

SUBJECT: Modifying voter ID requirements and providing a criminal penalty

COMMITTEE: Elections — favorable, without amendment

VOTE: 5 ayes — Laubenberg, R. Anderson, Fallon, Larson, Swanson

2 nays — Israel, Reynolds

SENATE VOTE: On final passage, March 28 — 21-10 (Garcia, Hinojosa, Menendez, Miles, Rodriguez, Uresti, Watson, West, Whitmire, Zaffirini)

WITNESSES: None

BACKGROUND: In 2011, the 82nd Legislature enacted SB 14 by Fraser, which requires a voter to present to an elections officer an acceptable form of photo identification before voting, unless the voter is disabled and presents a voter registration certificate indicating that the voter is exempt from the photo identification requirement. Acceptable forms of photo identification, which cannot be more than 60 days expired, include:

- a driver's license, election identification card, or personal identification card, or license to carry a handgun issued to the person by the Department of Public Safety (DPS); or
- a U.S. military identification card, citizenship certificate, or passport.

An election identification card (EIC) is a form of identification provided at no charge to a person who does not have an unexpired version of the forms of photo ID mentioned above or a certificate of naturalization containing a photograph. These cards can be used only for voting purposes and are valid for six years or, if issued to citizens 70 years of age or older, do not expire. In 2013, the secretary of state and DPS partnered to provide EICs at several mobile locations throughout the state.

A federal district court determined and the Fifth Circuit Court of Appeals affirmed that SB 14 had a racially discriminatory effect in violation of the

federal Voting Rights Act because the law disproportionately diminished African Americans' and Latinos' ability to participate in the political process. A U.S. district judge entered an interim order approving a plan proposed by the parties that created alternatives to the voter identification requirements of SB 14. The voter ID requirements contained in this order were used in the November 2016 election.

The interim order allowed voters to present acceptable forms of photo ID that were not more than four years expired. Voters without acceptable forms of ID were allowed to vote a regular ballot after completing and signing a reasonable impediment declaration in conjunction with presenting a valid voter registration certificate, a certified birth certificate, a current utility bill, a bank statement, a government check, a paycheck, or any other government document displaying the voter's name and address.

DIGEST:

SB 5 would revise the photo identification requirements for voting and establish a mobile unit program for issuing election identification certificates.

Photo identification. SB 5 would allow a voter to present an acceptable form of photo identification if it had been expired for no more than two years. A person 70 years of age or older could use any acceptable form of photo identification that had expired for the purpose of voting as long as the identification was otherwise valid.

The bill also would establish that a person could vote after presenting an alternate form of identification accompanied by a signed reasonable impediment declaration. Acceptable alternate forms of identification would include:

- a government document showing the voter's name and address, including voter registration certificates;
- a current utility bill, bank statement, government check, or paycheck showing the voter's name and address; or
- a certified copy of a domestic birth certificate or other document confirming birth that established identity and would be admissible

in court.

The secretary of state would have to prescribe the form for the reasonable impediment declaration. It would include several things, including notice that a person is subject to prosecution for a false statement or false information on the declaration, an affirmation of the truth of the information provided in the declaration, the location of the polling place, a place for both the voter and election judge to sign and date the form, and an acceptable impediment to having a form of photo identification.

An acceptable impediment would be lack of transportation, lack of documents needed to obtain a photo ID, work schedule, lost or stolen photo ID, disability or illness, family responsibilities, or that a form of photo ID had been applied for but had not been received. Election officers could not question the reasonableness of an impediment sworn to by a voter and would have to affix the voter's voter registration number to the declaration.

Intentionally making a false statement or providing false information on the declaration would be a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000).

Mobile unit program. SB 5 would require the secretary of state to establish a program to provide election identification certificates (EIC) to voters using mobile units. When creating the program, the secretary of state would be required to consult with the Department of Public Safety on security relating to and best practices and equipment required for issuing certificates.

The secretary of state could deny a request for a mobile unit if the required security or other necessary elements of the program could not be ensured.

The bill would take effect January 1, 2018.

SUPPORTERS SB 5 would maintain the integrity of elections in Texas while providing

SAY: an opportunity for any eligible voter to cast a ballot. Requiring a photo ID is favored by most voters and is the preferred method of ensuring integrity at the ballot box. This bill would provide a constitutionally sound way to do that by addressing concerns raised by a federal appellate court.

While the bill may not codify the court's interim order exactly, it closely follows the directive of the order. The bill would codify a mobile unit program that the secretary of state has already used to provide election identification certificates (EIC) free of charge to qualified Texas voters who do not have an approved, unexpired form of photo ID. This program would help Texas voters obtain a valid form of photo ID without requiring them to travel to a DPS office.

While some argue that the bill's establishment of a third-degree felony is too harsh for making a false statement or providing false information on the reasonable impediment declaration for voters without a photo ID, the penalty is in line with the range for similar offenses. The penalty for intentionally lying on a government document is a state-jail felony, and the penalty for voting illegally is a second-degree felony. Another safeguard for the voter is provided by requiring a prosecutor to prove the voter intentionally made the false statement, which is the most difficult standard.

**OPPONENTS
SAY:**

While SB 5 attempts to address the issues raised by federal courts regarding Texas' voter ID law, it misses the mark by deviating from the remedy provided in the interim court order. The court expects to revisit the issue after the legislative session to determine if further remedies are needed. The state already has spent resources defending its voter ID law, and it would be better not to codify a remedy that could also fail to meet the standards of the federal Voting Rights Act.

A voter should be allowed to vote a regular ballot if that person presents an acceptable form of photo ID that is not more than four years expired. The list of acceptable impediments to obtaining the ID should include an "other" box with room for a written explanation. Not all voters will fall into the six categories laid out in the bill. A person also should be able to

present federally acceptable identification for Indian tribes, student photo IDs, and government photo IDs, which are acceptable in other states.

The penalty provided in the bill could act as a form of voter intimidation. Voters already are anxious about their participation in the process, and a penalty this severe could deter those voters from the ballot box. The penalty also is not accompanied by an affirmative defense to protect a voter who was directed to fill out the reasonable impediment declaration incorrectly by an election worker.

NOTES:

A companion bill, HB 2481 by P. King, was left pending following a public hearing by the House Elections Committee on April 10.