SUBJECT: Authorizing cities smaller than 250 persons to conduct elections by mail

COMMITTEE: Elections — committee substitute recommended

VOTE: 6 ayes — Berman, Bohac, England, Anchia, Farias, C. Howard

                1 nay — Burnam

                0 absent

WITNESSES: For — Debbie Alongis, Town of Quintana

                Against — Joni Ashbrook and Karen Renick, Vote Rescue; Mary Ann
                Collins; Sonia Santana, ACLU-Texas; Skipper Wallace, Texas Republican
                County Chairman's Association; (*Registered, but did not testify*: Luis
                Figueroa, Mexican American Legal Defense and Educational Fund
                ((MALDEF)); Jeff Fisher)

                On — Laurie Vanhoose, Advocacy, Inc. (*Registered, but did not testify*:
                Ann McGeehan, Office of the Secretary of State)

BACKGROUND: Election Code, sec. 61.012(a), enacted in 2003 by the 78th Legislature
                (HB1549 by Denny) in order to comply with the Help America Vote Act
                (HAVA) states that not later than January 1, 2006, each polling place must
                provide at least one voting station that:

                • complies with sec. 504 of the federal Rehabilitation Act of 1973
                  (29 U.S.C. sec. 794) and its subsequent amendments and Title II of
                  the federal Americans with Disabilities Act (ADA) (42 U.S.C., sec.
                  12131 et seq.) and its subsequent amendments; and
                • provides a practical and effective means for voters with physical
                  disabilities to cast a secret ballot.

                Sec. 61.012(b) specifies that these provisions would apply only to a
                polling place that used an electronic voting system unless the secretary of
                state certified that federal law requires the application to all forms of
                voting at a polling place.

In a memorandum dated November 16, 2005, and titled "Certification of Required Use of Accessible Voting Systems," issued by the secretary of state's director of elections stated that the secretary of state "certifies that sec. 301(a)(3)(B) of the Help America Vote Act (HAVA) has been interpreted to require an accessible voting system at all polling places, including those using manually-counted paper ballots, as a minimum requirement in order to make voting accessible for disabled voters at federal elections."

DIGEST: CSHB 1146 would create Election Code, ch. 107 to establish that a city with a population of less than 250 could, by ordinance, provide that one or more elections held by the city be conducted only by mail. The bill would require the city to adopt the ordinance 90 days before the election date of the first mail-only election.

Under the bill, a person would have to vote early by mail, and voting by personal appearance would not be permitted. In order to vote in an election under the bill, a registered voter would have to request a ballot from the early voting clerk, in writing or in person at the office of the early voting clerk, not later than 35 days before election day. A written request would have to be signed by the voter.

CSHB 1146 would require that ballots be mailed to a voter not later than 25 days before election day. The early voting clerk would have to provide an official ballot to each registered voter in the city who requested a ballot as described. The ballot would have to be sent to the address at which the voter was registered, unless the voter had applied for a ballot to be voted early by mail and specified it be sent to a different address as authorized by current law.

A city conducting an election by mail would have to publish notice in a newspaper of general circulation in the city at least once during the week before the deadline for a voter to request a ballot. The notice would have to state:

- that there would be no voting by personal appearance for the election;
- that a ballot would not be mailed to a voter and a voter could not vote in the election unless the voter requested a ballot in writing or in person from the early voting clerk;

- that if requested, a ballot would be mailed to a registered voter at the address at which the voter was registered, unless the voter had submitted an application to vote early by mail on grounds of age, disability, confinement in jail, or absence from the voter's county of residence, in which case the ballot would be mailed to an authorized address stated on the application;
- the deadline for requesting a ballot; and
- the deadline for returning marked ballots.

The bill would specify that provisions applicable to early voting by mail apply to a mail-only election. The secretary of state would prescribe any additional procedures necessary for implementation.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

SUPPORTERS
SAY:

CSHB 1146 simply would allow cities of fewer than 250 people the option of conducting mail-only municipal elections in order to contain costs. Under sec. 61.102, every polling place must provide an accessible voting system, even those using hand-counted paper ballots. A recent election held by the city of Quintana with a population of 38 people cost over $2,500. In that election, Quintana had to have two voting machines and also hire a bi-lingual election judge. The cost of meeting certain statutory requirements can be overwhelming for a municipality with a population of 250 or under.

CSHB 1146 would permit a city of the specified population to hold municipal elections by mail only if the city adopted a related ordinance 90 days before the election date. The bill would mirror provisions for early voting by mail found elsewhere in the Election Code. Under the legislation, a person would have to vote by mail and voting in person would not be permitted. A voter would have to request a ballot from the early voting clerk in writing or in person not later than 35 days before election day.

The bill would include requirements for publishing notice in a newspaper of general circulation in the city at least once during the week before the deadline for requesting a ballot. The notice would clearly state that there would be no in-person voting for the election and the procedures for voting by mail.

CSHB 1146 would offer a creative approach to circumventing the high cost of elections for these small cities. The bill would not affect elections for county, state, or federal offices, but it would provide a reasonable alternative for their municipal elections.

A suggestion to provide return postage for ballots could set a bad precedent and lead to notions that all political subdivisions should pay for postage on early mail-in ballots.

OPPONENTS SAY:

Most voting fraud occurs by mail. In allowing a mail-only election, CSHB 1146 would create a situation ripe for abuse. The bill also could establish a bad precedent. If the 80th Legislature chose to allow a small city of fewer than 250 people to conduct an election by this method, next session it could be cities of 500 or 5,000 people. Texas could end up like Oregon with all voting by mail, which could pose issues regarding ballot security.

OTHER OPPONENTS SAY:

CSHB 1146 would be an innovative approach to reducing election costs for small municipalities, but the bill could be more successful ultimately if it were a pilot program. Since these municipalities would require their city elections to be by mail, the bill would be more even-handed if the cities automatically sent every registered voter a ballot rather than the voter having to determine the procedures and deadline for requesting a ballot.

CSHB 1146 could open these cities to ADA complaints under Title II because it would not provide a way for disabled persons to request assistance. This could become an issue particularly for a disabled person with attendant care from someone who has other clients. Current law would not allow an attendant to assist with more than one voter's mail-in ballot.

The provision in the bill that would require a registered voter to request a ballot from the early voting clerk could be problematic. Frequently, confined elderly persons or disabled persons request mail-in ballots and never receive them. Since the bill would authorize a mail-only election, registered voters who did not receive ballots timely would have no recourse and would lose their right to vote in that election.

Even though expenses associated with conducting an election are a factor for certain small cities, the bill should not put the cost of postage on the voter. Instead, the municipality should have to bear that expense.

Absorbing the cost of return postage would still make the total price of a mail-only election a small fraction of the expense of a providing a HAVA-compliant voting system at the polling places.