

SUBJECT: City and special district exemption from unfunded disabled voter access

COMMITTEE: Government Reform — committee substitute recommended

VOTE: 6 ayes — Callegari, Pitts, Berman, Leibowitz, Miles, Rodriguez  
0 nays  
1 absent — W. Smith

WITNESSES: For — Bennett Sandlin, Texas Municipal League; (*Registered, but did not testify*: Darrin Hall, City of Houston)  
  
Against — None  
  
On — Mike Higgins, Texas State Association of Fire Fighters;  
(*Registered, but did not testify*: Johnny Villarreal, Houston Fire Fighters Local 341)

BACKGROUND: Election Code, sec. 61.012 requires that no 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 Title II of the federal Americans with Disabilities Act (42 U.S.C. sec. 12131 et seq.). The voting station must provide a practical and effective means for voters with physical disabilities to cast a secret ballot.  
  
The Help American Vote Act of 2002 (HAVA), 42 U.S.C. sec. 15481(a)(3)(B) requires each polling place to have at least one voting system accessible to individuals with disabilities, including non-visual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters.  
  
Local Government Code, sec. 43.052(a) defines a special district as a municipal utility district, water control and improvement district, or other district created under Art. 3, sec. 52 or Art. 16 sec. 59 of the Texas Constitution. Sec. 430.003 prohibits a county, municipality, or utility district from collecting from a state agency or public higher education

institution a fee for the development or maintenance of programs of facilities for the control of excess water or storm water.

**DIGEST:**

CSHB 3209 would amend Election Code 61.012 to provide that for an election of a city or a special district, the use of a voting station that met accessibility requirements under the federal Help America Vote Act would not be required, except when the election were held jointly with another in which a federal office was on the ballot or unless the city or special district received state or federal funds sufficient to pay for all costs associated with providing the voting station.

The bill also would repeal sec. 430.003, Local Government Code.

The bill would take effect September 1, 2007.

**SUPPORTERS  
SAY:**

CSHB 3298 is needed to give some relief to Texas cities and special districts from unfunded mandates. Various laws impose mandates on cities and special districts, but provide no funding to meet the requirements. These mandates increase the costs of everyday functions for cities and districts, including election costs.

All counties in Texas are required to have electronic voting machines, and they received federal funding to make the initial purchase. Smaller political subdivisions like cities, school districts, and MUDs have not received any funding for the machines. Some municipalities bought the voting systems, which increased the cost of their elections by thousands of dollars, only to find out that they were under-utilized or not used at all. Election officials always have provided accommodations for disabled voters and will continue to provide those services.

Likewise, state agencies and universities are not required to pay for water drainage services that cities and special districts provide. CSHB 3298 would allow cities and special districts to collect fees for those services.

**OPPONENTS  
SAY:**

This bill would undo many years of hard-fought efforts to secure voting rights for the disabled to have a chance to vote a private ballot. The bill would establish a stair-step process that would send a message that polling places did not have to comply with the Americans with Disabilities Act (ADA), and it could open the door for more cities that do not want to pay the expense of electronic voting stations to be relieved of that duty. Some disabled voters would not be able to cast a private ballot, resulting in the

city's being vulnerable to ADA lawsuits. A large number of disabled voters are visually impaired, and this technology has affected them the most by allowing them, for the first time, to vote a private ballot without having someone read it aloud to them. This includes the elderly who are losing their eyesight and voters who are unable to read.

NOTES:

Two bills would address similar issues. HB 1031 by Chisum, which would allow a city with a population of 5,000 or less to be exempt from the voting accessibility requirement, passed the House by 126-17 on May 1 and has been referred to the Senate State Affairs Committee. SB 1776 by Duncan would create a formula finding an undue burden and would establish ways to make reasonable accommodations for disabled voters, passed the Senate on the Local and Uncontested Calendar on April 26 and has been referred to the House Elections Committee.