

# SMART Transportation Division

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Office of the Transportation Division President

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Secretaries, All Locals  
SMART Transportation Division

August 1, 2019

## **2019 ELECTIONS FOR LEGISLATIVE REPRESENTATIVES AND ALTERNATE LEGISLATIVE REPRESENTATIVES**

Dear Brothers and Sisters:

Under the provisions of Article Twenty-One B (21B), Section 57, of the SMART Constitution, elections of Local Legislative Representatives and Alternate Legislative Representatives will be held by all Transportation Division Locals in November 2019.

Permanent vacancies that exist in any other elective positions also should be filled during this election.

For your guidance, accompanying this circular is a flyer entitled, "*How to Conduct Elections for Legislative Representatives and Alternate Legislative Representatives*," which includes a sample ballot. (Ballots should be obtained from an outside source, such as a union printer, instead of using a computer or copying machine to make ballots. The printing company should be asked to provide an official count of the number of ballots printed.) Also depicted in the accompanying flyer is a sample postcard labeled "ELECTION NOTICE," to be used to give notice of the call for nominations and notice of the election. The flyer also includes the voting instructions supplied to members in mail referendums. For those Locals that will conduct a mail referendum, samples of the three envelopes required in elections also are depicted in the flyer.

The envelopes needed to conduct an election, as well as the "ELECTION NOTICE" nomination/election postcards and pads of pre-printed voting instructions, may be purchased from the SMART Transportation Division Supply Department. You may use the regular "Order for Supplies" form to order these items. The envelopes supplied by the SMART Transportation Division Supply Department are blank. Addresses will need to be printed directly on the envelopes, or address labels may be used. (NOTE: As per the voting instructions, members must place their names and addresses in the upper-left-hand corner of the ballot-return envelope they receive. The illustration of this envelope shows lines printed in this area for this purpose. Such lines are not necessary, and their omission will not invalidate the election, but the voting instructions prescribed by Article Twenty-One B [21B], Section 57, of the SMART Constitution MUST accompany the ballot material sent to members.)

The following instructions and pertinent portions of our law are called to your attention to ensure the validity of your election. A separate outline of tips for conducting elections that meet the requirements of the Labor Management Reporting and Disclosure Act (LMRDA) and the SMART Constitution is included in the enclosed flyer, along with an election planner and checklist. All questions relating to Local election procedures should be directed in writing to this office.

## **LEGISLATIVE AND ALTERNATE LEGISLATIVE REPRESENTATIVES TO BE ELECTED IN NOVEMBER 2019**

*An election for Legislative Representatives and Alternate Legislative Representatives shall be held in November 1971, and quadrennially thereafter. Candidates for these offices must be qualified voters. (Article Twenty-One B [21B], Section 57, Lines 6-8.)*

NOTE: This means candidates must be registered to vote in the state in which they reside.

*Local Committeepersons and Legislative Representatives shall assume their office on January 1, following the year of the Quadrennial election. (Article Twenty-One B [21B], Section 57, Lines 9-10.)*

NOTE: Alternate Legislative Representatives shall also assume office on January 1, following the year of the Quadrennial election.

## **GENERAL INSTRUCTIONS**

### **NOMINATIONS IN LOCAL ELECTIONS**

*Nominations must be filed with the Secretary not later than the last regular meeting in October in the year of election. Where nominations are made by nominating petition, at least five (5) members eligible to vote shall sign the petition. The Secretary shall promptly acknowledge receipt of all petitions and read them at the last regular meeting in October. (Article Twenty-One B [21B], Section 57, Lines 21-25.)*

NOTE: Nominations may also be made from the floor at the nomination meeting. Nominations made on the floor do not require a second. No nominations can be accepted after the nomination meeting closes. Nominees may withdraw from the race up until the day before ballots are to be printed. Withdrawals must be in writing and signed by the nominee.

If nominations are conducted at a meeting, no quorum requirement may be imposed. Those making nominations must be members in good standing. Their eligibility must be checked at the nomination meeting in order to allow an eligible member the opportunity to make the nomination if the original nominator is not in good standing.

## **ELECTION IN NOVEMBER - BY SECRET BALLOT**

*Officers stipulated in this Section shall be elected by secret ballot at a November meeting of the Local, or by referendum vote, as provided by existing bylaws or procedures of each Local. An electronic voting method may be used if it meets the standards of the Department of Labor for guaranteeing secrecy of the ballot. (Article Twenty-One B [21B], Section 57, Lines 17-20.)*

NOTE: In the absence of Local bylaws or adoption of a motion requiring a mail referendum, election must be by secret ballot at a meeting of the Local.

NOTE: The phrase “*An electronic voting method may be used if it meets the standards of the Department of Labor for guaranteeing secrecy of the ballot*” was adopted by Delegates at the First SMART General Convention. Such voting must meet LMRDA and Department of Labor requirements. Voting by email or website does not meet such requirements.

## **SETTING ELECTION DATE**

*The members present at the last regular meeting in October shall set the date on which the ballots shall be counted and the election held. (Article Twenty-One B [21B], Section 57, Lines 26-27.)*

## **NOMINATION AND ELECTION NOTICES**

Reasonable notice (not less than 10 days) shall be provided all active members that nominations will be received at the last regular meeting in October in the year of election. A special notice of the nomination meeting must be posted. A postcard is also recommended for use to give notice of the nomination meeting, but not required by law or constitution.

Federal law requires that all active members, including nonworking members (not just members eligible to vote) be notified of an officer election, including the date, time and place that the voting will occur. Unlike the nomination notice, the notice of election must be mailed to each member at his or her last known home address at least 15 days prior to the election. (Such notice does not have to be given to retired members.)

Locals which do not use the mail referendum ballot procedures MUST mail the “ELECTION NOTICE” postcard to each member at his/her last known address not less than 15 days prior to the date of election to apprise members of the date, time and place of the election. In recognition of this requirement, efforts should be made in August and September to update membership addresses, on your own books as well as on our online directory.

Where election is by mail referendum ballot, the notice of election and election date should be included on the ballot, as indicated on the sample ballot, and must be mailed to each eligible member at his/her last known home address not less than 15 days prior to the date of election.

## **PREPARATION OF BALLOTS**

*The Secretary shall prepare ballots showing the names of all candidates and the offices*

*for which they are nominated.*

*Incumbent officers shall appear first, with names of other candidates following in alphabetical order.*

*The ballots shall be prepared so as to provide a square opposite each candidate's name in which the voter can mark his/her preference of candidates. (Article Twenty-One B [21B], Section 57, Lines 28-33.)*

NOTE: Write-in candidates are not permitted.

NOTE: The return address on the "Ballot Enclosed" envelope must be the same as the mailing address on the "Ballot" envelope members will use to return their ballots, and ideally, should be a dedicated post office box address used only for elections. Please contact this office if there is a problem with using a post office box.

## **MAIL REFERENDUM ELECTION**

SMART Transportation Division Locals having the mail referendum plan of election in effect should complete their election in accordance with Article Twenty-One B (21B), Section 57, Lines 37-78.

If your Local has the mail referendum plan of election in effect, you must send each member entitled to vote, at least 15 days prior to date set for counting ballots, each of the following:

1. Leaflet containing voting instructions. (Article Twenty-One B [21B], Section 57, Lines 45-50.)
2. Official ballot(s).
3. Envelope marked "A."
4. Ballot-return envelope marked "Ballot" with first-class postage affixed.

Do not use the Local's regular post office box for the election if regular mail is normally routed there. In situations where the postmaster will not retain the key or combination to the election post office box, the Local President should appoint the Tellers prior to the mailing of the ballots, and they should determine who among them will retain the box key or combination. The key or combination should be placed in a sealed envelope, and each Teller should sign his or her name across the sealed edge of the envelope.

*On the day set for the tabulation of the ballots and election, the President will appoint three (3) Tellers. (Article Twenty-One B [21B], Section 57, Lines 54-55.)*

NOTE: The Local President may wish to arrange who will serve as Tellers well in advance of the date of tabulation to ensure their availability. Only the Tellers may pick up ballots from the designated post office box, and only the Tellers will canvass ballots, as per Article Twenty-One B [21B], Section 57 of the SMART Constitution. Candidates cannot serve as Tellers.

## **SUPPLYING DUPLICATE BALLOTS FOR MAIL REFERENDUM ELECTION**

A member who has not received a ballot in the mail, who has lost or accidentally destroyed his or her ballot, or for any other reason wishes to receive a ballot after the initial mailing has gone out, must be able to reach the Secretary to request a ballot in a timely manner. Contact information for the Secretary should be available to all members, whether included on the nomination/election notice postcards, posted on a bulletin board or website, or in some other manner made accessible. When issuing duplicate ballots, mark the ballot-return envelope "Duplicate." If both the original and duplicate envelopes are returned, void the original unopened ballot. Record on the eligibility list all duplicate ballots issued. The Secretary must be able to account for all ballots printed.

## **LOCAL FLOOR ELECTION**

SMART Transportation Division Locals holding elections at Local meetings shall determine winning candidates by secret vote of eligible members present at the election meeting, as per Article Twenty-One B (21B), Section 57, Lines 65-78.

## **ONE NOMINATION - ELECTED WITHOUT OPPOSITION**

*When only one (1) nomination has been received for an office, the member so nominated will be declared elected on the day set for the tabulation of ballots and election. (Article Twenty-One B (21B), Section 57, Lines 83-85.)*

NOTE: In this event, such office should not appear on the ballot.

## **MEMBERS ELIGIBLE TO VOTE:**

*Except as otherwise provided in this Constitution, no member shall be entitled to any of the rights or benefits of SMART, unless dues and assessments are paid within the time specified herein. (Article Twenty-One B [21B], Section 53, Lines 2-4.)*

*The dues and assessments of members shall be paid in advance, before the first day of the month in which they are due. (Article Twenty-One B [21B], Section 49, Lines 2-3.)*

*During the period in which members request relief and are relieved from the payment of dues and assessments in accordance with this Section, they shall continue to enjoy all privileges of membership, except they shall not be permitted to vote in elections...unless allowed to vote by virtue of Local bylaws in Local matters only. (Article Twenty-One B [21B], Section 49, Lines 25-30.)*

NOTE: Retired members are among those not eligible to vote.

NOTE: Members serving their employers in an official capacity are eligible to vote in Local elections (i.e., for President, Vice President, Secretary, Treasurer, Secretary-Treasurer, Trustees, Delegate, Alternate Delegate, Legislative Representative and Alternate Legislative Representative), but cannot vote in

Local Committee of Adjustment (LCA) elections.

NOTE: When filling interim vacancies for Local Committees of Adjustment (LCAs), only members in service under the jurisdiction of the committee will be notified of such election and permitted to file or sign nominating petitions and vote, as per Article Twenty-One B (21B), Section 57, Lines 92-94.

**ELIGIBILITY FOR OFFICE** (Article Twenty-One B [21B], Section 7, Lines 1-30.)

*Unless otherwise provided, any member paying full dues shall be eligible for election to any office in the Transportation Division, except a member who:*

(a) *Has attained age 65 or attains age 65 during year of election;*

NOTE: Pursuant to the Age Discrimination in Employment Act, 29 USC §621, et seq., as amended, the above limitation based on age is inapplicable.

(b) *Holds membership in any other union representing transportation employees, other fields of employment, trades and industries, whether in public or private employment, except when a member is forced by agreement to belong to another union;*

(c) *Is serving in an official capacity with a transportation company, other fields of employment, trades and industries, whether in public or private employment, except as yardmaster where the Transportation Division holds the contract for yardmaster;*

(d) *Does not hold seniority rights in transportation service, other fields of employment, trades and industries, whether in public or private employment where the Transportation Division holds the contract, except this does not apply when a member is dismissed from service and his/her case is being appealed;*

(e) *Voluntarily elects to receive a rebate of dues from any department will not be eligible to hold office in that department and will not be eligible for the offices of Delegate or Alternate Delegate, Legislative Representative, or Alternate Legislative Representative;*

(f) *Is restricted from holding office by Labor-Management Reporting and Disclosure Act;*

(g) *Is an elected officer of the Transportation Division, listed in Section 2(A), shall not be eligible to the office of Transportation Division Delegate.*

(h) *Is serving as a Local Officer and/or Local Committee of Adjustment Officer who serves on a part-time basis need only be members in good standing to retain their office.*

NOTE: A member may not seek office in any Local other than the Local in which membership is held, and may not serve on more than one Local Committee of

Adjustment (LCA) under the jurisdiction of the same General Committee of Adjustment at the same time.

In order to participate in elections, you must be a member and have paid dues. As an example, a member who has not paid October dues prior to the first day of the month in which they are due, or is otherwise not a member, cannot nominate or be nominated in October. The same person, however, may become an eligible voter in November if he gains membership after October 1, and his or her November dues are paid in a timely manner. A person cannot submit a membership application after October 1 and pay October dues after September 30 in order to become eligible to run, vote or nominate in October.

### **FILLING MORE THAN ONE ELECTIVE OFFICE**

*No member may fill more than one (1) of these elective offices (specified in Article Twenty-One B [21B], Section 56, Lines 2-3) at the same time. (Article Twenty-One B [21B], Section 56, Lines 13-14.)*

NOTE: This does not prohibit a member from holding one of the elective offices set forth in Article Twenty-One B (21B), Section 56, and at the same time serving on a Local Committee of Adjustment (LCA), and/or as Legislative Representative or Alternate Legislative Representative, and/or as Delegate or Alternate Delegate.

### **RUNOFF ELECTION**

*Locals failing to complete their regular elections during the month of November must notify the President Transportation Division the reason therefor and the date set for the completion of the election. (Article Twenty-One B [21B], Section 57, Lines 95-97.)*

### **DISTRIBUTING CAMPAIGN LITERATURE**

Candidates for elective office may send statements or circulars to members regarding their qualifications, but letterheads of a candidate's Local or office must not be used for this purpose. Federal law strictly prohibits the use of union and employer funds to promote the candidacy of any person in a union officer election.

Secretaries or Secretary-Treasurers must address and mail out campaign materials for a candidate who requests such action. The candidate will be responsible for all expenses connected with such a request.

### **INSPECTING THE MEMBERSHIP LIST**

Department of Labor regulations provide that each bona fide candidate for office has a right, once within 30 days prior to any election in which he or she is a candidate, to inspect a list containing the names and last known addresses of all members eligible to vote in that election. A union also must allow a bona fide candidate who is seeking to be nominated to run for office the

opportunity to inspect the membership list once within 30 days before the election. The right to inspect the membership list is limited to one time within 30 days before the election or 30 days before the mailing of ballots in a mail ballot election. Candidates do not have the right to copy the membership list, nor can Secretaries or Secretary-Treasurers supply copies of the list to candidates or their representatives. Candidates only have the right to inspect and/or compare the list with a personal list of members.

In the event that a candidate, by virtue of the office he or she holds, or through some other circumstance, has privileged access to a list containing the names and last known addresses of all members eligible to vote in that election, such access must be granted all other candidates.

Membership lists or eligibility lists must not be supplied by the Secretary or Secretary-Treasurer, but can be obtained through a request directed to the SMART Transportation Division. The list supplied by the SMART Transportation Division will be based on the last billing submitted to this office and the addresses on file with this office, as reflected by our online directory. Because of this, it is very important that Secretaries and Secretary-Treasurers ensure the information available to this office is up-to-date prior to an election.

## **OBSERVERS**

An observer (or poll watcher) is a candidate representative who is stationed at the polls on election day to watch the conduct of election officials and voters to ensure that the election is conducted in a fair and impartial manner. Candidates may have observers present during the counting and tallying process, including totaling, recording, and reporting of tally sheets. In a mail ballot election, candidates may have observers present at the preparation and mailing of the ballots, their receipt, opening and counting. Candidates may serve as their own observers. Under federal law, every candidate is entitled to have an observer at each polling site and at the counting of ballots.

## **NOTIFICATION OF COMPLETED ELECTIONS**

*Locals must, following each election of officers or succession to office, promptly notify the President Transportation Division, General Secretary-Treasurer, interested General Chairpersons, and State and District Legislative Boards of the names and addresses of the new officers. (Article Twenty-One B [21B], Section 57, Lines 98-101.)*

## **PRESERVATION OF ELECTION BALLOTS AND RECORDS**

All records pertaining to elections, including "Ballot" envelopes; used, unused and void ballots; tabulation sheets; eligibility list and related material shall be preserved for one year as required by federal law (29 USC 481) and Article Twenty-One B (21B), Section 57, Lines 72-73.

*Local Officers, Committeepersons, Legislative Representatives and Delegates upon leaving*



*office must promptly transfer all property, funds, securities, equipment and other effects of their office to their successor. Any member failing to comply with the provisions of this paragraph shall be suspended from membership in SMART. (Article Twenty-One B [21B], Section 57, Lines 102-106.)*

## **ELECTION PROTESTS**

Election protests must be addressed to the SMART Transportation Division President and should include all pertinent information indicating why the protest has merit. Election protests should not be based on a “technical” violation which has had no effect on the outcome of the election. An election protest filed with the SMART Transportation Division should cite the specific LMRDA election standard(s) violated; and/or the specific provision(s) of the SMART Constitution violated; and/or information regarding unreasonable application of any union election rule, such as applying a candidate eligibility requirement to only some of the candidates. A union member has the right under federal law to file a complaint with the Office of Labor-Management Standards (OLMS) regarding the conduct of a union officer election within one calendar month after meeting certain conditions. (Essentially, before filing an election complaint with OLMS, a member must have either exhausted internal remedies within the union or pursued them for three months without obtaining a final decision from the union.) A challenged election shall be presumed valid pending a final decision, and in the interim, the affairs of the Local shall be conducted by the officers elected or in such other manner consistent with the SMART Constitution.

Fraternally yours,



John Previsich  
President – Transportation Division

cc: SMART Transportation Division Officers  
General Chairpersons  
State Legislative Directors  
Local Presidents  
Field Supervisors