



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 19, 2019

To All Bond Counsel:

RE: Applicability of Certain Election Law Changes to Bond Elections to Be Held on November 5, 2019 and Other Matters

This letter addresses whether certain election law changes passed by the 86th Legislature apply to bond elections to be held on November 5, 2019. Its scope is limited to election law changes regarding matters reviewed by this office as part of the bond proceedings submitted by issuers after the election. Together with the analysis set forth below, please review the attached exhibit, which identifies the specific bill provisions addressed by this letter and their applicability to bond elections to be held on November 5, 2019.

Bond counsel have asked whether certain election law changes reflected in the attached exhibit apply to the upcoming bond election date of November 5, 2019, in light of the different language used regarding the effective date. Some bills contain an express provision that the changes apply to elections *called or ordered* on or after September 1, 2019. Other bills merely state an effective date of September 1, 2019. At least one bill provides that the changes made govern elections *held* on or after September 1, 2019.

In conferring with the Elections Division of the Secretary of State's Office, we believe the operative factor is whether the issuer must take or determine the election law action prior to the effective date of the bill. For example, if state law requires the governing body of an issuer to take the particular action by adopting its election order – such as determining the bond proposition or ballot language – before the effective date of the particular bill, those election law changes should not be applicable to the upcoming November 5, 2019 bond election because the governing body must call the election by August 19, 2019. *See* Tex. Election Code §3.005; <https://www.sos.texas.gov/elections/voter/2019-important-election-dates.shtml>.

However, for bills not expressly stating that the changes apply only to elections called or ordered on or after September 1, 2019, if the method of providing notice of the election will cause such notice to occur on or after the effective date of the Act, those provisions should apply to the November 5, 2019 bond election. In other words, the issuer determines most of *the content* of the election information provided in the notice at the time it adopts its election order; however, the act of *providing* the election notice occurs after the effective date.

We recognize that the governing body directs and authorizes the providing of the notice of election in its order calling the election. Therefore, the governing body may want to additionally authorize its officers to provide any other manner of notice as authorized by law.

Moreover, if a change in law directs an entity separate from the issuer to post notice of the election in lieu of the issuer under certain circumstances, such as House Bill 933, the governing body may choose to additionally authorize its officers to post a copy of the notice on the bulletin board as permitted in section 1 of House Bill 933.

We have provided this letter pursuant to our authority under section 402.044 of the Government Code, which requires that we advise the proper legal authorities in regard to the issuance of bonds that by law require the attorney general's approval. However, please note that this letter does not dictate how a court might rule should an election contest be filed regarding the applicability of certain provisions to the November 5, 2019 bond election.

We have also received questions regarding changes in law that govern bond elections subsequent to the November 5, 2019 bond election, such as the changes required of school districts in providing separate bond propositions for certain purposes specified in Senate Bill 30. We intend to address such matters in a future All Bond Counsel Letter. We ask that you provide your questions and legal analysis about such matters in writing to ensure we consider all pertinent legal issues.

Sincerely,



Leslie Brock
Assistant Attorney General
Chief, Public Finance Division

Exhibit A

Bond Election/Notice Changes Enacted by the 86th Legislature Addressed by this All Bond Counsel Letter

Enacted Bill	Applicable Section of Bill Regarding Bond Election Requirement Addressed by this Letter	Applicable Section(s) of Bill Regarding Effective Date.	Applicable to November 5, 2019 Bond Election?
HB 3	The portion of <u>Section 1.008</u> of bill that amends section 45.003 of Education Code to require bond ballot to include following statement: "THIS IS A PROPERTY TAX INCREASE."	Section 6.001(a). September 1, 2019.	No.
HB 440	<u>Section 2</u> amends 4.003(f) of Election Code to require any sample ballot prepared for election to be posted during 21 days before election on political subdivision's internet website, if the political subdivision maintains an internet website	Section 6. September 1, 2019	Yes.
HB 440	The portion of <u>section 3</u> adding section 1253.002 to Government Code prohibiting political subdivisions from issuing general obligation bonds with a weighted average maturity of the issue of bonds exceeding 120 percent of the reasonably expected weighted average economic life of the improvements and personal property financed with the issue of bonds.	Section 5. Section 1253.002, Gov't Code, as added by act applies only to general obligation bonds authorized to be issued at an election held on or after the effective date of September 1, 2019.	Yes.
HB 477	<u>Section 1</u> amends section 3.009 of Election Code regarding contents of debt obligation order. <u>Section 2</u> amends section 52.072 of Election Code regarding ballot propositions. <u>Sections 3 and 4</u> amend chapter 1251 of Government Code and add new subchapter B imposing certain debt obligation election order and ballot requirements for debt obligations by a political subdivision.	Sections 7(a) and 8. Changes in law made by act to chapter 1251 apply only to a ballot for an election ordered on or after the effective date of September 1, 2019.	No.

Enacted Bill	Applicable Section of Bill Regarding Bond Election Requirement Addressed by this Letter	Applicable Section(s) of Bill Regarding Effective Date.	Applicable to November 5, 2019 Bond Election?
HB 933	<p><u>Section 1</u> amends 4.003(b) of Election Code to require counties receiving notices of election from political subdivisions under section 4.008(a) of Election Code to post notice of the election, including each polling place location, on the county's internet website, if the county maintains a website; if the county does not maintain a website, then the authority responsible for giving the notice of the election shall post a copy of the notice of the election on the bulletin board used for posting notices of the meetings of the governing body; Even if county does maintain website, section 4.003(b), as amended, provides that the authority responsible for giving notice of an election may post a copy of the notice on the bulletin board.</p> <p><u>Section 2</u> amends 4.008(a) of Election Code to require political subdivision giving notice of election to county to include location of each polling place and to require county to post the notice with location of each polling place on county's internet website if it maintains a website.</p>	Section 17. September 1, 2019.	Yes.
HB 1048	<u>Section 1</u> amends 85.010 of the Election Code regarding the use of a county early voting polling place by a political subdivision.	Section 2. Effective Immediately	Yes.
SB 30	<p><u>Section 1</u> amends section 45.003 of Education Code to require certain school purposes be stated in separate ballot propositions.</p> <p><u>Section 2</u> amends section 52.072 of Election Code regarding ballot propositions.</p> <p><u>Sections 3 and 4</u> amend chapter 1251 of Government Code and add new subchapter B imposing certain ballot requirements for debt obligations by a political subdivision.</p>	Sections 6 and 7. Change in law made by act applies only to an election ordered on or after effective date of September 1, 2019.	No.