

The State of Texas

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Jane Nelson
Secretary of State

ELECTION ADVISORY **NO. 2023-05**

To: All Election Officials

From: Christina Worrell Adkins, Director of Elections 

Date: June 2, 2023

RE: Exemptions to Voting System Accessibility Requirements

As a general rule, a county or a political subdivision must provide at least one accessible voting machine in each early voting and election day polling place, pursuant to Section 61.012(a)(1)(C) of the Texas Election Code (the "Code"). However, **for all elections in which a federal office is not on the ballot**, a county or a political subdivision located within a county with a population described below may be able to obtain an exemption from the general requirement of providing one accessible voting machine in each polling place. The rules and procedures for that exemption are outlined in Section 61.013 of the Code and in this advisory.

Note that the exemptions are not available to a county when a federal office appears on the ballot or to a political subdivision when the election of the political subdivision is held jointly with an election in which a federal office appears on the ballot.

Notice and Publication Requirement:

1. All political subdivisions desiring to reduce the number of electronic accessible voting systems must **file a written notice** with our office stating which exemption they seek to utilize (or, if seeking exemption No. 4, submit an Application of Undue Burden Status) to our office no later than 90 days prior to election day. See "Possible Exemptions," below, for the list of exemptions that may be claimed.
 - **For the November 7, 2023 uniform election date, the deadline to submit such notices or an Application of Undue Burden Status is Wednesday, August 9, 2023. Pursuant to HB 2025 (2021), the population figures from the 2010 federal census will continue to apply with respect to a statute that applies to a political subdivision having a certain population according to the most recent federal census until September 1, 2023. The bill specifies that a statute does not apply to a political subdivision to which the statute did not apply under**

the 2010 federal census, regardless of whether the political subdivision has the population prescribed by the statute according to the 2020 federal census.

- **For the May 4, 2024 uniform election date, the deadline to submit such notices or an Application of Undue Burden Status is Monday, February 5, 2024.** (The statutory deadline falls on Sunday, February 4, 2024, and is extended to the next regular business day under Section 1.006 of the Code).

Our office has created a sample [Notice of Exemption \(AW13-5\)](#), and an [Application of Undue Burden Status \(AW13-4\)](#) and instructions for counties and other political subdivisions that can be accessed on our website or by contacting our office for a copy. You are not required to use the form prescribed by our office.

2. Not later than the 15th day before the start of the period of early voting by personal appearance, all counties or political subdivisions using exemption No. 2, 3, or 4 must **publish notice in a newspaper** of general circulation of the location of each early voting and election day polling place that will contain an electronic voting system.
 - For the **November 7, 2023** uniform election date, the 15th day before the start of early voting in person is **Sunday, October 8, 2023**.
 - For the **May 4, 2024** uniform election date, the 15th day before the start of early voting in person is **Sunday, April 7, 2024**.
 - **NOTE:** The Elections Division does not believe that this deadline moves forward under Section 1.006 of the Code.

Possible Exemptions:

Note: Population is determined by the most recent Federal Census numbers. The relevant population figure to consider is the **county's** population, not the population of the political subdivision.

1. Counties with a population of **less than 2,000** or political subdivisions **located in a county** with a population of **less than 2,000** are exempt from the requirement of providing accessible electronic voting systems. A voter with a disability may request a reasonable accommodation by the 21st day before election day with the early voting clerk. Such a reasonable accommodation may include providing an audio tape of the ballot for the voter or a template which lays over the ballot and allows a voter with a visual disability to vote independently and in privacy.
2. Counties with a population of **2,000 or more but less than 5,000** or political subdivisions **located in a county** with a population of **2,000 or more but less than 5,000** must provide at least one accessible electronic voting system on election day, preferably at the early voting clerk's office.
3. Counties with a population of **5,000 or more but less than 10,000** or political subdivisions **located in a county** with a population of **5,000 or more but less than 10,000** must provide at least one accessible electronic voting system on election day and during the period for early

voting by personal appearance. We suggest that the accessible system be located at the main early voting location during early voting and at the early voting clerk's office on election day.

4. Counties with a population of **10,000 or more but less than 20,000** or political subdivisions **located in such a county** may provide fewer accessible voting stations (than one in every early voting and election day polling place) if they comply with the requirements set out below.
 - The entity must submit an **Application of Undue Burden Status** to the Secretary of State showing that compliance with Section 61.012(a)(1)(C) would cause an undue burden on the political subdivision by increasing the costs associated with the election by at least 25% as compared to the costs of the last general election held by the subdivision before January 1, 2006.
 - As noted, the application must be submitted to our office **no later** than the 90th day before the date of the election for which the subdivision seeks relief. The Secretary of State will determine whether to approve the request for undue burden status no later than the 20th day after the date it receives the application and inform the applicant as soon as possible after making that determination.
 - If the Secretary of State approves the request for undue burden status, the entity must:
 - Provide at least one accessible electronic voting system during the period of early voting by personal appearance (preferably at the main early voting site) and on election day (preferably at the early voting clerk's office);
 - If the subdivision has branch early voting locations, provide one mobile accessible electronic voting system to be deployed at least once to each branch early voting polling place; and
 - Publish notice in a newspaper of the location of the accessible voting machines (See Notice and Publication Requirement, above).

If your political subdivision is located in more than one county, and you fall into one of the 4 categories above, you may choose to be considered either 1) as being located in the county that contains the greatest number of registered voters of your subdivision; or 2) for each portion of your subdivision located in a different county to be considered as a separate subdivision.

Note for Water Districts

If you are a water district claiming an exemption under Section 49.111 of the Texas Water Code, please contact our office if you need guidance on that process.

For more information, please contact the Elections Division at 1-800-252-VOTE (8683).

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