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## HB - 1 FAQ

### FREQUENTLY ASKED QUESTIONS REGARDING HOUSE BILL 1 (2006) AND JOINT ELECTIONS FOR SCHOOL DISTRICTS

We have received many questions about the election-related effects of House Bill 1 (2006), especially as to the new joint election requirements. The joint election section provides as follows:

SECTION 11.01. Subchapter C, Chapter 11, Education Code, is amended by adding Section 11.058 to read as follows:

#### Sec. 11.0581. JOINT ELECTIONS REQUIRED.

- a. An election for trustees of an independent school district shall be held on the same date as:
  - 1. the election for the members of the governing body of a municipality located in the school district; or
  - 2. the general election for state and county officers.
- b. Elections held on the same date as provided by Subsection (a) shall be held as a joint election under Chapter 271, Election Code.
- c. The voters of a joint election under this section shall be served by common polling places consistent with Section 271.003(b), Election Code.
- d. The board of trustees of an independent school district changing an election date to comply with this section shall adjust the terms of office of its members to conform to the new election date

#### 1. Our school district's election schedule is a result of litigation. Should we change this schedule?

You should not depart from a court-ordered plan or other plan that is a result of litigation, without first reviewing the situation with your local legal counsel. If you are currently electing officers under a court-ordered or court-approved plan, you should not depart from this plan without further legal review.

#### 2. The school district elects annually using three-year terms. Do we have to change to four-year terms if we cannot find a city to have a joint election with in May?

No Our advice is that you should NOT make permanent changes from three-year to four-year terms, or from four-year to three-year terms, for the following reasons.

In Senate Bill 1 (1995), Education Code Section 11.059(e) provided that a "district in which trustees serve three-year or four-year terms as of January 1, 1995, continues to elect trustees under that system." The subsection then required school districts that had two-year or six-year terms to adopt three-year or four-year terms by resolution, and provided: "After adoption of the resolution, the board may not alter the length of the terms served by district

trustees." Although the subsection expired August 31, 2001, we think the legislative intent was that after adoption of the choice, the board could not alter the length of terms thereafter. The new law addresses adjusting terms; however, reading the two laws together, we think this is to make allowances for the necessary adjustment of months to adjust the term to the new election date.

In sum, we think that a school district can and should continue to use three-year terms, with annual elections, even if they must use the November uniform election date for lack of a suitable municipality. This would mean that in even-numbered years, a three-year term school district is required to have joint elections with the county. We are making this interpretation in order to harmonize the new joint election requirement as much as possible with the Legislature's intent to preserve three-year terms.

**3. What if a school district elects every two years (biennial elections) using four-year terms and cannot find a city using the May date?**

A four-year term school district that cannot use the May date (and is not under a litigated schedule) would have two options. First (and most likely), they could coordinate their biennial elections with the county in November of even-numbered years. In the alternative, a four-year term school district could use the November dates in odd-numbered years if they can find a suitable municipality using that date.

**4. What if the school district wants to use the May date, but has difficulty finding municipal elections within their boundaries? If there is even one city, is that enough? Is a city partially within the boundaries of the school district enough for a joint election partner? Must they have agreements with additional cities or other entities? What if the city cancels their election? What if the city uses the May date, but doesn't completely "match" the school district schedule?**

Under House Bill 1 (2006), a school district must have joint polling places with at least one incorporated city at a minimum (or choose the county option discussed above). Once this minimum requirement is met, anything else the school district wants to do with any other political subdivisions with overlapping territory is based on agreements with other governing bodies pursuant to Chapter 271, Election Code. Currently, Chapter 271 of the Texas Election Code authorizes any two or more entities with overlapping territory to enter into a joint election agreement. Therefore, the school district may have a joint election agreement with a city that is only partially contained in the district.

We note that many smaller cities have cancelled their elections so often, for so many years, that not everyone in the community remembers their schedule. Whether the city cancels an election is not at issue. If the school district creates a joint election agreement, and the joint election partner entity cancels, the school board has done everything they can to comply.

If a city elects annually in May and the school district elects biennially, and both want to have joint polling places whenever their elections coincide on the May date, we think that is sufficient. Again, we do not think the intent of HB 1 was to compel a school district to change from three-year to four-year terms in order to match the county's schedule perfectly, or from four to three-year terms to match a city's schedule perfectly. (See discussion above for why we are advising school districts not to permanently change the length of their terms.)

**5. We are close to deciding which entity we want to partner with on the joint election agreement. Does that mean we must match polling places everywhere on election day? Who makes the decisions?**

Once you have made a joint election agreement, you will need to make decisions about the voters' convenience as part of the details of that agreement. Chapter 271 of the Election Code provides that you can share some election day polling places and not others. The purpose of a joint election is voter convenience, and this is not served if some voters must travel too far from their residence just to go to a joint polling place.

Generally, you should have joint polling places to the extent your territories overlap. Chapter 271 allows voters to go outside the usual boundaries in order to go to a joint polling place, as

long as the joint polling place can adequately and conveniently serve the voters. For more details on the polling place rules, see Chapter 271. For more about the ballots, see below.

As to the decision-making authority, for a May election, the governing bodies decide the polling places as part of the agreement, in accordance with Chapter 271

For a November election, previous law enacted in 2005 will mean that in most counties, the county will determine the polling places, and the other entities must use those polling places to the extent they have overlapping territory. House Bill 1209 (2005). As a practical matter, if you think the county is choosing a polling place when you know of a better alternative, we encourage you to inform the county in a timely manner.

#### **6. What about joint ballots? Voting systems? Election workers?**

We do not read the new law as a mandate for joint ballots. We read HB 1 to require joint polling places at a minimum; remaining election issues will be worked out by the parties to the joint election agreement. For example, you may have some joint polling places with both ballots available (joint ballots or separate ballots) and at the same time have some polling places where only the school district voters are served and not the city.

Note for 2006-2007: House Bill 1 also waives the requirement for accessible voting systems for school district trustee elections (unless a federal office is on the ballot), from the effective date of the Act through December 31, 2007 (pending preclearance). In the meantime, the cities and other entities do not have a waiver. Our advice to the cities (and any other entities) will be that they must continue to try to comply with the voting system requirements (i.e., at least one accessible voting system in each polling place) even if they have a joint election agreement with a school district. If a school district chooses not to use accessible voting systems during this time, then the two entities will need separate ballots.

Pursuant to chapter 271, Election Code, two or more entities in a joint election agreement can decide whether to have the same group of workers work both elections.

#### **7. Last year we "contracted" with the county when we had an election. Is that enough? What's the difference between contracting and having a joint election?**

As noted, a joint election agreement is adopted pursuant to chapter 271 of the Texas Election Code. Any two or more political subdivisions with overlapping territory conducting elections on the same day may enter into an agreement approved by their governing bodies. The contract provisions authorize a county to contract to provide election services pursuant to Sections 31.092-31.100, Election Code. A county may contract to provide services even if the county itself is not having an election. Additionally, there are leasing provisions through which you may lease equipment from another entity, but not other services.

We often see entities achieve the same results as a joint election agreement with the county through a combination of a joint election agreement, and an election services contract. What is important for purposes of HB 1 (2006) is to remember the intent of joint polling places, serving a minimum of two elections. For example, if a school district merely contracted with the county to provide equipment and other election services in May, but did not have joint polling places with a city, this would not be enough to comply with HB 1. For purposes of this FAQ, we are using the vocabulary of joint elections.

We hope this has been helpful to you.

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