



**Texas Association of School Boards**

Legal Services

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*Serving Texas Schools Since 1949*

## Things to Know about Postponing the May 2, 2020 Election

*Published online in [TASB School Law eSource](#)*

On March 18, 2020, Governor Abbott issued a [proclamation](#) authorizing political subdivisions, including school districts, holding elections on May 2, 2020, to postpone those elections to the November 3, 2020 uniform election date. The Secretary of State Elections Division issued [Election Advisory 2020-12](#) to provide guidance (the guidance) to political subdivisions in postponing their elections. On March 19 and again on March 24, the Elections Division emailed additional guidance, both of which are attached. Carefully review this guidance.

Based on questions TASB Legal Services has received, the list below contains things school districts should know about the proclamation and associated guidance:

- Postponement is an **option** for school districts, but **board action is required** to exercise the option. The guidance sets out what should be included in the order postponing the election. Consult your district's attorney for assistance in drafting the order.
- If you are holding a bond election, **consult bond counsel** for assistance in drafting the postponement order for your bond election.
- While there is no deadline for a decision set out in the proclamation or in the guidance, the decision should be made as soon as possible. See the attached March 24 additional guidance for more information. Work with your district's attorney to ensure compliance with the Texas Open Meetings Act.
- Districts should consult county election officials and joint election partners for assistance in evaluating the costs and logistical issues associated with postponement as opposed to not postponing. For example, if an election proceeds in May, it may be difficult to find polling places and election workers. In addition, the current circumstances may impact voter turnout.
- The decision to postpone will **not** affect a district's election schedule in future years.
- For information on contracting issues, see the attached March 19 additional guidance.
- If a district cancelled all or part of its election, candidates declared elected may be sworn in after May 2, 2020. See the attached March 19 additional guidance for more information.
- Above all, districts should consider public health and safety in making the decision. See the attached March 24 additional guidance for information regarding "shelter-in-place" orders.

Additional questions should be directed to the Elections Division or TASB Legal Services. If you email a question, include a current phone number at which you can be reached.

This document is continually updated, and references to online resources are hyperlinked, at [tasb.org/services/legal-services/tasb-school-law-esource/governance/documents/things-to-know-about-postponing-may-2-2020-election.pdf](https://tasb.org/services/legal-services/tasb-school-law-esource/governance/documents/things-to-know-about-postponing-may-2-2020-election.pdf). For more information on this and other school law topics, visit TASB School Law eSource at [schoolawesource.tasb.org](https://schoolawesource.tasb.org).

*This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.*

## March 19, 2020 Guidance

**From:** Elections Internet <Elections@sos.texas.gov>

**Sent:** Thursday, March 19, 2020 4:13 PM

**To:** Elections Internet <Elections@sos.texas.gov>

**Subject:** MASS EMAIL ADVISORY - (CC/EA/VR -700) - Questions regarding Advisory 2020-12- Actions for May 2, 2020 Uniform Election (COVID-19)

**Sensitivity:** Personal

Dear Election Officials:

We've received a number of questions related to the Governor's proclamation and Advisory 2020-12 (see email below). We appreciate the questions and would like to provide a few clarifications.

1. **This is NOT a permanent move.** The Governor's proclamation has the effect of postponing an election, but it is not a permanent move. The result is that your current office holders will be holdovers until the next election occurs. Your newly elected office holders in November will have a shorter term. Their next election will return back to the May date.
2. **Elections that have been properly cancelled:** If your entity cancelled their May 2, 2020 election, your new officers will still be able to take office after the May 2, 2020 election date. If you cancelled part of your election, you will still let the candidates that were declared elected be sworn in and the remainder of your election will occur in November if you choose to postpone your May election. For those officers that took the oath of office after the May 2, 2020 date, you would not have to place their names in the "unopposed candidates declared elected" box on your ballot in November as these candidates will have already taken office.
3. **Multi-County Territories:** If your entity is in more than one county, you will be required to use each county's polling places for the November 2020 election. You will also be required to share at least one early voting location in accordance with Section 85.010 of the Texas Election Code.
4. **Countywide Polling Places (Vote Centers):** If your county utilizes countywide polling places for November 2020, then you will be required to use all polling locations within each county that contains territory for your entity.
5. **Contracting Issues:** If a contract hasn't been executed between the county elections officer and the local political subdivision, the county does NOT have an obligation to contract in May 2020. If a contract has been executed, then both parties would need to consult with their attorney regarding options for modifying the terms of the contract. Additionally, when you contract with your county in November, this allows you to use a joint ballot, shared election workers, and shared voting system equipment. Political subdivisions will most likely not be required to obtain their own separate voting system equipment or e-pollbooks.

Thank you all for the very thoughtful questions. We appreciate your patience in allowing us time to work through some of your questions. Please let us know if there's anything else you need from us.

Thank you,

**Christina Worrell Adkins**

Legal Director – Elections Division

Office of the Texas Secretary of State

1019 Brazos Street | Rudder Building, 2nd Floor | Austin, Texas 78701

1.800.252.VOTE (8683)

[elections@sos.texas.gov](mailto:elections@sos.texas.gov) | [www.sos.texas.gov](http://www.sos.texas.gov)

**For Voter Related Information, please visit:**



*The information contained in this email is intended to provide advice and assistance in election matters per §31.004 of the Texas Election Code. It is not intended to serve as a legal opinion for any matter. Please review the law yourself, and consult with an attorney when your legal rights are involved.*

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# March 24, 2020 Guidance

**From:** [Elections Internet](#)  
**To:** [Elections Internet](#)  
**Subject:** MASS EMAIL (CSO -3492 ) - March 24, 2020 Update to COVID-19 Election Procedures  
**Date:** Tuesday, March 24, 2020 1:58:14 PM  
**Attachments:** [image001.png](#)  
**Sensitivity:** Personal

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Dear Election Officials:

We've continued to receive questions regarding the recent proclamations issued by the Governor related to both the May 2, 2020 uniform election date and the postponement of the primary runoff election to July 14, 2020. Below are some issues we'd like to address:

1. **Authorized Postponement of May 2, 2020 Election:** On March 18, 2020, the Governor issued a [proclamation](#) that authorized local political subdivisions to postpone their elections scheduled on May 2, 2020 to November 3, 2020. There are a few key issues that we wanted to address:
  - a. **Make the decision as quickly as possible while complying with open meetings laws:** While the Governor's proclamation doesn't prescribe a deadline for a local entity to make a decision on postponement, we STRONGLY advise that the decision be made this week. Election equipment must be programmed and tested and mail ballots must be sent immediately if the election will be taking place May 2, 2020. Delaying the decision could subject your election to a contest if mail ballots are sent out significantly later than the law requires.
  - b. **Shelter-in-Place Orders:** As many local political subdivisions are enacting shelter-in-place orders, this has a significant impact on elections. If your entity or your county has issued such an order, you need to move your election; otherwise you are putting your election at risk of an election contest due to voters not being able to exercise their right to vote. Additionally, some political subdivisions have enacted fines for violating their local ordinances; if your order does so and there is no specific exemption for voting or conducting elections, you put your voters at risk of criminal penalty for leaving their homes to vote.
  - c. **Article XI, Section 11, Texas Constitution:** If your city is holding a special election to fill a vacancy due to the requirements prescribed in Article XI, Section 11 of the Texas Constitution, the Governor's proclamation does NOT apply to your election. You must hold your election within 120 days of the vacancy occurring. The Governor's proclamation does not suspend this requirement in the Texas Constitution. However, given that many political subdivisions are enacting shelter-in-place orders, it is imperative that some action be taken to move your election dates. If you opt to move your election in response to this public health crisis, and to do so safely would result in ordering the election to occur outside of the constitutionally prescribed 120 day period, you should consult with your attorney regarding Attorney General Opinion No. [JC-0318](#), as you may be required to hold your election on the November 2020 uniform election date.
  - d. **Certain Types of Special Elections:** We have heard from a number of entities that have special elections resulting from the expiration of a sales tax and that the

November 3, 2020 uniform election date occurs after their expiration date. For these elections, we recommend consulting with the Comptroller's office, as they may be able to provide certain assistance with expiring taxes. Additionally, if you need to have an election prior to November 3, 2020, you may have to seek permission from the Governor in accordance with Section 41.0011 of the Texas Election Code to hold your election on a nonuniform election date.

- e. **Options Other Than November 3, 2020:** The Governor's proclamation only authorized a move to November 3, 2020. There is no authority for a local political subdivision, on its own order, to move an election to any other date. If an entity would like to move to a date other than November 3, 2020, there are likely only two ways to do so:
  - i. **Emergency Election under Section 41.0011(b) of the Texas Election Code:** A local political subdivision can request permission from the Governor to allow the political subdivision to order a special election on a nonuniform election date. Please note that this only applies to special elections and not general elections
  - ii. **Court Order for Nonuniform Election Date:** As there are no other options outside of the Governor's authorization to postpone the election and the option under Section 41.0011 of the Texas Election Code, a political subdivision that wishes to hold its election on a date other than the November 3, 2020 could try to seek court order for an alternative date.

Thank you all for your continued questions and all of your hard work. Please let us know if you have any additional questions or concerns.

**Christina Worrell Adkins**

Legal Director – Elections Division

Office of the Texas Secretary of State

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