

## **Additional Background Material Regarding Postponing Bond Election**

*Prepared by Tim Savoy, March 28, 2020*

I have been in contact with our bond counsel discussion options regarding our bond election for May 2, 2020. Here is a summary recap of some of the key items and options based on my understanding:

**It is the recommendation of administration and bond counsel to adopt the order to postpone the May 2, 2020 election, moving it to November. This appears to be our best and only viable option right now. It will buy us time to allow coronavirus events to unfold and for us to consider other strategies if needed.**

### **Considerations:**

Postponing the election would cause it to move as-is (with the exception of changes in dates and polling locations) to November. However, the current bond election is based on construction cost projections for a May election, market rates and district bond capacity pre-coronavirus, and demographic growth projections that could be affected by coronavirus.

### **Can we still have the election on May 2, 2020?**

Not advisable for the following reasons:

1. A May 2, 2020, with early in-person voting starting April 20, 2020, would expose poll workers and voters to coronavirus infection and spread. Their safety must be paramount.
2. It is likely that stay-home orders will be extended, thus they would still be in place in either Hays, Travis, or Caldwell Counties during early voting and through election day. Holding an election with stay-home orders in place would expose the district to legal action from disenfranchised voters. The bond election could be successfully challenged.
3. County election offices are closed and in work-from-home mode preventing: the mailing and receiving of mail-in ballots, maintenance of required election office hours and voter registrations, and completion of programing and testing of machines. County offices will not assist us if we attempted to proceed with the election.
4. We don't have time to purchase our own equipment and print/mail absentee ballots. Additionally, we do not have the expertise or staff to conduct balloting in-house.

### **What if we do nothing – we don't postpone and still have no election?**

Not advisable for the following reasons:

1. Without formal action by the Board moving the election, the district could be sued for disenfranchisement of voters. Worst-case scenario is that a judge, after lengthy legal expenses, could order the district to hold the exact same election a year or more from now.

### **Can we just order a cancellation of the election?**

No, not according to bond counsel:

1. Texas election code requires the Board to have specific statutory authority to cancel a measure election. The only statutory authority option is if the measure or measures are deemed moot – that even if the bond passed, the district would or could not carry out the measures. We don't have a moot argument for a May election. We may have one for a November election if the project cost projects become significantly more expensive, or student growth is significantly affected by coronavirus, etc. This is where buying time would aid us in our future strategy.
2. A few entities around the state are attempting to cancel their measure elections even though there is no statutory authority for them to do so, in hopes that they can argue extenuating circumstances. If that argument fails, they could be ordered to carry out their current measure elections at a future date in the exact form as the one prepared for May 2, 2020.
3. The trustee portion of the election is legally considered a separate election. Since the Board has previously and legally canceled the unopposed trustee election, it is not affected by coronavirus or the postponement order being considered by the Board. Unopposed trustees declared elected can take office for their upcoming terms according to the normal May election timeline.

### **Benefits of additional time by moving the election to November:**

1. We could receive further guidance from the Secretary of State allowing us other options.
2. We could receive an order from the Governor allowing other options.
3. We have a better chance to develop a moot argument if needed and if the Board chooses to explore a cancellation of this election for November.

### **What if this bond as-is is no longer viable in November, but we still have all or most of the needs?**

If we need or wish to try to cancel this election (the one set up for May), and we are successful; the Board could call for a new bond election in November 2020, May 2021, or on any allowable future uniform election date.