

Local Election Act Update (HB 407)

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HB 407

- * Introduced on January 29, 2019; current (as of 2/22/19) location: **House Judiciary Committee**
- * Amends Regular Local Election Act and affects Board Member Elections in 2019
- * Amends other laws
 - * School District Campaign Reporting Act
 - * Special Elections Act
 - * School Board Member Recall Act

HB 407

- * General Obligation Bonds of School Districts
- * Public School Capital Improvements Act
- * Public School Buildings Act
- * Property Tax Act
- * Effective date – immediately upon signing by Governor

Regular Local Elections

- * “biennial local election at which local governing body members are elected”
- * Held on first Tuesday in November of each odd-numbered year -- **November 5, 2019**

Regular Local Elections

- * **School District** notifies County Clerk of board positions to be filled between **150 days (June 8, 2019)** and **120 days (July 8, 2019)** of election
- * School board may propose ballot question (bond or mill levy) to appear on ballot at regular local election by a resolution:
 - * Filed with County Clerk of each county in which votes may be cast
 - * Not less than **70 days** before the election (**Tuesday August 27, 2019**)
 - * Last day to adopt a resolution is **Monday August 26, 2019**

Regular Local Elections

- * County clerk must notify Secretary of State of all positions to be filled no later than **112** days before the election (**July 16, 2019**)
- * Secretary of State issues and files (with the Secretary of State's Office) the election proclamation (in English and Spanish) **90** days before the election (**August 7, 2019**) and posts and certifies proclamation with County Clerks

Regular Local Election

- * Secretary of State Proclamation specifies:
 - * Date of election
 - * Positions to be filled on each governing body
 - * Executive and judicial positions to be filled
 - * Date for filing declarations of candidacy

Regular Local Elections

- * **County Clerk shall:**

- * Post entire proclamation on County Clerk's website after receipt of Secretary of State's proclamation
- * Publish portions of proclamation relevant to the county on the website and **not less than 75 days (August 22, 2019)** before the election publishes **at least once** in a newspaper of general circulation in the county

Regular Local Elections

- * Candidates

- * **On the date the election proclamation is filed with the Secretary of State's office, a candidate for membership on a local school board must be:**

- * A qualified elector of the state
 - * Physically residing in the board member district or School District
 - * Registered to vote in the School District

Regular Local Elections

- * Declaration of Candidacy:
 - * Must be filed with County Clerk (of county in which candidate resides) **between 9 a.m. and 5 p.m. on 70th day before election (August 27, 2019)**
 - * Must be delivered for filing with County Clerk (of county in which candidate resides) by eligible candidate or by person acting with written authorization

Regular Local Elections

- * Declaration of Candidacy, (cont.)
 - * Cannot be amended once filed
 - * False statements in declaration are a 4th degree felony
 - * County Clerk cannot accept for filing from any one individual more than one declaration of candidacy
 - * Can file for a position in more than one local government, but for only one position in the same local government

Regular Local Elections

* Write-In Candidates

- * Must meet same qualifications as regular candidate
- * File declaration with County Clerk between 9 a.m. and 5 p.m. on the **63rd** day before the election (**September 3, 2019**)
- * Withdrawal of candidacy must be made in writing no later than 5:00 p.m. on the **60th** day before election (**September 6, 2019**)

Regular Local Elections

- * Candidate Qualifications, Challenges
 - * Any voter may challenge a candidate's qualifications because the candidate does not meet the requirements for the office by filing a petition in the District Court **not less than 7 days** after date for filing declaration

Regular Local Elections

- * Candidate Qualifications, Challenges (cont.)
 - * District Court hears **within 10 days after** filing
 - * Appeal to Supreme Court **within 5 days after** District Court Decision is entered
 - * Supreme Court hears “forthwith”

Regular Local Elections

* Ballots

- * County Clerk determines ballot eligibility and whether candidate is registered to vote in area to be elected to represent; if so,
 - * Places candidate on ballot
 - * Notifies candidate **by 5 p.m. on 60th day before election (September 6, 2019)**, except write-in candidates
- * Ballots include candidates' names, positions sought, and questions

Regular Local Elections

- * Ballots (cont.)
 - * Non-partisan
 - * Order of names determined by lot or randomization rule
 - * Space provided for voter to write in name of one candidate for each position if there is a write-in candidate (name of write-in candidate does not appear on pre-printed ballot)

Regular Local Elections

- * Ballot Order:
 - * Municipal elections
 - * School board elections
 - * Community college district elections
 - * Special district elections

Regular Local Elections

- * Ballot Order (cont.)
 - * And in the order prescribed by the Secretary of State:
 - * County questions
 - * Local government questions (Bond and Mill Levy Questions)
 - * Other ballot questions

Regular Local Elections

- * Board Member Positions
 - * At-Large Positions
 - * Same Length of Time
 - * “Position One”, “Position Two”, etc.
 - * Different Lengths of time
 - * Shorter length of time first
 - * Each listed with “for a term expiring”

Regular Local Elections

- * Bond and Mill Levy Questions
 - * **School Board** files with County Clerk(s) a resolution proposing a ballot question **not less than 70 days before** the regular local election (**August 27, 2019**)
 - * **County Clerk** certifies the ballot question to the Secretary of State **not less than 67 days before** the regular local election (**August 30, 2019**)

Regular Local Elections

- * Bond and Mill Levy Questions (cont.)
 - * Permitted if sufficient space on a single page ballot
 - * If not, questions included in order received by County Clerk
 - * Exclusion of question from one county's ballot excludes question from ballot in other counties

Regular Local Elections

- * Bond and Mill Levy Questions (cont.)
 - * Local government question requiring second ballot page permitted if local government pays additional cost of second page
 - * If more than one local government question included in or on second page, then cost split among them in multi-county jurisdictions

Regular Local Elections

- * Publication of Proclamation
 - * Listing name of candidates for each office and questions appearing on ballot in that county issued and published **by County Clerk**
 - * Made in newspaper of general circulation in county once each week for two successive weeks, with last **publication** being made **within 12 (October 24, 2019) days but not later than 5 days (October 31, 2019) before election**
 - * Shall conform to provisions of federal Voting Rights Act of 1965, as amended

Regular Local Elections

- * Absentee Voting
 - * County Clerk responsible
 - * Procedures per statute

Regular Local Elections

- * Canvassing

- * Canvassing board is **Board of County Commissioners, which:**

- * Canvasses returns within 10 days after election, canvassing board, and

- * Issues canvass and sends copy of certified results to: each local governing body receiving votes; Secretary of State; County Clerk; and State canvassing board, if results are for candidates or questions of more than one county

Regular Local Elections

* Terms of Office

- * Begin **January 1, 2020** following election
- * Oath of office must be taken before entering upon duties
- * Continue to serve until successor is elected and qualified

Regular Local Elections

- * Costs of Election

- * Election fund created to:

- * Pay costs of conducting and administering required statewide elections
 - * Reimburse counties for costs of conducting and administering required statewide elections
 - * Pay administrative costs of Secretary of State for administering required elections and administering the election fund
 - * Carry out all other specified provisions of the Election Code not otherwise covered by another fund

Regular Local Elections

- * Costs of Election (cont.)
 - * Source of fund:
 - * Money appropriated by the legislature
 - * Grants received by the Secretary of State
 - * If fund balance insufficient to cover election costs, Secretary of State may apply to State Board of Finance for emergency grant

Regular Local Elections

- * After July 1, 2019, statutes requiring annual assessment no longer apply
 - * Assessment based on general fund expenditures for each fiscal year
 - * Annual assessment equal to \$250 per \$1,000,000 of general fund expenditures
- * January 2019 assessment (first 1/2 of annual assessment) past due

School District Campaign Reporting Act

- * Definition of “covered office” includes school board member
- * Receipt of contributions or expenditures of more than \$1,000 must be reported

School Board Member Recall Elections

- * “Local School Board Member Recall Act” is now “Recall Act”
- * Recall election shall be **no later than 90 days after** County Clerk’s determination that sufficient signatures have been submitted (but not within time prohibited)
- * Recall elections conducted and canvassed pursuant to Local Election Act

School Board Member Recall Elections

- * Person collecting petition signatures (a Canvasser) need not be registered voter in the School District
- * Petitions must be filed with each County Clerk in multi-county Districts and include specific charge which constitutes misfeasance, malfeasance or violation of oath of office
- * District Court determines if sufficient facts alleged to support recall after County Clerk verifies signatures and that number is 33.3% of all voters who voted for all candidates for position occupied by named official at last election where official elected.

School Board Member Recall Elections

- * Limitations on Recall Elections
 - * Grounds for recall must have occurred during current term of office
 - * No more than one petition may be submitted during same term of office to which board member was elected
 - * Election cannot be conducted later than **180 days (July 4)** from end of board member's term
 - * Only Petitioner or board member can appeal District Court's decision on sufficiency of petition

School Board Member Recall Elections

- * If recall proceeds, election is held **not later than 90 days** after County Clerk determines sufficiency of number of verified signatures (which could result in recall election being held on same day as a statewide election or a regular local election)
- * School District must pre-pay or make arrangements with County Clerk to pay estimated costs of election

Special Local Elections

- * An election at which only ballot questions are considered and held at a time other than a statewide election
- * All special local elections conducted absentee – **mail only**
- * May **not** be held **within 70 days prior to (Tuesday August 27, 2019) or following (Tuesday January 14, 2020)** a statewide election (primary, general, special statewide **or regular local election**)

Special Local Elections

- * **Board** adopts, by resolution, public proclamation calling special election, which specifies:
 - * Date of special election
 - * Purpose of special election
 - * Text of any questions to be voted on
 - * Date and time of closing of registration books by County Clerk

Special Local Elections

- * **Board** files proclamation with County Clerk in each county within boundaries of School District **no later than 70 days prior to date for special election**
- * **County Clerk** certifies the ballot question to the Secretary of State not less than 67 days before the special election
- * **County Clerk** posts and publishes proclamation once each week for two consecutive weeks in a newspaper of general circulation within School District boundaries beginning **no later than 67 days and no less than 63 days before** election
- * If boundaries include more than one county, County Clerks may jointly publish proclamation

Special Local Elections

- * Posting and publication shall also inform public
 - * Special election conducted by mailed ballot
 - * Date ballots will be mailed
 - * Last date to register to vote or to update an existing registration

Special Local Elections

- * Publication

- * **County Clerk** shall publish proclamation once each week for 2 consecutive weeks in newspaper of general circulation in School District not less than 63 days before election

Special Local Elections

* Conduct

- * **County Clerk** conducts special election by mailed ballot
- * **County Clerk** sends each voter an absentee ballot and statement that there will be no polling place for election
 - * Ballots mailed on **28th day before** election or as soon as practicable thereafter
 - * Mailed ballots used exclusively for voting in special elections on ballot question(s), including a recall election

Special Local Elections

- * Completed official mailing envelopes accepted until **7:00 p.m. on election day**

Special Local Elections

- * County Clerk appoints election boards for special elections to:
 - * Tally votes (in presence of County Clerk and any other person who may desire to be present)
 - * Replace ballots in ballot boxes or containers
 - * Certify results of special election for county canvassing report

Special Local Elections

* Costs

- * When Secretary of State issues proclamation, state pays costs of special election
- * When School District issues proclamation, School District must deposit estimated actual costs associated with election **no later than 49 days before** special election, unless School District made appropriate arrangements with County Clerk by means of written MOU

Special Local Elections

* Costs

- * Multiple local public bodies jointly conducting special local election may post pro rata share of estimated actual cost
- * County Clerk may refuse to print or mail ballots if estimated actual cost not deposited **no later than 49 days** before special election and no appropriate arrangement by MOU

Special Local Elections

- * County Clerk sends bill and accounting of expenses to School District **within 60 days** of special election
- * Any balance must be paid **within 90 days** of special election

Bond Elections

- * Bond questions can be submitted to voters at a regular local election **or** at a special election
- * Voters no longer permitted to petition for same bond question six months after failed election

Bond Elections

- * May have more than one bond question on a ballot
- * If at a special election, will be conducted by mail ballot

Mill Levy Elections in November 2019 and 2021 Regular Local Elections

- * **No later than July 15, 2019, School District** files resolution with County Clerk and local government division of DFA calling for imposition or renewal of a mill levy and stating intent to place property tax question on November regular local election ballot
- * DFA sets 2 property tax rates – one assuming levy is approved and another assuming it is not approved
- * After regular local election, County Treasurer sends tax bills with appropriate rate; property taxes are due on December 6

SB9 and HB33 Elections

- * Board adopts resolution to impose an SB9 or HB33 tax
- * Resolution must indicate whether question will appear on regular local election ballot or specify date of special election
- * Eliminated May 15 resolution deadline
- * Eliminated “commencing with the property tax year in which the election was held”

Cuddy & McCarthy, LLP and NMSBA Websites

- * Declaration of Candidacy Form
- * 2019 Regular Local Election Calendar
- * 2019 Special Local Election Calendar

Questions?

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