

The State of Texas




Elections Division
P.O. Box 12060
Austin, Texas 78711-2060
www.sos.state.tx.us

Phone: 512-463-5650
Fax: 512-475-2811
Dial 7-1-1 For Relay Services
(800) 252-VOTE (8683)

Ruth R. Hughs
Secretary of State

ELECTION ADVISORY **No. 2019-19**

TO: Election Officials

FROM: Keith Ingram, Director of Elections 

DATE: October 4, 2019

RE: NEW LAW: Web Posting Requirements for Political Subdivisions - House Bill 305, House Bill 440, Senate Bill 902, House Bill 933, House Bill 1850, and House Bill 2640.

As you prepare for the upcoming election on November 5, 2019 we wish to advise you of some changes in the law that passed during the 86th Regular Session (2019) regarding web posting requirements for political subdivisions. Please note, the Secretary of State's office is currently developing processes to allow for reporting of certain information to our office electronically. We will be conducting trainings for county officials and providing further information once our system updates are available.

HOUSE BILL 305 (Effective Date of September 1, 2019)

HB 305 amended Chapter 2051 of the Government Code by adding Subchapter E. The bill provides that a political subdivision with the authority to impose a tax, that maintained a publicly accessible Internet website at any time on or after January 1, 2019, must post the following items on the entity's internet website for one year continuously before the election day for the office:

1. The political subdivision's contact information, including a mailing address, telephone number, and e-mail address;
2. Each elected officer of the political subdivision;
3. The date and location of the next election for officers of the political subdivision;
4. The requirements and deadline for filing for candidacy of each elected office of the political subdivision which shall be continuously posted or at least one year before the election day for the office;
5. Each notice of a meeting of the political subdivision's governing body under Subchapter C, Chapter 551 of the Government Code; and
6. Each record of a meeting of the political subdivision's governing body under Section 551.021 of the Government Code.

Our office recommends consulting with your political subdivision's local counsel regarding the particular posting requirements under Subdivisions (5) and (6) referenced above. Please note, the requirements for posting notice of meetings and record of meetings of the political subdivision's governing body does not apply to:

1. A county with a population of less than 10,000;
2. A municipality with a population of less than 5,000 located in a county with a population of less than 25,000; or
3. A school district with a population of less than 5,000 in the district's boundaries and located in a county with a population of less than 25,000.

Meaning of "location." Your jurisdiction already must post polling places on your website (if you have one) as part of standard election notice requirements. See the relevant entries in our calendars. Sections 85.006, 85.007. The political subdivision should also provide the address of the main administrative office (i.e. the location a person would expect to file candidate applications).

Meaning of "requirements" for office. At a minimum, a statement of requirements should include form, content, and procedure; for example, the type of application form needed, if there is a fee or petition in lieu of filing fee, and so on. However, we think the likely legislative intent is to also post the qualifications for office; for example, how long the candidate must be a resident, whether the candidate must be a registered voter, and so on. The Ethics Commission has advised us that this posting need not refer to Ethics Commission filing requirements.

Meaning of "next election." Although the likely meaning is the next general election (as the requirement is about "officers," a year in advance), the best practice would be to also post any such notice of a special election for an officer as soon as possible after ordering the special election.

Please note, our office created a form that your entity may use as a sample when posting the online information required by HB 305.

HOUSE BILL 440 (Effective Date of September 1, 2019)

Method of Giving Notice: Amended Section 4.003 of the Election Code. Requires that a political subdivision that maintains a website must include a sample ballot for their general obligation bond election and that it be posted on the website for the 21 days before the election, along with the election order, notice of the election, and contents of the proposition. Please note, House Bill 477 made a number of changes to the requirements of a debt obligation order, ballot language, and notice requirements.

SENATE BILL 902: (Effective Date of September 1, 2019)

Election Day Vote Total for Certain Elections: Added Section 66.0021 to the Texas Election Code. This section requires the general custodian of election records for a primary election or general election for state and county officers to maintain a list that states the total number of votes cast in each precinct on election day. This list must be available for public inspection not later than

the day after election day. This information must be submitted to the Secretary of State and posted in a downloadable format on the Secretary of State's internet website.

Early Voting Rosters: Amended Section 87.121 of the Code. Requires that information on the roster for a person who votes an early voting ballot by personal appearance must be made available for public inspection not later than 11 a.m. on the day after the date the information is entered on the roster. Information on the roster for a person who votes an early voting ballot by mail must be made available for public inspection not later than 11 a.m. on the day following the day the early voting clerk receives a ballot voted by mail. Please note, each roster must be updated daily. In a primary election or the general election for state and county officers, the county elections officer must submit to the Secretary of State for posting on the Secretary of State's internet website, in a downloadable format, certain information from the early voting rosters described by Sections 87.121(g) and (h) of the Code.

As noted previously in this advisory, our office is currently developing processes to allow for reporting of this information to our office electronically. We will be providing information and conducting trainings for county officials once our system updates are available regarding SB 902 posting requirements.

HOUSE BILL 933 (Effective Date of September 1, 2019)

HB 933 requires the posting of certain election information on the county election officer's internet website, if the county maintains a website, as well as the Secretary of State's internet website. The county's requirements for internet postings and the specific sections of the Texas Election Code affected are addressed below:

Notice of Election: Amended Sections 4.003 and 4.008 of the Code. Provides that not later than the 21st day before election day, counties must post a notice of election given by the county or provided to the county by a political subdivision located in the county, which must include the location of each polling place. Please note, the information regarding the polling place includes the name of the building in which the polling place is located, if any, the street address and zip code, and the days and hours of voting at each location.

Public County Training Program: Amended Section 32.114 of the Code. The bill requires the county election officer to post notice of the time and place of each session of public training for election judges and clerks for elections ordered by the Governor or a county authority. The posting must include a statement that the program is open to the public.

County Website: Added Section 31.125 to the Code. It requires the county election officer to post on the county's internet website contact information for the county election office including: (1) the street address and zip code; (2) the mailing address if different from the address provided in Subdivision (1); (3) telephone number; (4) facsimile number; and (5) e-mail address.

For each polling place located in the county, the county must post on the county's website: (1) the name of the building in which the polling place is located, if any; (2) the street address and zip code; and (3) the days and hours of voting at each location.

Public Notice of Boundary Changes: Amended Section 42.035 of the Code. It requires the commissioners court to publish notice of an order changing a county election precinct on the county's website beginning with the first week following the week in which the order is adopted. The notice must be published for three consecutive weeks.

Retrieving Erroneously Placed Election Records: Amended Section 66.059 of the Code. Provides that if the political subdivision holding the election is not a county or is a county that does not maintain an Internet website, the district judge must post a notice of the date, hour, and place for opening the ballot box on the bulletin board used for posting notices of the meetings of the governing body of the political subdivision served by the general custodian of election records. The notice must remain posted continuously for the 24 hours immediately preceding the hour set for opening the box.

If the political subdivision holding the election is a county that maintains an Internet website, the district judge shall post a notice of the date, hour, and place for opening the box on the county's Internet website. The notice must remain posted continuously for the 24 hours preceding the hour set for opening the box.

Public Notice of Time for Voting: Amended Section 85.007 of the Code. Requires the early voting clerk to post notice for each election stating the dates and hours that voting on a Saturday or Sunday is ordered to be conducted under Section 85.006(b) of the Code. The notice must be posted continuously for at least 72 hours immediately preceding the first hour that the voting to which the notice pertains will be conducted.

Public Notice of Branch Voting Schedule: Amended Section 85.067 of the Code. If the early voting clerk is the county election officer, then the early voting clerk shall post for each election a schedule stating the location of each permanent and temporary branch polling place, the election precincts served by each branch polling place and the dates and hours that temporary branch voting will be conducted. The schedule must be posted continuously for a period beginning not later than the fifth day before the first day of the period for early voting by personal appearance and ending on the last day of that period.

Signature Verification Committee: Amended Section 87.027 of the Code. Provides that postings required by Section 87.027 of the Code must be made on the county's website in an election for which the county election board is established or a primary election. Certain items related to the posting of information regarding the Signature Verification Committee under Section 87.027 of the Code include: (1) the copy of order calling for the appointment of the Signature Verification Committee; (2) the early voting clerk's notice of names and addresses of members of the committee; and (3) notice of delivery of ballots to the signature verification committee.

Public Test of Logic and Accuracy: Amended Section 129.023 of the Code. Provides that the public notice of the logic and accuracy test must be posted on the county's website at least 48 hours before the test begins.

The Secretary of State's requirements for internet postings and the specific sections of the Texas Election Code affected by HB 933 are addressed below:

Voting Information on Secretary of State's Website: Added Section 31.016 to the Election Code. Provides that the Secretary of State must post on its website contact information for each county election office including the street address and zip code, mailing address, if different, telephone number, fax number and email address. Section 31.016 of the Code also provides that the Secretary of State must post election day and early voting polling place locations for county and local elections including the polling place building name, if any, street address and zip code, and days and hours of voting under each location.

Time for Canvass by Governor: Amended Section 67.012 of the Code to provide that the Secretary of State must post on its website the notice for the Governor's statewide canvass for elections containing a statewide office, statewide measure, district office, or president or vice-president. The notice must be posted at least 72 hours before the canvass is conducted.

Petition Supplementing Precinct Convention Lists: Amended Section 181.006 of the Code. Provides that the Secretary of State must post on its website the notice of the submission of a petition supplementing a precinct convention list for the creation of a new party.

Time of Canvass: Amended Section 203.012 of the Code. Provides that the Secretary of State must post on its website notice of the Governor's canvass of an election to fill a legislative vacancy. The notice must include the date, hour, and place of the canvass at least 24 hours before the canvass is conducted.

Drawing for Ballot Order: Amended Section 274.002 of the Code. Provides that the Secretary of State must post on its website notice of the ballot drawing for constitutional amendment elections. The notice must remain posted continuously for 72 hours immediately preceding the scheduled time of the drawing.

HOUSE BILL 1850 (Effective September 1, 2019)

Branch Daily Register and Early Voting Rosters: Amended Sections 85.072 and 87.121 of the Election Code. Information on the early voting roster for a person who votes an early voting ballot by personal appearance must be made available for public inspection no later than 11:00 a.m. on the day after the date the information is entered on the roster. Information on the roster for a person who votes an early voting ballot by mail must be made available for public inspection not later than 11:00 a.m. on the day following the day the early voting clerk receives the ballot voted by mail. Please note, each roster must be updated daily.

If the county clerk/elections administrator is the early voting clerk, the information above must be posted on the county's website. If the county does not maintain a website, then the roster must be made available on the bulletin board used for posting notice of meetings of the commissioners court. Information regarding the early voting roster must be made available for all elections, including the constitutional amendment election because the bill took effect September 1, 2019. The Secretary of State must also make these rosters available to the public on our website. Our office is currently developing processes to allow for reporting of this information to our office electronically. We will be providing information and conducting trainings for county officials once our system updates are available regarding HB 1850.

For an election held by a political subdivision in which the county election officer is not the early voting clerk, the information on the roster must be made available on the internet website of the authority ordering the election or, if the authority ordering the election does not maintain a website, on the bulletin board used for posting notice of meetings of the governing body of the authority.

HOUSE BILL 2640 (Effective September 1, 2019)

Reporting Precinct Results to Secretary of State: Amended Section 67.017 of the Election Code. Requires all precinct by precinct reporting that is submitted to the Secretary of State to now include district, county, and precinct level offices. The bill clarifies that precinct by precinct reporting is submitted by the county election officers which eliminates the submission of precinct by precinct reporting for local political subdivisions. The county elections officer must deliver the report to the Secretary of State not later than the 30th day after election day in an electronic format prescribed by our office.

Filling Vacancy in County Executive Committee: Amended Section 171.024 of the Code. Provides that the county chair shall submit the replacement member's name to the Secretary of State for posting on the Secretary of State's website. The Secretary of State's office must create a system for the chair to submit such information to our office.

Withdrawal or Declaration of Ineligibility of Candidate that Results in Extended Filing Period: Amended Section 172.055 of the Code. In a primary election, if the deadline for filing applications is extended, notice of the extended filing deadline must be given as provided by Section 172.055 of the Code. Not later than 24 hours after a candidate withdraws or is declared ineligible or after the authority preparing the notice learns of a candidate's death, the filing authority must post certain notices. The filing authority must now also post the notice on the authority's internet website, if one is maintained, and send a copy of the notice to the Secretary of State to be posted on the Secretary of State's internet website for a candidate for an office filled by voters of more than one county, or the county clerk/elections administrator for an office filled by voters of a single county.

Notice of Election for Primary Elections: Amended Section 172.1112 of the Code. Provides that the county clerk/elections administrator shall post a notice of the election and notice of consolidated precincts in the manner prescribed under 4.003. Additionally, the notice of election must be posted on the county's internet website, if the county maintains a website.

Unofficial Tabulation of Precinct Results: Amended Section 172.113 of the Code. Provides that the Secretary of State may require the posting of unofficial tabulation of precinct results on the Secretary of State's website.

Canvass of Primary Election: Amended Section 172.116 of the Code. Provides that the county clerk/elections administrator must prepare and electronically submit to the Secretary of State a report of the results of the canvass. We will be providing information and conducting trainings for County Chairs regarding the canvass process and how to complete the canvass via the Secretary of State's website.

Listing of Candidates on Secretary of State’s Website: Amended Section 172.117 of the Code. This section now provides for two additional candidate statuses: “accepted” and “rejected.” The county chair is required to update the notations after each general primary or primary runoff election unless the Secretary of State’s internet website automatically updates the notations based on election returns. Section 172.121 of the Code provides that the Secretary of State shall update the status of each candidate as appropriate for statewide and district office who is to be a candidate in the runoff.

Certification of Candidates on Secretary of State’s Website: Amended Section 172.122 of the Code. Provides that not later than the 20th day after the date the state canvass is completed, the state chair shall submit the certification of candidates to the Secretary of State for posting on the Secretary of State’s internet website. The Secretary of State must create a system for the state chair to submit the information to the SOS for posting on the website.

Presidential Nominations: Amended Section 191.003 of the Code. Provides that the state chair of each political party holding a presidential primary election must submit the candidate information to the Secretary of State for posting on the Secretary of State’s internet website and certify the name of each presidential candidate who qualifies for a place on the presidential primary election ballot in the same manner as a candidate filing for statewide, district, and county offices not later than the ninth day after the date of the regular filing deadline for the general primary election.

Posting of Party Rules: Amended Section 191.008 of the Code. Provides that for a political party to be entitled to have its nominees for president and vice-president placed on the general election ballot, the rules related to the presidential primary must be posted on the party’s internet website and filed with the Secretary of State not later than January 5th of the presidential election year.

Please contact us at 1-800-252-VOTE (8683) or at elections@sos.texas.gov if you have any questions.

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