

SUBJECT: Implementation of the federal Help America Vote Act of 2002

COMMITTEE: Elections — committee substitute recommended

VOTE: 4 ayes — Denny, Howard, Harper-Brown, Uresti

0 nays

3 absent — Bohac, Coleman, Deshotel

WITNESSES: For — Paul Bettencourt, Harris County Tax Assessor-Collector; Suzy Woodford, Common Cause of Texas; *(Registered, but did not testify:)* Pat Carlson, Tarrant County Republican Party

Against — None

On — David Beirne, Harris County Clerk; Mary Ann Collins; Elizabeth Hanshaw Winn, Ann McGeehan, Secretary of State; Fred Lewis, Campaigns for People; Ben Stool, Criminal District Attorney's Office of Dallas; *(Registered, but did not testify:)* Jesse Lewis, Republican Party of Texas; Molly Beth Malcolm, Texas Democratic Party

BACKGROUND: The federal Help America Vote Act of 2002 (HAVA), signed into law by President Bush in October 2002, provides states \$3.9 billion in federal funds from 2003 through 2006. States can use the funds to replace outdated voting equipment, improve election administration, and train poll workers. Among other requirements, each state must:

- implement a uniform, centralized statewide voter registration computer database;
- provide provisional ballots to ensure that no individual is turned away at the polls; and
- provide in each precinct at least one voting machine that is accessible to voters with disabilities.

HAVA Title I will provide \$650 million in funding, with each state guaranteed a minimum of \$5 million. The federal government will pay 95

percent and states must pay a 5 percent match. These funds will be used for replacing punch-card and lever voting machines and to improve election administration.

Title II establishes the Election Assistance Commission, which will issue voluntary guidelines for voting systems and address certification and testing of voting systems. Under Title II, \$3 billion in funds will go to states to help meet the requirements of HAVA, including providing provisional ballots, creating computerized statewide voter registration lists, and providing accessible voting machines for voters with disabilities.

The Legislative Budget Board (LBB) estimates that Texas will receive about \$23 million from Title I funds and about \$57 million from Title II funds. The LBB estimates that \$2.9 million would be required to satisfy the 5 percent match and that there are sufficient funds in the Chapter 19 account (used for financing voter registration) for fiscal 2004 and 2005 for this purpose. HB 1 by Heflin, the House-passed version of the general appropriations bill for fiscal 2004-05, authorizes the transfer of funds.

Each state must submit a plan to the Elections Assistance Commission by September 2003 detailing how it will meet the law's mandates. Each state is required to form a task force and develop a plan. The Texas secretary of state will be forming a task force over the next few months, but at this point, the federal commission has not been appointed, and no federal funds have been released.

Texas already has met some of HAVA's voting system standards. For example, Texas election law has required voting systems adopted since September 1999 to be accessible to voters with disabilities.

For additional background on HAVA, see House Research Organization Interim News Number 77-13, *Federal Election Law Change Affects Texas Voting Systems*, October 29, 2002.

**DIGEST:**

CSHB 1549 would amend various chapters of the Election Code to comply with requirements of HAVA, and the secretary of state would be authorized to adopt any rules necessary to implement the act. It would establish a statewide computerized, interactive voter registration database and an administrative

complaint process, require development and implementation of a provisional voting program, prohibit lever and punch card voting machines, and require that each polling place have at least one voting device accessible to voters with disabilities.

The bill would amend current law regarding voter registration to require additional voter identification at the time of initial registration. The voter registration application would have to include the applicant's Texas driver's license number or Department of Public Safety-issued personal identification card number, or the last four digits of the applicant's social security number. An applicant who had none of these forms of identification could provide another means of identification as prescribed by the secretary of state.

Additional acceptable forms of identification would include a copy of a current utility bill, bank statement, government check, paycheck, or other government document that showed the voter's name and address. The bill no longer would allow pre-printed checks and two other forms of identification as acceptable forms of identification.

The secretary of state would have to develop procedures to notify first-time voters who applied for registration by mail that they would have to provide copies of acceptable forms of identification. An instructional sheet would have to be provided with the application explaining the process. The early voting clerk would have to include a notice with a ballot to be voted by mail that required the voter to submit a copy of one of the acceptable forms of identification with the returned ballot. The ballot would not be counted if the identification was not provided, unless the early voting ballot board otherwise determined eligibility. These provisions would expire on the earlier of January 1, 2006, or the date when the secretary of state implemented the statewide computerized voter registration list.

**Statewide voter registration list.** The bill would abolish the registration service program, require the secretary of state to implement and maintain a single, official, computerized list of registered voters in Texas, and set forth provisions for noncompliance, unlawful use, and availability of the voter list. The list would have to include the name and registration information of each registered voter, generate a unique identifier for each voter, and be available electronically to any election official in the state. Each voter registrar would

be required as quickly as possible to provide electronically to the secretary of state the necessary information to maintain the list. Counties that failed to comply by January 1, 2006, would lose their state funds for financing voter registration.

Original and supplemental lists of registered voters would have to contain unique statewide voter registration numbers and, until the notification requirement expired, information on whether a first-time mail registrant had provided the required identification.

**Provisional voting.** As of January 1, 2004, the system of using ballot stubs for voters whose registration was challenged at the polling place would be replaced with a provisional voting procedure for persons authorized to cast a provisional ballot. It would set forth the eligibility requirements for a voter to cast a provisional ballot, and the provisions for implementing casting, verification, and processing of provisional ballots, including the duties of election officials, and the security, acceptance, delivery, disposition, and preservation of provisional ballots. Provisional ballots would be kept separate until after the election and would be counted if the voter's registration and eligibility could be verified.

CSHB 1549 would require election officers to give a provisional voter information on how to learn whether a provisional vote had been counted, which could include using a toll-free phone number or the Internet.

**Access by disabled voters.** By January 1, 2006, each polling place would have to provide at least one voting system that was accessible to persons with disabilities and allowed them to cast secret ballots. This requirement would apply only to polling places that used electronic voting systems, unless determined otherwise by the secretary of state.

**Voting systems.** CSHB 1549 would require that voting systems comply with the error rate standards adopted by the Federal Elections Commission and, as of January 1, 2006, would prohibit the use of mechanical (lever-based) voting machines and punch-card ballots. In a federal election for which a court order had been issued to extend the voting time, a voting system would have to be able to provide a separate count of the late votes cast.

**Election improvement fund.** The election improvement fund would be a dedicated account in the general revenue fund that would consist of federal funds, matching funds from the state or political subdivisions, and earned interest. Once the secretary of state determined that federal matching funds were available, the comptroller would deposit into the election fund the state's 5 percent match from Chapter 19 funds. The money could be used only to:

- improve election administration at the state and local level;
- make grants to local governments to improve or replace voting systems;
- create the centralized voter registration database; and
- comply with other federal election requirements.

**Administrative complaint procedure.** The secretary of state would be required to adopt rules establishing state-based, uniform, and non-discriminatory administrative complaint procedures to remedy grievances.

**Vote counting provisions.** Following a court order for a poll to stay open past the authorized time — 7:00 p.m. — late ballots would be placed in a separate box so that the early voting ballot board could count these ballots along with the accepted provisional ballots. To define what constituted a vote, the bill also would set forth the methods for determining the intent of the voter when counting irregularly marked paper ballots. If there were a manual count of electronic system ballots, the same provisions for determining the intent of the voter would be used. In the case of a recount, a custodian of voted ballots, machines, or test materials also would have to make available to the recount committee the records to enable the committee to audit the operation of the voting system.

**Various provisions.** The bill would move the uniform election date in May from the first Saturday to the third Saturday. The governing bodies of political subdivisions would have until December 31, 2004, to select another uniform date for their elections of officers. The bill also would move the date for the runoff primary election from the second to the third Tuesday in April following the general primary election and would extend the last date for conducting local and state canvassing for certain elections.

The bill would require, rather than authorize, the authority responsible for procuring election supplies to have a supply of sample ballots on hand. It would require additional information on the instruction poster that each polling place would have to display, including information regarding voting for people who registered by mail, casting provisional ballots, voting rights, and certain federal and state laws. It would designate the secretary of state as the official office to provide information on absentee voting for overseas and military citizens.

The bill also would extend the validity of the federal postcard application, used during early voting by members of the armed forces, to each election for federal office that occurred on or before the date of the second general election for state and county officers after the date the application was submitted.

The bill generally would take effect January 1, 2004, except that provisions relating to the statewide voter registration list, accessible voting systems for disabled voters, and the prohibition against punch-card ballots and lever machines would take effect January 1, 2006.

**SUPPORTERS  
SAY:**

By implementing the requirements of the federal Help America Vote Act, CSHB 1549 would improve access to the polls and help avoid problems brought to light during the 2000 election. The Florida recount during the 2000 presidential election revealed widespread problems with voting machines and ballots, resulting in 36 days of electoral limbo. However, officials in many states admitted that if their election systems had undergone the same scrutiny as Florida's, they would have fared no better. Issues central to the debacle were unmarked, uncounted, and spoiled ballots (also called "lost votes"), ineffective equipment, and poorly designed ballots. One study reported that there were 1.5 million lost votes nationwide.

Congress took an important step by enacting HAVA, which will strengthen the integrity of the elections process, ensure that no eligible voter is denied the right to vote, and assure citizens that their votes are counted. CSHB 1549 would implement the provisions mandated by the federal act.

In light of the current state of the budget, it is appropriate to use Chapter 19 funds to satisfy the state's 5 percent matching requirement. Without the state

matching funds, Texas would not receive any of the \$57 million in federal funds under Title II of HAVA. If Texas failed to enact CSHB 1549, the state still would have to comply with all of the federal requirements, including the statewide voter registration list and providing accessible voting machines in each polling place. In any case, counties should get back more in federal funds than the amount taken from Chapter 19 funds.

Under the bill, the verification of provisional ballots would delay the time of the canvass, which in turn would delay the primary runoff. This would require the May uniform election date to be moved to later in the month. The second Saturday would not be acceptable because it conflicts with the Mother's Day weekend when many voters are out of town.

States still are attempting to interpret many of the provisions in the federal bill. The secretary of state has requested guidance from the Department of Justice on several of the requirements and hopes to have clear guidelines by the time HAVA's requirements are implemented in Texas. Also, the Elections Assistance Commission has been charged with issuing guidance to states but has not yet been appointed. The secretary of state would receive the necessary rulemaking authority to address certain issues at a later date in order to bring Texas into compliance by the deadlines.

**OPPONENTS  
SAY:**

This bill contains vague definitions that could discourage some people from voting if they were not clarified. For example, from the list of acceptable forms of identification, it is not clear what would pass as a "current" utility bill — would a utility bill three months old be acceptable, or could the bill be one month old or less? Similarly, could a voter produce a credit union statement instead of a bank statement? The term "financial" statement should appear in the list of acceptable ID, as should the Lone Star Card (an electronic benefits card), and an expired voters registration card. Also, removing a pre-printed check from the list could pose a significant hurdle for some people. The goal of any voting reform act should be to make registration and voting easier and clearer, not more difficult and confusing.

The statewide computerized voter list would be available to elections officials immediately, but anyone else who wanted it would have to wait 15 days. Since the list would be computerized, it should be available for everyone to view, but not to download. The process for maintaining the list should be

made clearer. The bill does not address how the list would be purged of ineligible voters or how it would ensure that eligible voters were not accidentally purged from the list.

HAVA requires that voting technology and election administration, including the complaint procedure, be uniform and nondiscriminatory. However, CSHB 1549 does not address how election officials would be able to track whether the provisions had been applied in a uniform and nondiscriminatory manner. The secretary of state should have a standardized process for collecting data and studying these issues periodically.

Current election law allows felons to vote if they have completed their sentence, parole or probation. The poster that would be displayed in each polling place also should contain this information.

There is some concern about moving the May uniform election date from the first Saturday to the third Saturday. The third Saturday is not a good date for many cities, as there is a clerk's conference held on this date every year. The second Saturday in May would be a better date.

**OTHER  
OPPONENTS  
SAY:**

Chapter 19 funds, which are intended to finance voter registration, should not be used as matching funds for federal HAVA dollars. Even if these funds were replaced later with federal funds, it is not clear who would get reimbursed — the counties or the voter registrars. Currently, Chapter 19 funds are earmarked only for defraying expenses of the registrar's office. To ensure that counties would continue to have sufficient money to fund voter registration, this bill should guarantee that federal reimbursement money be returned to Chapter 19 funds to be used solely for voter registration.

**NOTES:**

The committee substitute made numerous changes to the bill as introduced, including creating the election improvement fund and authorizing the appropriation of state funds in order to qualify for matching federal funds. It would give the secretary of state rule-making authority associated with the implementation of HAVA.

The substitute would add a requirement for polling places using electronic voting systems to allow access for voters with disabilities and would change the May uniform election date from the first Saturday to the third Saturday.



The substitute would authorize the statewide computerized voter registration list, and would require that registration applications include identification numbers. Also, upon the implementation of the voter list, it would require the expiration of the requirement that voters who registered by mail provide identification. It added a prohibition of mechanical voting machines and punch-card ballots and would provide that if the polls were ordered to remain open late, persons voting late would have to vote provisional ballots.