

The State of Texas



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John B. Scott
Secretary of State

ELECTION ADVISORY

NO. 2021-14

TO: All Election Officials

FROM: Keith Ingram, Director of Elections

DATE: November 1, 2021

RE: Impact of Redistricting on Certain Election Deadlines and Procedures

On October 25, 2021, Governor Greg Abbott signed Senate Bill 4, Senate Bill 6, Senate Bill 7, and House Bill 1, adopting new redistricting maps for the U.S. House of Representatives, Texas Senate, Texas House of Representatives, and State Board of Education. Pursuant to Senate Bill 13 (87th Leg., 2d C.S.), because these redistricting plans were passed by the Legislature and signed by the Governor before November 15, 2021, the 2022 primary and primary runoff elections are still scheduled to occur on March 1, 2022 and May 24, 2022, respectively.

Due to delays in the U.S. Census Bureau releasing 2020 Census data to the States for redistricting purposes, the timeline for undertaking redistricting in Texas was modified this year. Recognizing these delays, SB 13 authorizes the Secretary of State to adjust the schedules for performing any official act relating to the 2022 election cycle "as necessary for the efficient and orderly administration of the election."

This advisory will provide relevant dates and deadlines that have been adjusted in accordance with SB 13 to effectuate legislative redistricting plans. Additionally, this advisory will highlight certain provisions for county officials to consider when redrawing their county election precincts following the adoption of legislative redistricting plans.

Effects of Redistricting on District-Level Offices

Congressional, State Legislature, and State Board of Education Districts

The new district lines established for the U.S. House of Representatives, Texas Senate, Texas House of Representatives, and State Board of Education will be used for the primary, primary runoff, and general elections in 2022. Individuals elected to office in November 2022 will represent the newly configured districts when they are sworn into office in January 2023. **The candidate-filing period for these offices begins on November 13, 2021 and ends at 6:00 p.m. on December 13, 2021.** (Section 172.023, Election Code).

Effects of Redistricting on County-Level Offices

The county commissioners court is the entity charged with redistricting at the county level.

County Commissioner Precincts

Article V, Section 18(b) of the Texas Constitution requires each county to be divided into four commissioner precincts. One commissioner is elected from each precinct. There is no statutory deadline for the commissioners court to reapportion precinct lines. However, commissioners precincts must be redrawn as necessary to maintain a substantially equal population within the four precincts. *Avery v. Midland County*, 390 U.S. 474 (1968). Therefore, each county commissioners court must order any necessary changes to the county commissioner precinct lines in light of 2020 census figures no later than **November 13, 2021**, the first day of the candidate-filing period for the primary election.

Constable/Justice of the Peace Precincts

Article V, Section 18(a) of the Texas Constitution uses the census figures to set population ranges to determine the number of constable and justice of the peace precincts in a county. For example, a county with a population of 50,000 or more, according to the most recent census, must be divided into not less than four and not more than eight precincts. Tex. Const. art. V, § 18(a). Any changes to constable/justice of the peace precinct lines must be ordered no later than **November 13, 2021**, the first day of the candidate-filing period for the primary election.

Impacts on Candidate Filings and Existing Terms of Office

Section 81.021(a) of the Texas Local Government Code provides that for changes in commissioner or justice precincts ordered by a commissioners court, an election for precinct office occurring after the date that the order is issued but before the effective date of the change in boundaries shall be held in the precincts as they will exist on that effective date. A person who has resided in the area included in a new precinct for the period required for eligibility to hold office is not made ineligible on the ground that the precinct has not existed for that period.

Section 81.021(b) of the Texas Local Government Code provides that the term of office of a commissioner, justice of the peace, or constable who holds office at the time a change in precinct boundaries becomes effective is not affected by the change, regardless of whether the change places the officer's residence outside the precinct for which the officer was elected. The officer is entitled to serve for the remainder of the term to which the officer was elected.

Redistricting for Local Political Subdivisions

Redistricting also may be necessary to maintain a substantially equal population between single-member districts within local political subdivisions such as cities and school districts. The timelines for completing redistricting may vary depending on the local political subdivision. For example, see Section 26.044 of the Texas Local Government Code, Sections 11.052 and 11.053 of the Texas Education Code, and various other special law district provisions.

Additionally, Section 276.006 of the Texas Election Code provides that a change in a boundary of a territorial unit of a political subdivision other than a county is not effective for an election unless the date of the order adopting the boundary change is made more than three months before election day. Local political subdivisions should be mindful of this requirement when planning their redistricting process.

Notice to County Election and Voter Registration Officials of District Changes

Section 42.0615 of the Texas Election Code provides that a political subdivision that changes its boundaries or the boundaries of districts used to elect members to the governing body of the political subdivision 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 boundary change occurs; 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 voter registrar's office.

Effects of Redistricting on County Election Precincts

The county election precinct is the basic electoral unit. Sections 42.005, 42.006, and 42.007 of the Texas Election Code govern the composition of county election precincts.

Section 42.005, referred to as the "officer line rule," provides that county election precincts may not contain territory from more than one commissioners precinct, justice precinct, congressional district, state representative district, state senatorial district, or State Board of Education district.

Section 42.006 provides population requirements related to the number of registered voters that may be contained within a voter registration precinct. Generally, a precinct must contain at least 100 but not more than 5,000 registered voters. In a county with a population under 100,000, the minimum number of registered voters that a precinct may contain is 50. However, in a county with a population under 50,000, a county election precinct may contain fewer than 50 registered voters if the commissioners court receives a written petition, signed by at least 25 registered voters of the county, requesting establishment or continuation of the precinct. When computing the number of registered voters in a precinct, voters on the suspense or "S" list shall be excluded in determining population limits (but these voters remain registered voters within the precinct).

Section 42.007 provides that a commissioners court may not establish a county election precinct containing territory inside a city with a population of 10,000 or more and unincorporated territory outside that city unless the commissioners court determines that either of the two areas: (1) cannot constitute a separate election precinct of suitable size or shape that contains the permissible number of voters; or (2) cannot be combined with other territory on the same side of the city boundary to form an election precinct of a suitable size or shape that contains the permissible number of voters without causing another election precinct to fail to meet those requirements.

With this year's changes to legislative and State Board of Education districts, election precinct boundaries in some counties may have to be adjusted pursuant to Section 42.005. Section 42.005(b) provides that if the application of Section 42.005 conflicts with

the population requirements set forth in Section 42.006, the requirements of Section 42.005 prevail.

Deadline for Ordering County Election Precinct Changes

Section 42.032 of the Texas Election Code requires that any changes to a county election precinct that are necessary to give effect to a state redistricting plan must be ordered by the commissioners court before October 1 of the year in which the redistricting was done. Because state redistricting plans were adopted after October 1, 2021, the Secretary of State must adjust this deadline in accordance with SB 13. The deadline must allow counties sufficient time to redraw their precinct lines, complete programming and testing of their primary election ballot, and meet federal requirements regarding the mailing of ballots to overseas and military voters.

To meet these deadlines associated with the March 1, 2022 primary election, all commissioners courts must order changes to boundary lines of county election precincts no later than December 30, 2021.

Effective Date of Boundary Change

Section 42.033 of the Texas Election Code provides that a change in a county election precinct boundary takes effect on the first day of the first even-numbered year following the voting year in which the change is ordered. Accordingly, all county election precinct boundary changes take effect January 1, 2022.

Notice Requirements Related to Precinct Boundary Changes

Notice Requirements for All Counties

Beginning with the first week following the week in which an order changing a county election precinct boundary is adopted, the commissioners court shall publish notice of the change in a newspaper in the county once a week for three consecutive weeks, and must publish notice on the county's Internet website for three consecutive weeks. The notice must include a brief, general description of the boundary change. (Section 42.035).

Notice Requirements for Counties with a Population of 1 Million or More

There are additional notice requirements that counties with a population of 1 million or more must meet before and after the adoption of a change in a county election precinct. (Section 42.036).

- **Notice of Proposed Change:**
 - **Timing of Notice:** Not later than the seventh day before the date of the commissioners court meeting at which the proposed change will be considered, the commissioners court shall deliver written notice of the proposed change to certain individuals.
 - **Parties Receiving Notice:**
 - The county chair of each political party that held a primary election in the county in 2020;
 - The political party's precinct chair of each affected election precinct; and

- The presiding judge appointed by the commissioners court for each affected election precinct.
- **Contents of Notice:** The notice must describe the proposed change in brief, general terms; identify the precincts to be affected by the proposed change; and state the date, hour, and place of the meeting.
- **Notice of Order Making Boundary Change:**
 - **Timing of Notice:** Not later than the seventh day after the date the order is adopted changing a county election precinct boundary, the commissioners court shall deliver written notice of the order to certain individuals.
 - **Parties Receiving Notice:**
 - The county chair of each political party that held a primary election in the county in 2020;
 - The political party's precinct chair of each affected election precinct; and
 - The presiding judge appointed by the commissioners court for each affected election precinct.
 - **Contents of Notice:** The notice of an order making a boundary change must describe the change in brief, general terms and identify the changed precincts. As an alternative, the notice to the county chair may be a copy of the order, and the notice to a precinct chair or presiding judge may be a copy of the portion of the order affecting the precinct served by that person.

Notice to Voter

Section 15.027 of the Texas Election Code provides that before the effective date of an abolishment of a county election precinct or a change in its boundary, the voter registrar shall deliver written notice of that action to each affected registered voter. Notice may be provided to a voter by issuing a new voter registration certificate during the time prescribed for the mailing of renewal certificates under Section 14.001 and as indicated in this advisory.

Notice to the Secretary of State

Public Notice of Order Changing Precinct Boundary Lines

The county clerk (or elections administrator, if applicable) shall deliver a copy of the public notice of the change in precinct boundary lines required under Section 42.035 to the Secretary of State not later than the 20th day after the date the order changing the boundary is adopted. This order may be submitted to the Secretary of State via email at elections@sos.texas.gov. (Section 42.035(d)).

Filing Map of Precinct Boundary Changes with the Secretary of State

Not later than the 120th day after the date an order changing a county election precinct boundary is adopted, the county clerk (or elections administrator, if applicable) shall deliver to the Secretary of State a map depicting the affected precinct's boundary as changed and showing the number of the precinct. The Secretary of State shall retain each map for 10 years after receipt. After that period, the map will be transferred to the state library. The state librarian shall retain the map for 20 years after receipt. (Section 42.037).

Notice to Voter Registrar

The commissioners court shall deliver a certified copy of an order changing a county election precinct boundary to the voter registrar not later than the seventh day after the date the order is adopted. (Section 42.034).

Voter Registration Certificates

Section 15.001(a)(16) of the Texas Election Code requires that a voter registration certificate contain jurisdictional information for city and school district election precincts. However, not all entities have single-member districts or territorial units. At a minimum, identifying the name of the city or school district as a whole on the voter registration certificate meets this requirement in Section 15.001(a)(16). Entities that have single-member districts should work with their county voter registrar to determine the information that the county will need for the certificate.

If a local political subdivision conducts redistricting after a county has issued their voter registration renewal certificate, the entity needs to provide that updated information to the county in order to ensure that the county is able to provide an official list of registered voters in time for the entity's next election. (Section 18.001). Single-member district designations are not strictly required for a voter registration certificate. A county may—but is not required to—send a new voter registration certificate due to a change in the single-member district of a city or school district. Cities or schools that have a change in single-member district boundaries should notify voters of any single-member district boundary or number changes.

Section 14.001 of the Texas Election Code requires the voter registrar to issue a voter registration certificate to each registered voter of the county between November 15 and December 6 of each odd-numbered year. As a result of redistricting delays, renewal certificates **should not** be mailed out during this timeframe. Under SB 13, the Secretary of State must adjust this deadline to allow county election and voter registration officials sufficient time to implement boundary changes in county election precincts. **Therefore, the voter registration renewal certificates shall be mailed to all voters in the county in active status whose registration is effective on December 31, 2021, between January 1, 2022 and January 12, 2022.**

We hope you find this information helpful. Please contact us at 1-800-252-VOTE(8683) if you have any questions.

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