need to make changes at the last minute, the U.S. Department of Justice may be able to give your submission expedited consideration.

Rules for submissions, including the new electronic submission process, and more information can be found on the Department of Justice's Web Site at: [www.usdoj.gov/crt/voting/sec\\_5/about.php](http://www.usdoj.gov/crt/voting/sec_5/about.php).

***Q: After Senate Bill 9, are we required to conduct background checks on citizens who come on campus to vote?***

Remember that Senate Bill 9, passed in 2007 during the 80th Legislative Session, permits criminal background checks to be conducted on district employees and certain campus visitors.

Currently, no statutes specifically address conducting background checks on citizens who come on district campuses solely for the purpose of voting. Please remember that, in order to vote, a person is required to be a registered voter and present identification at the polling place. If a person comes on district property to vote, election workers will check the qualifications and identification of these persons.

We generally recommend that school districts leave these matters to the election workers, not school employees. School campuses concerned about safety while the campus is being used as a polling site may want to address the concern by strategically choosing the polling location. Logistically, a polling place requires a large, open, handicap-accessible space, so an ideal location would be an area on the outskirts of a campus away from students (e.g., auditorium, gym, or foyer) or at an administrative building. Ideally the site will be partitioned or closed off from the rest of campus so that voters will not be able to pass through the polling place and into the rest of the building without clearance through the district's visitor screening process.

If a voter wants to stay on campus or enter another area of campus, district employees can then run a background check as they would for any other campus visitor. The Secretary of State's office has the authority to approve a form to be posted in polling places defining the boundaries of the polling place and notifying voters that they will be subject to security measures if they proceed past the polling place. Senate Bill 9 and local policy will allow districts to obtain criminal history information of campus visitors by requiring a visitor to show his or her driver's license or using an electronic database to determine if the person is a sex offender.

***Q: Are we required to conduct background checks on election judges and clerks?***



The answer depends on whether the election officials and workers are involved in pre-election programming, testing, and preparing of electronic voting systems.

Election workers involved with electronic voting systems: A new requirement for conducting criminal background checks on certain election officials and workers was passed by the 81st Texas Legislature in House Bill 2524. Effective September 1, 2009, the general custodian of election records must conduct criminal background checks on all election officials, staff and temporary workers who are engaged in pre-election programming, testing and preparing of the voting system equipment for Early Voting and Election Day. This includes temporary workers hired to test, store, or service voting equipment.

If a school district contracts with a vendor (including a county or city) to program, test, or perform maintenance on the voting equipment prior to an election, the vendor can be required to certify that a criminal background check has been performed on the necessary employees. The Secretary of State's office recommends that part of the agreement or contract with the vendor include wording that the vendor will perform the check, with the following suggested language:

\_\_\_\_\_ certifies that a criminal background check on all employees, including temporary employees, that may program, test, perform maintenance, transport equipment, or perform technical support on the voting system equipment for (name of entity) has been performed. \_\_\_\_\_ has determined there are no findings that would prevent the employees from performing their assigned duties.

For further information on how to comply with this new law, please see the Secretary of State's Election Advisory 2009-12 (December 7, 2009) at:  
[www.sos.state.tx.us/elections/laws/advisory2009-14.shtml](http://www.sos.state.tx.us/elections/laws/advisory2009-14.shtml).

Additionally, the Secretary of State's office has released answers to frequently asked questions regarding the new law: [www.sos.state.tx.us/elections/laws/qa2009-14.shtml](http://www.sos.state.tx.us/elections/laws/qa2009-14.shtml).

Poll workers: The new criminal background check requirement from House Bill 2524 does not require checks on poll workers (election judges and clerks) assigned to work election voting centers or precincts.

Board presidents received related correspondence via facsimile.

*Although this memo is intended to answer several of the most frequently asked questions regarding trustee elections, it is not exhaustive in addressing all possible issues that might arise. It is important for you to consult with your own attorneys in order to apply these legal principles to specific fact situations. If you have additional questions, call TASB Legal Services at 800-580-5345 or the Elections Division of the Secretary of State's Office at 800-252-8683.*

*Prepared by Allyson Collins, Senior Attorney, February 2010*