

No. _____



UNITED INDEPENDENT SCHOOL DISTRICT AGENDA ACTION ITEM

TOPIC _____ Review of Legal Policies in TASB Update 110 _____

SUBMITTED BY: _____ Gloria S. Rendon _____ **OF:** _____ Associate Superintendent for Administration _____

APPROVED FOR TRANSMITTAL TO SCHOOL BOARD: _____

DATE ASSIGNED FOR BOARD CONSIDERATION: _____ May 16, 2018 _____

RECOMMENDATION:

Update 110 focuses on updating and reorganizing several policies in the BB series of the policy manual addressing board member eligibility and qualifications, elections and vacancies and removal from office. In addition to the BB series, Update 110 includes several other policies affected by legislation from the 85th Legislative Session that were not included in Update 109.

Policies Include:

- BBA (LEGAL)
- BBB (LEGAL)
- BBBA (LEGAL)
- BBBB (LEGAL)
- BBBC (LEGAL)
- BBBD (LEGAL)
- BBC(LEGAL)
- CCA (LEGAL)
- CPAB (LEGAL)

RATIONALE:

BUDGETARY INFORMATION

BOARD POLICY REFERENCE AND COMPLIANCE:

Note: If the district is subject to a court order or other binding legal determination, the district shall conduct its elections in accordance with that court order or determination, applicable law, and this policy. To the extent of any conflict, the court order or other legal determination shall prevail. [See BBB(LOCAL)]

Eligibility

To be eligible to be a candidate for, or elected or appointed to, the office of school board member, a person must:

1. Be a United States citizen.
2. Be 18 years of age or older on the first day of the term to be filled at the election or on the date of appointment, as applicable.
3. Have not been determined by a final judgment of a court exercising probate jurisdiction to be totally mentally incapacitated or partially mentally incapacitated without the right to vote.
4. Have not been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities.
5. Have resided continuously in the state for 12 months and in the territory from which the office is elected for six months immediately preceding the following date:
 - a. For an independent candidate, the date of the regular filing deadline for a candidate's application for a place on the ballot.
 - b. For a write-in candidate, the date of the election at which the candidate's name is written in.
 - c. For an appointee to an office, the date the appointment is made.
6. Be registered to vote in the territory from which the office is elected on the date described at item 5, above.

Election Code 1.020, 141.001(a); Gov't Code 601.009; Brown v. Patterson, 609 S.W.2d 287 (Tex. Civ. App.—Dallas 1980, no writ); Tex. Const. Art. XVI, Sec. 14

Qualified Voter

A person may not be elected trustee of an independent school district unless the person is a qualified voter. *Education Code 11.061(b)*

“Qualified voter” means a person who:

BOARD MEMBERS
ELIGIBILITY/QUALIFICATIONS

BBA
(LEGAL)

1. Is 18 years of age or older;
2. Is a United States citizen;
3. Has not been determined by a final judgment of a court exercising probate jurisdiction to be totally mentally incapacitated or partially mentally incapacitated without the right to vote;
4. Has not been finally convicted of a felony [see also Atty. Gen. Op. LO 96-114 (1996) (concluding that caveat at Election Code 11.002 does not mitigate blanket prohibition in Election Code 141.001, above at Eligibility)];
5. Is a resident of this state; and
6. Is a registered voter.

Election Code 1.020, 11.002

Residency

"Residence"
Defined

"Residence" means domicile, one's home and fixed place of habitation to which one intends to return after any temporary absence; one does not lose one's residence status by leaving to go to another place for temporary purposes only. A person does not acquire a residence in a place to which the person has come for temporary purposes only and without the intention of making that place the person's home. Residence shall be determined in accordance with the common-law rules, as enunciated by the courts of this state, except as otherwise provided by the Election Code. *Election Code 1.015*

Single-Member
Districts

A candidate for board member representing a single-member district must be a resident of the district the candidate seeks to represent. *Education Code 11.052(g)*

Note: The issue of whether a candidate has satisfied residency requirements should be judicially determined. *State v. Fischer, 769 S.W.2d 619 (Tex. App.—Corpus Christi 1989, writ dismissed w.o.j)*

Ineligibility

A person is ineligible to serve as a member of the board of a district if the person has been convicted of an offense under Penal Code 43.02(b) (regarding prostitution). *Education Code 11.066*

Note: If the district is subject to a court order or other binding legal determination, the district shall conduct its elections in accordance with that court order or determination, applicable law, and this policy. To the extent of any conflict, the court order or other legal determination shall prevail. [See BBB(LOCAL)]

Membership

The board consists of the number of members that the district had on September 1, 1995. *Education Code 11.051(b)*

Note: For information regarding increasing the number of board members from three or five to seven, see this policy code in the *TASB Policy Reference Manual* and *Education Code 11.051(c)*.

Terms

A trustee of a district serves a term of three or four years. Board policy must state the schedule on which specific terms expire. *Education Code 11.059(a), (d)*

**Uniform Election
Dates**

Each general or special election of board members shall be on one of the following dates:

1. The first Saturday in May.
2. The first Tuesday after the first Monday in November.

Election Code 41.001(a)

**Joint Elections
Required**

A district trustee election shall be held on the same date as:

1. The election for the members of the governing body of a municipality located in the district;
2. The general election for state and county officers, which is held on the first Tuesday after the first Monday in November in even-numbered years under *Election Code 41.002*;
3. The election for the members of the governing body of a hospital district, if the school district:
 - a. Is wholly or partly located in a county with a population of less than 40,000 that is adjacent to a county with a population of more than three million; and
 - b. Held its election for board members jointly with the election for the members of the governing body of the hospital district before May 2007; or

4. The election for the members of the governing board of a public junior college district in which the school district is wholly or partly located.

Elections held on the same date as provided above shall be held as a joint election under Election Code Chapter 271, and the voters shall be served by common polling places consistent with Election Code 271.003(b).

Education Code 11.0581(a)–(c)

A board may enter into an agreement with another political subdivision holding an election on the same day in all or part of the same county to hold the elections jointly. The terms of a joint election agreement must be stated in an order, resolution, or other official action adopted by the board. *Election Code 271.002*

Method of Election

Single-Member
Districts

*On Board's
Motion*

Except as provided below, the board, on its own motion, may order that trustees of the district are to be elected from single-member districts or that not fewer than 70 percent of the members of the board are to be elected from single-member districts with the remaining board members to be elected from the district at large.

If a majority of the area of a district is located in a county with a population of less than 10,000, a board, on its own motion, may order that trustees of the district are to be elected from single-member districts or that not fewer than 50 percent of the members of the board are to be elected from single-member districts with the remaining board members to be elected from the district at large.

Before adopting an order, a board must:

1. Hold a public hearing at which registered voters of a district are given an opportunity to comment on whether or not they favor the election of trustees in the manner proposed by the board; and
2. Publish notice of the hearing in a newspaper that has general circulation in the district, not later than the seventh day before the date of the hearing.

An order adopted by the board must be entered not later than the 120th day before the date of the first election at which all or some of the trustees are elected from single-member districts authorized by the order.

Education Code 11.052(a)–(d)

By Voter Petition

If at least 15 percent or 15,000 of the registered voters of the district, whichever is less, sign and present to the board a petition requesting submission to the voters of the proposition that trustees

be elected in a specific manner, which must be generally described on the petition and which must be a manner of election the board could have ordered on its own motion, the board shall order that the appropriate proposition be placed on the ballot at the first regular election of trustees held after the 120th day after the date the petition is submitted to the board. The proposition must specify the number of trustees to be elected from single-member districts. Beginning with the first regular election of trustees held after an election at which a majority of the registered voters voting approve the proposition, trustees shall be elected in the manner prescribed by the approved proposition. *Education Code 11.052(e)*

*Board Member
Districts*

If single-member districts are adopted or approved by either method described above, the board shall divide the district into the appropriate number of trustee districts, based on the number of members that are to be elected from single-member districts, and shall number each trustee district. The trustee districts must be compact and contiguous and must be as nearly as practicable of equal population. In a district with 150,000 or more students in average daily attendance, the boundary of a trustee district shall not cross a county election precinct boundary except at a point at which the district boundary crosses the county election precinct boundary. Trustee districts must be drawn not later than the 90th day before the date of the first election of trustees from those districts. *Education Code 11.052(f)*

*Residency for
First Election*

Residents of each trustee district are entitled to elect one trustee to the board. A trustee elected to represent a trustee district at the first election of members must be a resident of the district the trustee represents not later than the 90th day after the date election returns are canvassed, or the 60th day after the date of a final judgment in an election contest filed concerning that trustee district. A trustee vacates the office if the trustee fails to move into the district the trustee represents within the time provided. [For more information on residency, see BBA and BBC.] *Education Code 11.052(g)*

*Number and
Term*

At the first election at which some or all of the trustees are elected from single-member trustee districts and after each redistricting, all positions on a board shall be filled. The trustees then elected shall draw lots for staggered terms as provided by Education Code 11.059 (regarding terms). *Education Code 11.052(h)*

Redistricting

Not later than the 90th day before the date of the first regular board election at which trustees may officially recognize and act on the last preceding federal census, a board shall redivide a district into the appropriate number of trustee districts if the census data indicates that the population of the most populous district exceeds the

population of the least populous district by more than ten percent. Redivision of a district shall be in the manner provided above at Board Member Districts. *Education Code 11.052(i)*

Phase-in Option

The board of a district that adopts a redistricting plan may provide for the trustees in office when the plan is adopted or the district is redistricted to serve for the remainder of their terms in accordance with this provision. The trustee district and any at-large positions provided by the district's plan shall be filled as the staggered terms of trustees then in office expire. Not later than the 90th day before the date of the first election from trustee districts and after each redistricting, a board shall determine the order in which the positions will be filled. *Education Code 11.053*

**Boundary Change
Notice**

A district that changes its boundaries or the boundaries of districts used to elect members to the board shall not later than the 30th day after the date the change is adopted:

1. Notify the voter registrar of the county in which the area subject to the boundary change is located of the adopted boundary change; and
2. Provide the voter registrar with a map of an adopted boundary change in a format that is compatible with the mapping format used by the registrar's office.

Election Code 42.0615

**Methods of Voting—
Options**

Plurality

Except as otherwise provided at Majority, below, to be elected to a public office, a candidate elected by single-member district must receive more votes than any other candidate for the office. *Education Code 11.057(a); Election Code 2.001*

Majority

The board of a district in which the positions of trustees are elected from single-member districts may provide by resolution, not later than the 180th day before the date of an election, that a candidate must receive a majority of the votes cast for a position or in a trustee district, as applicable, to be elected.

The resolution is effective until rescinded by a subsequent resolution adopted not later than the 180th day before the date of the first election to which the rescission applies.

Education Code 11.057(c)

Note: If the district is subject to a court order or other binding legal determination, the district shall conduct its elections in accordance with that court order or determination, applicable law, and this policy. To the extent of any conflict, the court order or other legal determination shall prevail. [See BBB(LOCAL)]

Election Order

The board shall order an election. An election to be held on a uniform election date shall be ordered not later than the 78th day before election day. *Election Code 3.004, .005*

Each election order must state:

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

Election Code 3.006, 83.010, 85.004, .007

A board shall preserve the election order for the period for preserving the precinct election records. The date and nature of each election shall be entered in the official records of the board. For an election on a measure, the entry must include a description of the measure. *Election Code 3.008*

Failure to Order an Election

Failure to order a general election does not affect the validity of the election. *Election Code 3.007*

Election Notice

Contents

Notice of the election must state:

1. The nature and date of the election;
2. The location of each polling place;
3. The hours the polls will be open;
4. The early voting clerk's official mailing address;
5. The location of the main early voting polling place; and
6. The dates and hours for early voting, including the dates and hours of any Saturday and Sunday early voting.

Election Code 4.004(a), 83.010, 85.004, .007

ELECTIONS
CONDUCTING ELECTIONS

BBBA
(LEGAL)

Notice of Special Election	The notice of a special election must also state each office to be filled or the proposition stating each measure to be voted on. <i>Election Code 4.004(b)</i>
Publication	Notice of the election shall be published at least once, not earlier than the 30th day or later than the tenth day before election day, in a newspaper published within the district's boundaries or in a newspaper of general circulation in the district if none is published within the district's boundaries. The board shall retain a copy of the published notice that contains the name of the newspaper and the date of publication. <i>Election Code 4.003(a)(1), (c), .005(a)</i>
Posting	<p>In addition to the notice described above, not later than the 21st day before election day, the district shall post a copy of the notice on the bulletin board used for posting notices of the meetings of the board. The notice must remain posted continuously through election day. The person posting the notice shall make a record at the time of posting stating the date and place of posting. The person shall sign the record and deliver it to the board after the last posting is made. <i>Election Code 4.003(b), .005(b)</i></p> <p>A district that maintains a website must post the notice described above on the Internet website of the district. <i>Election Code 85.007(d)</i></p>
Notice to County Clerk and Voter Registrar	The board shall deliver notice of the election to the county clerk and voter registrar of each county in which the district is located not later than the 60th day before election day. <i>Election Code 4.008(a)</i>
Notice to Election Judge	<p>Not later than the 15th day before election day or the seventh day after the date the election is ordered, whichever is later, the board shall deliver to the presiding judge of each election precinct in which the election is to be held in the district a written notice of:</p> <ol style="list-style-type: none">1. The nature and date of the election;2. The location of the polling place for the precinct served by the judge;3. The hours that the polls will be open;4. The judge's duty to hold the election in the precinct specified by the notice; and5. The maximum number of clerks that the judge may appoint for the election. <p><i>Election Code 4.007</i></p>

Failure to Give Notice of Election	Failure to give notice of a general election does not affect the validity of the election. <i>Election Code 4.006</i>
Filing Information	
Notice to Candidates	A district shall post notice of the dates of the filing period in a public place in a building in which the district has an office not later than the 30th day before the last day on which a candidate may file an application for a place on the ballot. <i>Election Code 141.040</i>
Application	A candidate application for a place on the ballot must: <ol style="list-style-type: none">1. Be in writing;2. Be signed and sworn to before a person authorized to administer an oath in this state by the candidate and indicate the date that the candidate swears to the application;3. Be timely filed with the appropriate authority; and4. Include all statutorily required information. <i>Election Code 31.0021, 141.031, .039</i>
Deadline	An application for a place on the ballot may not be filed earlier than the 30th day before the date of the filing deadline. An application must be filed not later than 5:00 p.m. of the 78th day before the date of the election for an election to be held on a uniform election date. <i>Education Code 11.055(a); Election Code 144.005(d)</i>
Write-in Candidate	A declaration of write-in candidacy must be filed not later than 5:00 p.m. of the 74th day before election day for an election to be held on a uniform election date. <i>Education Code 11.056(b); Election Code 146.054</i>
Special Election	An application for a place on a special election ballot may not be filed before the election is ordered. An application must be filed not later than: <ol style="list-style-type: none">1. 5:00 p.m. of the 62nd day before election day if election day is on or after the 70th day after the election is ordered; or2. 5:00 p.m. of the 40th day before election day if election day is on or after the 46th day and before the 70th day after the date the election is ordered.
<i>Exception</i>	For a special election to be held on the date of the general election for state and county officers (the first Tuesday after the first Monday in November in even-numbered years under Election Code 41.002), the day of the filing deadline is 6 p.m. of the 75th day before election day.

<i>Write-in Candidate</i>	<p>A declaration of write-in candidacy for a special election must be filed not later than the filing deadline.</p> <p><i>Election Code 201.054</i></p>
Delivery or Submission of Documents	<p>Under the Election Code, delivery, submission, or filing of an application, notice, report, or other document or paper with an employee of the district at the district's usual place for conducting official business constitutes filing with the district. The district may accept the document or paper at a place other than the district's usual place for conducting official business.</p> <p>A delivery, submission, or filing of a document or paper under the Election Code may be made by personal delivery, mail, telephonic facsimile machine, or any other method of transmission.</p> <p><i>Election Code 1.007</i></p>
Election of Unopposed Candidate	<p>The board may declare each unopposed candidate elected to office in accordance with the provisions below. <i>Election Code 2.053(a)</i></p> <p>A special election is considered to be a separate election with a separate ballot from a general election for board members or another special election held at the same time. <i>Election Code 2.051(a)</i></p>
Single-Member Districts	<p>If any members of a board are elected from single-member districts, the procedures to declare unopposed candidates elected apply to the election in a particular single-member district if each candidate for an office that is to appear on the ballot in that single-member district is unopposed and no opposed at-large race is to appear on the ballot. <i>Election Code 2.051(b)</i></p>
Procedure for Canceling Election	<p>The authority responsible for having the official ballot prepared shall certify in writing that a candidate is unopposed for election to an office if, were the election held, only the votes cast for that candidate in the election for that office may be counted. The certification shall be delivered to the board as soon as possible after the filing deadlines for placement on the ballot and list of write-in candidates.</p> <p>A certification may be made following the filing of a withdrawal request by a candidate after the deadline prescribed by Election Code 145.092 if:</p> <ol style="list-style-type: none">1. The withdrawal request is valid except for the untimely filing;2. Ballots have not been prepared; and3. The other conditions for certification are met.

A certification under these circumstances shall be delivered to the board as soon as possible.

Election Code 2.052

On receipt of the certification, the board by order may declare each unopposed candidate elected to office. If a declaration is made, no election is held.

If no election is to be held by the district on election day, a copy of the order shall be posted on election day at each polling place used or that would have been used in the election.

The ballots used at a separate election held at the same time as an election that would have been held if the candidates were not declared elected shall include the offices and names of the candidates declared elected listed separately after the measures or contested races in the separate election under the heading "Unopposed Candidates Declared Elected." The candidates shall be grouped in the same relative order prescribed for the ballot generally. No votes are cast in connection with the unopposed candidates.

Election Code 2.053

[See BBBB regarding issuance of a certificate of election to an unopposed candidate declared elected and qualification for office.]

Ballot

The ballot shall be prepared in accordance with Election Code Chapter 52.

Drawing

The district shall conduct a drawing to determine the order of the candidates' names in an election at which the names of more than one candidate for the same office are to appear on the ballot. The district shall post notice of the date, hour, and place of the drawing. The notice must remain posted in the district's office continuously for 72 hours immediately preceding the scheduled drawing. The district shall mail written notice of the date, hour, and place of the drawing to each candidate not later than the fourth day before the date of the drawing. Each candidate affected by a drawing is entitled to be present or have a representative present at the drawing.
Election Code 52.093-.094

Ballots for an election by position must clearly show the position for which each person is a candidate. A board shall arrange by lot the names of the candidates for each position. *Education Code 11.058(g)*

**Election Services
Contract**

The county election officer, as defined by Election Code 31.091(a), may contract with the board of a district situated wholly or partly in

the county served by the officer to perform election services, as provided by Election Code Chapter 31, Subchapter D, in any one or more elections ordered by the board.

If requested to do so by a district, the county elections administrator, as defined under Election Code Chapter 31, Subchapter B, shall enter into a contract to furnish the election services requested in accordance with a cost schedule agreed on by the contracting parties. A county elections administrator is not required to enter into a contract to furnish elections services for an election held on the first Saturday in May in an even-numbered year.

Election Code 31.092, .093, 41.001(d)

Election Judges and Clerks

By written order, a board shall appoint a presiding election judge and an alternate presiding judge for each election precinct in which an election is held. A board shall prescribe the maximum number of clerks that each presiding judge may appoint for each election. The judges and clerks shall be selected and serve in accordance with Election Code Chapter 32. *Election Code 32.001(a), .008, .033*

Polling Places

A board shall designate polling places for election day and early voting. Each polling place shall be accessible to and usable by the elderly and persons with physical disabilities. *Election Code 43.004, .034, Ch. 85 (regarding early voting by personal appearance)*

In an election held on a uniform election date, a district shall use the regular county election precincts and shall designate as the polling places for the election the regular county polling places in the county election precincts that contain territory from the district.

Exception for May Election

A district is not required to use the county election precincts for an election held on the May uniform election date if the district:

1. Conducts early voting by personal appearance:
 - a. At 75 percent or more of its permanent or temporary branch polling places on the same days and during the same hours as voting is conducted at the main early voting place; and
 - b. At each remaining polling place for at least two consecutive days of voting during the early voting period, and for at least eight hours on each day; or
2. Has not established a permanent or temporary branch early voting polling place.

Election Code 42.002(a)(5), (c), .0621, 43.004(b)

Electioneering	<p>A person commits an offense if, during the voting period and within 100 feet of an outside door through which a voter may enter the building in which a polling place is located, the person loiters or electioneers for or against any candidate, measure, or political party.</p> <p>“Electioneering” includes the posting, use, or distribution of political signs or literature. The term does not include the distribution of a notice of a party convention authorized under Election Code 172.114.</p> <p>“Voting period” means the period beginning when the polls open for voting and ending when the polls close or the last voter has voted, whichever is later.</p> <p>“Early voting period” means the period prescribed by Election Code 85.001.</p> <p>A district that owns or controls a public building being used as a polling place or early voting polling place may not, at any time during the voting period or early voting periods, as applicable, prohibit electioneering on the building's premises outside of the area described above, but may enact reasonable regulations concerning the time, place, and manner of electioneering.</p>
Early Voting	<p>In each election, early voting shall be conducted by personal appearance at an early voting polling place and by mail, in accordance with Election Code Title 7, Chapters 81–114. <i>Election Code 81.001</i></p>
Conducting Elections	<p>Elections shall be conducted in accordance with Election Code Title 6, Chapters 61–68.</p>
Bilingual Materials Spanish	<p>Bilingual election materials shall be used in each election precinct situated wholly or partly in a county in which five percent or more of the inhabitants are persons of Spanish origin or descent according to the most recent federal decennial census that may be officially recognized or acted upon by the state or political subdivisions. <i>Election Code 272.002</i></p>
Other Languages	<p>If the director of the census determines that a district must provide election materials in a language other than English or Spanish, the district shall provide election materials in that language in the same manner in which the district would be required to provide materials in Spanish, to the extent applicable. <i>Election Code 272.011; 52 U.S.C. 10503</i></p>

Voting Systems

A voting system shall be adopted and utilized in accordance with Election Code Title 8.

**Accessible Voting
Stations**

Except as provided below, each polling place must provide at least one voting station that complies with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) and its subsequent amendments, Title II of the Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.) and its subsequent amendments, and the requirements for accessibility under 42 U.S.C. Section 15481(a)(3) and its subsequent amendments, and that provides a practical and effective means for voters with physical disabilities to cast a secret ballot. *Election Code 61.012*

***Electronic Voting
System
Exceptions***

For an election other than an election of a district that is held jointly with another election in which a federal office appears on the ballot, a district is not required to meet the requirements for accessibility under 42 U.S.C. Section 15481(a)(3) if the district is located in a county that meets certain population and other requirements set forth in Election Code 61.013(a). A district that intends to use this provision to provide fewer voting stations that meet the requirements for accessibility than required must provide notice under Election Code 61.013(d). *Election Code 61.013*

Note: If the district is subject to a court order or other binding legal determination, the district shall conduct its elections in accordance with that court order or determination, applicable law, and this policy. To the extent of any conflict, the court order or other legal determination shall prevail. [See BBB(LOCAL)]

Tie Votes

Second Election

In an election requiring a plurality, if two or more candidates for the same office tie for the number of votes required to be elected, a second election to fill the office shall be held in accordance with the deadlines and other requirements of Election Code 2.002.

Other Options

Casting Lots

The tying candidates may agree to cast lots to resolve the tie. The agreement must be filed with the board. The board president shall supervise the casting of lots.

Withdrawal

A tying candidate may resolve the tie by filing with the board a signed and acknowledged written statement of withdrawal. On receipt of the statement, the remaining candidate is the winner, and a second election or casting of lots is not held.

Automatic Recount

If the tie is not resolved by casting lots or withdrawal, an automatic recount shall be conducted under Election Code Chapter 216 before the second election is held.

Election Code 2.002

Runoff Election

In a district in which trustees are elected by majority vote under Education Code 11.057(c) [see BBB], if no candidate for a particular office receives the vote necessary to be elected, a runoff election for that office is required. *Election Code 2.021 et seq.*

If the candidates in a runoff election tie, an automatic recount shall be conducted under Election Code Chapter 216. If the recount does not resolve the tie, the tied candidates shall cast lots to determine the winner. The board president shall supervise the casting of lots. A tying candidate may resolve the tie by filing with the board president a signed and acknowledged written statement of withdrawal. On receipt of the statement, the remaining candidate is the winner, and a casting of lots is not held. *Election Code 2.028*

Recounts

The district shall conduct an authorized recount in accordance with Election Code Title 13. *Election Code 211.001*

A candidate in a board election may obtain an initial recount in an election if the difference in the number of votes received by the candidate and any candidate for the office who is shown by the election returns to be elected, tied, or entitled to a place on a runoff ballot, if applicable, is less than ten percent of that candidate's

number of votes, or the total number of votes received by all candidates for the office is less than 1,000. *Election Code 212.022*

A ground for obtaining an initial recount is not required to obtain an initial recount of electronic voting system results. A candidate may obtain an initial recount of electronic voting system results in an election only if the candidate is shown by the election returns not to be elected. *Election Code 212.0241*

An initial recount may not be conducted unless an authorized candidate submits a petition for the recount to the presiding officer of the local canvassing authority in accordance with Election Code Chapter 212, Subchapter B, accompanied by a deposit to cover the costs of the recount in accordance with Subchapter E. *Election Code 212.025, .026, .111*

Effect of Petition

The submission of a recount petition before a board completes its canvass does not delay the canvass for the office involved in the recount. The board shall make a notation on the tabulation of any office involved in a recount. The submission of a recount petition delays the issuance of a certificate of election and qualification for the office involved in the recount pending completion of the recount. A candidate may not qualify for an office involved in a recount before completion of the recount. This provision does not affect a candidate who has received a certificate of election and qualified for office before the submission of a recount petition involving the office. *Election Code 212.033, .0331*

Canvass Returns

General Rule

Except as provided below, a board shall convene to conduct the local canvass at the time set by the presiding officer not later than the 11th day after election day and not earlier than the later of:

1. The third day after election day;
2. The date on which the early voting ballot board has verified and counted all provisional ballots, if a provisional ballot has been cast in the election; or
3. The date on which all timely received ballots cast from addresses outside of the United States are counted, if a ballot to be voted by mail in the election was provided to a person outside of the United States.

Election Code 67.003(b)

**November
Election—Even-
Numbered Years**

For an election held on the date of the general election for state and county officers (the first Tuesday after the first Monday in November in even-numbered years under Election Code 41.002), the time for the canvass may be set not later than the 14th day after election day. *Election Code 65.051(a-1), 67.003(c)*

ELECTIONS
POST-ELECTION PROCEDURES

BBBB
(LEGAL)

Quorum for Canvass	Two members of a board constitute a quorum for purposes of canvassing an election. At the time set for convening the board for the local canvass, the presiding officer shall deliver the sealed precinct returns to the board. The board shall open the returns for each precinct and canvass them as provided by Election Code 67.004.
Minutes	The presiding officer shall note the completion of the canvass in the minutes or in the recording required by the Open Meetings Act (Government Code 551.021). [See BE] <i>Election Code 67.004(a), (g)</i>
Certificate of Election	After the completion of a canvass, the presiding officer shall prepare a certificate of election for each candidate who is elected to an office for which the official result is determined by the board's canvass. A certificate of election must contain: <ol style="list-style-type: none">1. The candidate's name;2. The office to which the candidate is elected;3. A statement of election to an unexpired term, if applicable;4. The date of the election;5. The signature of the officer preparing the certificate; and6. Any seal used by the officer preparing the certificate to authenticate documents that the officer executes or certifies. <p>The authority preparing a certificate of election shall promptly deliver it to the person for whom it is prepared, subject to the submission of a recount petition. [See Effect of Petition, above]</p> <p>A certificate of election may not be issued to a person who has been declared ineligible to be elected to the office.</p> <p>The presiding officer shall also prepare a report of the precinct results as contained in the election register and deliver the report to the secretary of state not later than the 30th day after election day in an electronic format prescribed by the secretary of state.</p> <p><i>Election Code 67.016, .017</i></p>
Certificate for Unopposed Candidate	A certificate of election shall be issued to each unopposed candidate declared elected in the same manner and at the same time as provided for a candidate elected at the election. The candidate must qualify for the office in the same manner as provided for a candidate elected at the election. <i>Election Code 2.053(e)</i> [See BBBA regarding the election of an unopposed candidate.]

ELECTIONS
POST-ELECTION PROCEDURES

BBBB
(LEGAL)

- Officer's Statement** All elected and appointed board members, before taking the oath or affirmation of office and entering upon the duties of office, shall sign the required officer's statement. The statement shall be retained with the official records of the office. *Tex. Const. Art. XVI, Sec. 1(b), (c)*
- Oath of Office** All elected and appointed board members, before they enter upon the duties of the office, shall take the official oath or affirmation of office and shall file it with the board president. *Tex. Const. Art. XVI, Sec. 1(a); Education Code 11.061(a)*
- The oath may be administered and a certificate of the fact given by the individuals listed at Government Code 602.002, including:
1. A judge, retired judge, or clerk of a municipal court.
 2. A judge, retired judge, senior judge, clerk, or commissioner of a court of record.
 3. A justice of the peace or clerk of a justice court.
 4. A notary public.
- Gov't Code 602.002*
- Election Records** Except as otherwise provided by the Election Code, a district shall preserve the precinct election records distributed to it for at least 22 months after election day. *Election Code 66.058(a)*
- Destruction of Records** After expiration of the prescribed period for preserving election records under the Election Code, the records may be destroyed or otherwise disposed of unless, at the expiration of the preservation period, an election contest or a criminal investigation or proceeding connected with the election is pending. In that case, the records shall be preserved until the contest, investigation, or proceeding is completed and the judgment, if any, becomes final. *Election Code 1.013*

Campaign Treasurer Appointment	Each candidate shall appoint a campaign treasurer as provided by Election Code, Chapter 252. An individual may appoint himself or herself as campaign treasurer. <i>Election Code 252.001, .004</i>
Contents	<p>A campaign treasurer appointment by a candidate must be in writing and include:</p> <ol style="list-style-type: none">1. The campaign treasurer's name, residence or business street address, and telephone number;2. The name of the person making the appointment;3. The candidate's telephone number; and4. A statement, signed by the candidate, that the candidate is aware of the nepotism law. [See DBE] <p><i>Election Code 252.002, .0032</i></p>
Filing Authority	<p>A candidate for a school board must file the campaign treasurer appointment and all required financial statements with the clerk or secretary of the board or, if the district has no clerk or secretary, with the board's presiding officer. <i>Election Code 252.005(3)</i></p> <p>A specific-purpose committee for supporting or opposing a candidate for the board must file its campaign treasurer appointment with the same authority. <i>Election Code 251.001(13), 252.006</i></p> <p>A specific-purpose committee for supporting or opposing a measure must file its campaign treasurer appointment with the secretary of the board or, if the district has no secretary, with the board's presiding officer. <i>Election Code 252.007(3)</i></p>
Period of Effectiveness	A campaign treasurer appointment takes effect at the time it is filed and continues in effect until terminated. <i>Election Code 252.011</i>
Termination of Appointment	A campaign treasurer may be removed at any time by the appointing authority by filing the written appointment of a successor in the same manner as the original appointment. The appointment of a successor terminates the appointment of the campaign treasurer who is removed. <i>Election Code 252.012</i>
Removal	
Board Action	<p>A board by order may adopt a process by which the clerk or secretary, as applicable, of the district may terminate the campaign treasurer appointment of an inactive candidate or political committee that is required to file a campaign treasurer appointment with the clerk or secretary.</p> <p>The order must:</p> <ol style="list-style-type: none">1. Define "inactive candidate or political committee" for purposes of terminating the campaign treasurer appointment; and

2. Require written notice to the affected candidate or committee of the proposed termination; the date, time, and place of the meeting at which the board will consider the proposed termination; and the effect of termination of the campaign treasurer appointment.

For purposes of this section, a candidate or political committee is inactive if the candidate or committee:

1. Has never filed or has ceased to file reports under Election Code Chapter 254 (Political Reporting);
2. In the case of a candidate, has not been elected to an office for which a candidate is required to file a campaign treasurer appointment with the board; and
3. Has not filed a final report under Election Code 254.065 or 254.125, or a dissolution report under Election Code 254.126 or 254.159.

Before the clerk or secretary of the district may terminate a campaign treasurer appointment, the board must consider the proposed termination in a regularly scheduled open meeting.

The termination of a campaign treasurer appointment under this section takes effect on the 30th day after the date of the meeting at which the board votes to terminate the appointment. Following that meeting, the clerk or secretary of the district shall promptly notify the affected candidate or political committee that the appointment has been terminated. The notice must state the effective date of the termination.

Election Code 252.0131

Contributions and Expenditures

A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. *Election Code 253.031(a)*

Recordkeeping

Each candidate and each officeholder shall maintain a record of all reportable activity. The record must contain the information necessary for filing the reports required by Election Code Chapter 254. *Election Code 254.001*

Reporting

Candidates and Officeholders

Reports by candidates and officeholders shall be filed with the authority with whom the campaign treasurer appointment is required to be filed. *Election Code 254.066, .097* [See Filing Authority, above]

*Specific-Purpose
Committee*

Except as provided below at Bonds, reports by a specific-purpose committee shall be filed with the authority with whom the political committee's campaign treasurer appointment is required to be filed.

Bonds

A specific-purpose committee created to support or oppose a measure on the issuance of bonds by a district shall file reports with the Ethics Commission.

Election Code 254.130

Note: The following provisions apply only to a district located wholly or partly in a municipality with a population of more than 500,000 and with a student enrollment of more than 15,000.

Internet Posting

A report filed under Election Code Chapter 254 by a board member, a candidate for membership on the board, or a specific-purpose committee for supporting, opposing, or assisting a candidate or board member must be posted on the Internet website of the district. This access is in addition to the public's access to the information through other electronic or print distribution of the information.

The report must be available to the public on the district's website not later than the fifth business day after the date the report is filed with the district.

Before making a report available on its website, the district may remove each portion, other than city, state, and zip code, of the address of a person listed as having made a political contribution to the person filing the report. If the address information is removed, the information must remain available on the report maintained in the district's office.

Election Code 254.04011

Electioneering

The board may not use state or local funds or other resources of the district to electioneer for or against any candidate, measure, or political party. *Education Code 11.169*

Political Advertising

An officer or employee of a district may not knowingly spend or authorize the spending of public funds for the purpose of political advertising. This does not apply to a communication that factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure.

An officer or employee of a district may not spend or authorize the spending of public funds for a communication describing a measure if the communication contains information that:

1. The officer or employee knows is false; and
2. Is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure.

It is an affirmative defense to prosecution for an offense under these provisions or the imposition of a civil penalty for conduct under these provisions that the officer or employee reasonably relied on a court order, or an interpretation of these provisions in a written opinion issued by a court of record, the attorney general, or the Ethics Commission.

On written request of the board that has ordered an election on a measure, the Ethics Commission shall prepare an advance written advisory opinion as to whether a particular communication relating to a measure does or does not comply with these provisions.

Election Code 255.003 [See CPAB regarding use of the internal mail system for political advertising]

Definition

"Political advertising" means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that:

1. In return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television;
2. Appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or
3. Appears on an Internet website.

Election Code 251.001(16); 1 TAC 20.1(13)(A)

"Political advertising" does not include an individual communication made by e-mail, but does include mass e-mails involving an ex-

penditure of funds beyond the basic cost of hardware, messaging software, and bandwidth. *1 TAC 20.1(13)(B)*

Newsletters

A newsletter of a public officer of a district is not political advertising if:

1. It includes no more than two pictures of a public officer per page and if the total amount of area covered by the pictures is no more than 20 percent of the page on which the pictures appear;
2. It includes no more than eight personally phrased references on a page that is 8 1/2" x 11" or larger, with a reasonable reduction in the number of such personally phrased references in pages smaller than 8 1/2" x 11"; and
3. When viewed as a whole and in the proper context:
 - a. Is informational rather than self-promotional;
 - b. Does not advocate passage or defeat of a measure; and
 - c. Does not support or oppose a candidate for nomination or election to a public office or office of political party, a political party, or a public officer.

1 TAC 26.2

Note: For specific information regarding political advertising and campaign communications by candidates, including offenses, see Election Code 255.001–.007.

Nepotism

A candidate may not take affirmative action to influence a district employee or current trustee regarding the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of another individual related to the candidate within a prohibited degree of relationship under the nepotism law. [See DBE] This prohibition does not apply to a candidate's actions taken regarding a bona fide class or category of employees or prospective employees. *Gov't Code 573.042*

BOARD MEMBERS
VACANCIES AND REMOVAL FROM OFFICE

BBC
(LEGAL)

Note: If the district is subject to a court order or other binding legal determination, the district shall conduct its elections in accordance with that court order or determination, applicable law, and this policy. To the extent of any conflict, the court order or other legal determination shall prevail. [See BBB(LOCAL)]

Resignation	To be effective, a board member's resignation must be in writing and signed by the board member and delivered to the presiding officer of the board. A board may not refuse to accept a resignation. <i>Election Code 201.001</i>
Effective Date	If a board member submits a resignation, whether to be effective immediately or at a future date, a vacancy occurs on the date the resignation is accepted by the board or on the eighth day after the date of its receipt by the board, whichever is earlier. <i>Election Code 201.023</i>
Holdover Doctrine	All public officers shall continue to perform the duties of their offices until their successors shall be duly qualified (i.e., sworn in). Until the vacancy created by a board member's resignation is filled by a successor, the board member continues to serve and have the duties and powers of office and continues to be subject to the nepotism provisions. A holdover board member may not vote on the appointment of his or her successor. <i>Tex. Const., Art. XVI, Sec. 17; Atty. Gen. Ops. JM-636 (1987), O-6259 (1945)</i> [See DBE for more information on nepotism]
Residency	A person elected or appointed to serve as a board member must remain a resident of the district throughout the term of office. A board member who ceases to reside in the district vacates the office. <i>Tex. Const., Art. XVI, Sec. 14; Prince v. Inman, 280 S.W.2d 779 (Tex. Civ. App.—Beaumont 1955, no writ); Whitmarsh v. Buckley, 324 S.W.2d 298 (Tex. Civ. App.—Houston 1959, no writ)</i> [See BBA]
Single-Member District	A trustee vacates the office if the trustee ceases to reside in the district the trustee represents. <i>Education Code 11.052(g)</i>
Filling a Vacancy	If a vacancy occurs on the board, the remaining board members may fill the vacancy by appointment until the next trustee election, or may order a special election to fill the vacancy. If more than one year remains in the term of the position vacated, the vacancy shall be filled not later than the 180th day after the date the vacancy occurs. <i>Education Code 11.060</i>

BOARD MEMBERS
VACANCIES AND REMOVAL FROM OFFICE

BBC
(LEGAL)

Appointment	To be eligible to be appointed to a board, a person must have the qualifications set forth at Election Code 141.001(a). <i>Election Code 141.001(a)</i> [See BBA]
Special Election	<p>A special election to fill a vacancy shall be conducted in the same manner as the district's general election. <i>Education Code 11.060(c)</i></p> <p>An election to fill a vacancy shall be to fill the unexpired term only. <i>Tex. Const. Art. XVI, Sec. 27</i></p>
<i>Date of Election</i>	A special election to fill a vacancy shall be held on an authorized uniform election date occurring within the required period after the vacancy occurs. If no uniform election date affords enough time to hold the election in the manner required by law, the election shall be held on the first authorized uniform election date occurring after the expiration of the period. <i>Election Code 41.001(a), .004(a); Atty. Gen. Op. KP-102 (2016)</i> [See BBB]
<i>Ordering Election</i>	<p>If a vacancy is to be filled by special election, the election shall be ordered as soon as practicable after the vacancy occurs. <i>Election Code 201.051(a)</i></p> <p>Except as otherwise provided by the Election Code, a special election to fill a vacancy shall be held on the first authorized uniform election date occurring on or after the 46th day after the date the election is ordered. <i>Election Code 201.052(a)</i></p> <p>If the special election is to be held on the date of the general election for state and county officers, the election shall be ordered not later than the 78th day before election day. The general election for state and county officers is the first Tuesday after the first Monday in November in even-numbered years. <i>Election Code 41.002, 201.051</i></p>
Officer's Statement and Oath	For requirements regarding the officer's statement and oath of office, see BBBB(LEGAL).
Former Board Member Employment	A trustee may not accept employment with the district until the first anniversary of the date the trustee's membership on a board ends. <i>Education Code 11.063</i>
Involuntary Removal from Office Quo Warranto	<p>On his or her own motion or at the request of an individual, the attorney general or the county or district attorney may petition the district court for leave to file an information in the nature of quo warranto. An action in the nature of quo warranto is available if:</p> <ol style="list-style-type: none">1. A person usurps, intrudes into, or unlawfully holds or executes an office; or2. A public officer does an act or allows an act that by law causes forfeiture of office.

BOARD MEMBERS
VACANCIES AND REMOVAL FROM OFFICE

BBC
(LEGAL)

If the person against whom the information is filed is found guilty as charged, the court:

1. Shall enter judgment removing the person from the office and for the costs of prosecution; and
2. May fine the person for usurping, intruding into, or unlawfully holding and executing the office.

Civ. Prac. & Rem. Code 66.001–.003

Removal by Petition
and Trial

A proceeding for the removal of a board member is begun by filing a written petition for removal in district court of the county in which the board member resides. A resident of the state who has lived for at least six months in the county in which the petition is to be filed and who is not currently under indictment in the county may file a petition. *Local Gov't Code 87.015*

*Reasons for
Removal*

A board member may be removed from office for:

1. "Incompetency," which means:
 - a. Gross ignorance of official duties;
 - b. Gross carelessness in the discharge of those duties; or
 - c. Unfitness or inability to promptly and properly discharge official duties because of a serious physical or mental defect that did not exist at the time of election.
2. "Official misconduct," which means intentional, unlawful behavior relating to official duties by a board member entrusted with the administration of justice or the execution of the law. The term includes an intentional or corrupt failure, refusal, or neglect of a board member to perform a duty imposed on the board member by law.
3. Intoxication on or off duty caused by drinking an alcoholic beverage, but not if it was caused by drinking an alcoholic beverage on the direction and prescription of a licensed physician.
4. Conviction of a board member by a jury for any felony or for misdemeanor official misconduct. The conviction of a public officer by a petit jury for any felony or for a misdemeanor involving official misconduct operates as an immediate removal from office of that officer.

Tex. Const., Art. V, Sec. 24; Local Gov't Code 87.011, .012(14), .013, .031

BOARD MEMBERS
VACANCIES AND REMOVAL FROM OFFICE

BBC
(LEGAL)

*Removal for
Purchasing
Violations*

A trustee who is convicted of a purchasing offense [see CH(LEGAL), regarding impermissible practices] is considered to have committed official misconduct and is subject to removal under Local Government Code Chapter 87. *Education Code 44.032(e)*

**Temporary
Replacement of
Board Member on
Military Active Duty**

A board member who enters active duty in the armed forces of the United States as a result of being called to duty, drafted, or activated does not vacate the office held, but the board may appoint a replacement to serve as a temporary board member if the elected or appointed board member will be on active duty for longer than 30 days.

The board member who is temporarily replaced may recommend to the board the name of a person to temporarily fill the office. The board shall appoint the temporary board member to begin service on the date specified in writing by the board member being temporarily replaced as the date the board member will enter active military service.

A temporary board member has all the powers, privileges, and duties of the office as the board member who is temporarily replaced. A temporary board member shall perform the duties of office for the shorter period of:

1. The term of the active military service of the board member who is temporarily replaced; or
2. The term of office of the board member who is temporarily replaced.

“Armed forces of the United States” means the United States Army, the United States Navy, the United States Air Force, the United States Marine Corps, the United States Coast Guard, any reserve or auxiliary component of any of those services, or the National Guard.

Tex. Const., Art. XVI, Sec. 72

LOCAL REVENUE SOURCES
BOND ISSUES

CCA
(LEGAL)

**Bonds and Bond
Taxes**

The board may issue bonds for:

1. The construction, acquisition, and equipment of school buildings in the district;
2. The acquisition of property or the refinancing of property under a contract entered under the Public Property Finance Act (Local Government Code, Chapter 271, Subchapter A), regardless of whether payment obligations under the contract are due in the current year or a future year;
3. The purchase of the necessary sites for school buildings; and
4. The purchase of new school buses.

The board may levy, pledge, assess, and collect annual ad valorem taxes sufficient to pay the principal of and interest on the bonds as or before the principal and interest become due, subject to the provisions at Bond Elections, below.

Education Code 45.001(a)

All bonds shall be issued in accordance with the Public Security Procedures Act. *Gov't Code, Ch. 1201*

**Use of Proceeds for
Utilities**

The proceeds of bonds issued by school districts for the construction and equipment of school buildings in the district and the purchase of the necessary sites for school buildings may be used, among other things, to pay the cost of acquiring, laying, and installing pipes or lines to connect with the water, sewer, or gas lines of a municipality or private utility company, whether or not the water, sewer, or gas lines adjoin the school, so that the school district may provide its public school buildings the water, sewer, or gas services. *Education Code 45.101*

**Instructional
Facilities Allotment**

"Instructional facility" means real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the required curriculum. *Education Code 46.001*

Under the Instructional Facilities Allotment, Education Code Chapter 46, Subchapter A, for each year, except as provided by Education Code 46.005 (regarding limitation on the guaranteed amount) and 46.006 (regarding shortage or excess of appropriated funds), a district is guaranteed a specified amount per student in state and local funds for each cent of tax effort, up to the statutory maximum in Education Code 46.003(b), to pay the principal of and interest on eligible bonds issued to construct, acquire, renovate or improve an instructional facility. *Education Code 46.003(a); 19 TAC 61.1032*

LOCAL REVENUE SOURCES
BOND ISSUES

CCA
(LEGAL)

Existing Debt Allotment	A district is guaranteed a specified amount per student in state and local funds for each cent of tax effort to pay the principal and interest on eligible bonds under Education Code Chapter 46, Subchapter B. Bonds are eligible to be paid with state and local funds under Subchapter B if the district made payments on the bonds during the final school year of the preceding state fiscal biennium or taxes levied to pay the principal and interest on the bonds were included in a district's audited debt service collections for that school year, and the district does not receive state assistance under the Instructional Facilities Allotment for payment of the principal and interest on the bonds. <i>Education Code 46.032(a), .033; 19 TAC 61.1035</i>
Capital Appreciation Bonds	For purposes of the following policy provisions, a "capital appreciation bond" is a bond that accrues and compounds interest from its date of delivery, the interest on which by its terms is payable only upon maturity or prior redemption.
Limitation on Issuance	A school district may not issue capital appreciation bonds that are secured by ad valorem taxes unless: <ol style="list-style-type: none">1. The bonds have a scheduled maturity date that is not later than 20 years after the date of issuance;2. The board has received a written estimate of the cost of the issuance, including:<ol style="list-style-type: none">a. The amount of principal and interest to be paid until maturity;b. The amount of fees to be paid to outside vendors, including vendors who sell products to be financed by the bond issuance;c. The amount of fees to be paid to each financing team member; andd. The projected tax impact of the bonds and the assumptions on which the calculation of the projected tax impact is based;3. The board has determined in writing whether any personal or financial relationship exists between the members of the board and any financial advisor, bond counsel, bond underwriter, or other professional associated with the bond issuance and submitted the determination to the Ethics Commission; and4. The board posts prominently on the district's Internet website and enters in the minutes of the board:<ol style="list-style-type: none">a. The total amount of the proposed bonds;

LOCAL REVENUE SOURCES
BOND ISSUES

CCA
(LEGAL)

- b. The length of maturity of the proposed bonds;
- c. The projects to be financed with bond proceeds;
- d. The intended use of bond proceeds not spent after completion of the projects identified;
- e. The total amount of the district's outstanding bonded indebtedness at the time of the election on the bonds, including the amount of principal and interest to be paid on existing bond indebtedness until maturity;
- f. The total amount of the district's outstanding bonded indebtedness, including the amount of principal and interest to be paid until maturity; and
- g. The information received at item 2 above and determined under item 3 above.

The board shall regularly update the debt information posted on the district's Internet website under item 4.f above to ensure that the information is current and accurate.

Limitation on Use of
Proceeds

Capital appreciation bond proceeds may not be used to purchase the following items, unless an item has an expected useful life that exceeds the bond's maturity date:

- 1. Items more regularly considered maintenance items, including replacement HVAC units, upgraded plumbing, or similar items; or
- 2. Transportation-related items, including buses.

*Unspent
Proceeds*

Capital appreciation bond proceeds unspent after completion of the project identified as the proceeds' intended use may be used only for a use identified on the district's website as required above, unless another use is approved by the voters of the district at an election held for that purpose.

Total Amount of
Capital Appreciation
Bonds

The total amount of capital appreciation bonds may not exceed 25 percent of the district's total outstanding bonded indebtedness at the time of the issuance, including the amount of principal and interest to be paid on the outstanding bonds until maturity.

Extension

A district may not extend the maturity date of an issued capital appreciation bond, including through the issuance of refunding bonds that extend the maturity date, unless:

- 1. The extension of the maturity date will decrease the total amount of projected principal and interest to maturity; or

2. The maximum legally allowable tax rate for indebtedness has been adopted and TEA certifies in writing that the solvency of the permanent school fund's bond guarantee program would be threatened without the extension.

Gov't Code 1201.0245

The foregoing provisions of Government Code 1201.0245 do not apply to the issuance of refunding bonds under Government Code Chapter 1207 or capital appreciation bonds for the purpose of financing transportation projects. *Gov't Code 1201.0245(j)*

Bond Elections

Bonds may not be issued and taxes may not be levied unless authorized by a majority of the qualified voters of the district, voting at an election held for such purpose, at the expense of the district, in accordance with the Election Code, except as provided by Education Code 45.003. The election shall be called by resolution or order of the board. The resolution or order must state the date of the election, the proposition or propositions to be submitted and voted on, the polling place or places, and any other matters considered necessary or advisable by the board. *Education Code 45.003(a)*

Each special election in this state shall be held on one of the following dates:

1. The first Saturday in May; or
2. The first Tuesday after the first Monday in November.

Election Code 41.001(a) [See BBB]

Call for Election

For an election to be held on a uniform election date, the election shall be ordered not later than the 78th day before election day. *Election Code 3.005 [See BBBA]*

Election Order

In addition to other legal requirements regarding the election order [see BBBA(LEGAL)], the election order must distinctly state:

1. The proposition language that will appear on the ballot;
2. The purpose for which the bonds are to be authorized;
3. The principal amount of the bonds to be authorized;
4. That taxes sufficient to pay the annual principal of and interest on the bonds may be imposed;
5. The estimated tax rate if the bonds are authorized or the maximum interest rate of the bonds or any series of the bonds, based on the market conditions at the time of the election order;

6. The maximum maturity date of the bonds to be authorized or that the bonds may be issued to mature over a specified number of years not to exceed 40;
7. The aggregate amount of the outstanding principal of the district's debt obligations as of the beginning of the fiscal year in which the election is ordered;
8. The aggregate amount of the outstanding interest on the district's debt obligations as of the beginning of the district's fiscal year in which the election is ordered; and
9. The district's ad valorem debt service tax rate at the time the election is ordered, expressed as an amount per \$100 valuation of taxable property.

Election Code 3.009(b)

Propositions

A proposition submitted to authorize the issuance of bonds must include the question of whether the board may levy, pledge, assess, and collect annual ad valorem taxes, on all taxable property in the district, either:

1. Sufficient, without limits as to rate or amount, to pay the principal of and interest on said bonds; or
2. Sufficient to pay the principal of and interest on the bonds, provided that the annual aggregate bond taxes in the district may never be more than the rate stated in the proposition.

Education Code 45.003(b)

In addition to any other requirement imposed by law for a proposition, including a provision prescribing the proposition language, a proposition submitted to the voters for approval of the issuance of bonds shall specifically state:

1. The total principal amount of the bonds to be authorized, if approved; and
2. A general description of the purposes for which the bonds are to be authorized, if approved.

Election Code 52.072(e)(1)

The district shall assign a letter to each measure on the ballot that corresponds to its order on the ballot. Each proposition on the ballot must identify the name of the authority ordering the election on the measure. *Election Code 52.095*

Posting

The election order must be posted:

1. On election day and during early voting by personal appearance, in a prominent location at each polling place;
2. Not later than the 21st day before the election in three public places in the boundaries of the district; and
3. During the 21 days before the election, on the district's Internet website, prominently and together with the notice of the election and the contents of the proposition, if the district maintains an Internet website.

Election Code 4.003(f)

Election Notice

The notice of election must comply with Election Code Chapter 4. [For specific requirements regarding contents of the election notice, see BBBA(LEGAL).]

Publication and Posting

The notice of election must be published and posted in accordance with Election Code requirements. [For specific requirements regarding publication and posting, see BBBA(LEGAL).]

Notice to Election Officials

Notice must be given to the county clerk, voter registrar, and election judge in accordance with Election Code Chapter 4. [For specific requirements, see BBBA(LEGAL).]

Electioneering and Political Advertising

The board may not use state or local funds or other resources of the district to electioneer for or against any candidate, measure, or political party. *Education Code 11.169*

[For additional information and prohibitions related to political advertising, see BBBB(LEGAL).]

50 Cent Test for New Debt

Before issuing bonds, a district must demonstrate to the attorney general that, with respect to the proposed issuance, the district has a projected ability to pay the principal of and interest on the proposed bonds and all previously issued bonds, other than bonds authorized to be issued at an election held on or before April 1, 1991, and issued before September 1, 1992, from a tax at a rate not to exceed \$0.50 per \$100 of valuation (the "50 Cent Test").

A district may demonstrate the ability to comply with the 50 Cent Test by using the most recent taxable value of property in the district, combined with state assistance to which the district is entitled under Education Code Chapter 42 or 46 that may be lawfully used for the payment of bonds.

Future Taxable Value

A district may demonstrate the ability to comply with the 50 Cent Test by using a projected future taxable value of property in the district anticipated for the earlier of the tax year five years after the current tax year or the tax year in which the final payment is due for the bonds submitted to the attorney general, combined with

state assistance to which the district is entitled under Education Code Chapter 42 or 46 that may be lawfully used for the payment of bonds.

The district must submit to the attorney general a certification of the district's projected taxable value prepared by a registered, certified professional appraiser who has demonstrated professional experience in projecting taxable values or who can obtain any necessary assistance from an experienced person.

The certification of a district's projected taxable value must be signed by the superintendent. The attorney general must base a determination of whether a district has complied with the 50 Cent Test on a taxable value that is equal to 90 percent of the value certified.

Education Code 45.0031

Refunding Bonds

A board may refund or refinance all or any part of any of the district's outstanding bonds and matured or unmatured but unpaid interest on those bonds payable from ad valorem taxes by issuing refunding bonds payable from ad valorem taxes. *Education Code 45.004; Gov't Code Ch. 1207*

**Instructional
Facilities Allotment
for Refunding
Bonds**

A district may use state funds received under Education Code Chapter 46 to pay principal of and interest on refunding bonds that:

1. Are issued to refund bonds eligible under Education Code 46.003;
2. Do not have a final maturity date later than the final maturity date of the bonds being refunded;
3. May not be called for redemption earlier than the earliest call date of all bonds being refunded; and
4. Result in a present value savings as defined in Education Code 46.007(4).

Education Code 46.007

**Authorized Unissued
Bonds**

If a district has authorized school bonds for a specific purpose and that purpose has been accomplished by other means or has been abandoned and all or a portion of the authorized bonds remains unissued, a board may order an election [see BBBA] to submit to the qualified voters of the district the proposition of whether or not the authorized but unissued bonds may be issued, sold, and delivered for other and different purposes specified in the election order and notice. The election shall be ordered, held, and conducted in the same form and manner as that at which the bonds were originally authorized. If a majority of those voting at the election vote in

favor of the sale and delivery of the unissued bonds for the purposes specified in the election order and notice, the board may issue, sell, and deliver the bonds and use the proceeds for the purposes authorized at the election. *Education Code 45.110*

Bond Guarantee Program

Eligibility

A district seeking guarantee of eligible bonds under the Bond Guarantee Program shall apply to the commissioner using a form adopted by the commissioner. To be eligible for approval, district bonds must be issued under Education Code Chapter 45, Subchapter A, or under Government Code Chapter 1207. *Education Code 45.054, .055(a); 19 TAC 33.65(b)(5)*

Application

An application must include:

1. The name of the district and the principal amount of the bonds to be issued;
2. The name and address of the district's paying agent, which means the financial institution designated by a district as its agent for payment of principal and interest on guaranteed bonds; and
3. The maturity schedule, estimated interest rate, and date of the bonds.

Education Code 45.051(2), .055

An application must be accompanied by a fee set by rule of the State Board of Education. *Education Code 45.055(c); 19 TAC 33.65(f)(1)*

On approval by the commissioner, bonds issued by a district are guaranteed by the corpus and income of the permanent school fund. The guarantee remains in effect until the date those bonds mature or are defeased in accordance with state law. *Education Code 45.052*

If a district does not receive approval for the guarantee or for any reason does not receive approval of the bonds from the attorney general within the specified time period, the district may reapply in a subsequent month. Applications that were denied approval for the guarantee will not be retained for consideration in subsequent months. *19 TAC 33.65(f)(5)*

A district may not represent bonds as guaranteed for the purpose of pricing or marketing the bonds before the date of the letter granting approval for the guarantee. *19 TAC 33.65(g)(4)(D)*

Credit Enhancement Program

If a district's application for guarantee of district bonds by the permanent school fund is rejected, the district may apply under Education Code Chapter 45, Subchapter I for credit enhancement of

bonds described by Education Code 45.054 (eligibility for the Bond Guarantee Program) by money appropriated for the Foundation School Program, other than money that is appropriated to districts specifically:

1. As required under the Texas Constitution; or
2. For assistance in paying debt service.

The credit enhancement remains in effect until the date the bonds mature or are defeased in accordance with state law.

Education Code 45.252

Eligibility

To be eligible for approval by the commissioner for credit enhancement:

1. Bonds must be issued in the manner provided by Education Code 45.054;
2. Payments of all of the principal of the bonds must be scheduled during the first six months of the state fiscal year;
3. The district's lowest credit rating from any credit rating agency may not be the same as or higher than that of the School District Bond Enhancement Program;
4. The bonded debt for which the credit enhancement is sought must be structured so that no single annual debt service payment exceeds two times the quotient produced by dividing the total proposed annual debt service, as defined in 19 Administrative Code 61.1038(b)(10), for the term of the bonds by the number of years in the amortization schedule; and
5. The district must agree in its application that the total annual debt service on bonds approved for the credit enhancement will be paid on or before August 15 of each state fiscal year.

Education Code 45.254; 19 TAC 61.1038(f)

Application

A district seeking credit enhancement of eligible bonds shall apply to the commissioner using a form adopted by the commissioner for the purpose. The application must:

1. Include the information required by Education Code 45.055(b), at Bond Guarantee Program—Application, above; and
2. Be accompanied by a fee set by the State Board of Education. 19 TAC 61.1038(d)(1)

Education Code 45.255

The district may not submit an application for a guarantee or credit enhancement before the successful passage of an authorizing proposition.

If a district does not receive a credit enhancement or for any reason does not receive approval of the bonds from the attorney general within the specified time period, the district may reapply in a subsequent month. Applications that were denied a credit enhancement will not be retained for consideration in subsequent months.

A district may not represent the bonds as approved for credit enhancement for the purposes of pricing or marketing the bonds before the date of the letter granting approval for the credit enhancement.

19 TAC 61.1038(e)(1), (8), (10)

**Federal Securities
Law**

Disclosure
Obligations for
Bond and Other
Debt Offerings

Prior to publicly offering bonds, a school district must prepare and deliver to an underwriter an official statement containing the terms of the bond offering, a description of the district itself, financial and operating data of the district, and any other information that may be material to an investor interested in purchasing the district's bonds or otherwise required by Rule 15c2-12 (the "Rule") of the Securities Exchange Commission (SEC). *SEC Rule 15c2-12(b)* [See Note, below]

Liability under
Federal Securities
Law

School districts, board members, and employees of the district are subject to liability under the "antifraud provisions" of the federal securities laws contained in Section 17(a) of the Securities Act of 1933 (the "Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 of the SEC. The antifraud provisions generally prohibit false or misleading statements made in connection with the offer or sale of a district's bonds (or the omission of material facts from such statements), including the official statement itself and any other statement reasonably expected to reach bond investors ("disclosures"). *SEC Exchange Act Release No. 33741 (Mar. 9, 1994)*

The antifraud provisions also apply to a district's continuing disclosure obligations under the Rule after a district's bonds are issued. [See Continuing Disclosure after Issuing Bonds, below] *SEC Report on the Municipal Securities Market (July 31, 2012) (the "SEC 2012 Report") at pg. 29 and SEC Exchange Act Release No. 33741 (Mar. 9, 1994)*

Continuing
Disclosure after
Issuing Bonds

Except for exempt offerings, the Rule requires underwriters to obtain a continuing disclosure agreement (CDA) from the district when the district issues bonds. The CDA obligates the district to

prepare and file “continuing disclosures” of financial information and operating data after the bonds are issued. *SEC Rule 15c2-12(b)(5)* [See Note, below]

Note: In preparing an official statement, a district may reasonably rely on the advice of outside professionals who are also subject to the antifraud provisions, but a district is primarily liable for the content of its official statement and other disclosures. *SEC Exchange Act Release No. 36761 (Jan. 24, 1996)*

A district may engage qualified consultants, including qualified disclosure or securities counsel and a financial adviser, to assist with preparing an official statement and other disclosures relating to a bond offering. Creation of internal procedures may help to insulate a district against criticism or liability under federal securities laws.

Internal procedures may provide for (1) appointment of, and disclosure training for, district officials and employees who will be part of the financing team, (2) a procedure of accountability for review of the disclosures, and (3) ensuring that any procedures established are in fact followed.

[See SEC Report on the Municipal Securities Market (July 31, 2012) at pg. 109]

**Use of District Mail
System**

Unless it has been opened to the public, by policy or practice, a school mail system is not a public forum. A district may create a limited public forum in its campus mailboxes. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983) [See also GKD]

Political Advertising

An officer or employee of a district may not knowingly use or authorize the use of an internal mail system for the distribution of political advertising. This prohibition does not apply to the use of an internal mail system to distribute political advertising that is delivered to the premises of the district through the United States Postal Service. *Election Code 255.0031* [See BBBD(LEGAL) for the definition of "Political Advertising."]