

SUBJECT: Exemption for disabled voter accessibility in small city elections

COMMITTEE: Elections — committee substitute recommended

VOTE: 6 ayes — Berman, Bohac, England, Anchia, Burnam, Farias
0 nays
1 absent — C. Howard

WITNESSES: For —(*Registered, but did not testify*: Rachael Pitts, Texas Municipal League)

Against — Laurie Vanhose, Advocacy, Inc.; (*Registered, but did not testify*: Ken Bailey, Texas Democratic Party; Patti Edelman; Mary Finch, The League of Women Voters of Texas; Nathanael Isaacson, People for the American Way; Sonia Santana, ACLU-Texas; Terri Sperry, True Courage Action Network)

On — Ed Johnson, Harris County Tax Office; Ann McGeehan, Texas Secretary of State

BACKGROUND: Election Code, sec. 61.012 requires that no later than January 1, 2006, each polling place 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 America Vote Act (HAVA), 42 U.S.C. sec. 15481(a)(3)(B), requires that voting be made accessible to people with disabilities through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place.

DIGEST: CSHB 1031 would amend Election Code, sec. 61.012 to provide that for an election of a city with a population of less than 5,000, the use of a voting station that met accessibility requirements under the federal Help

America Vote Act would not be required, unless the election were held jointly with another election in which a federal office was on the ballot.

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:**

Some cities in Texas, especially small communities, face a significant financial burden in complying with the requirement to provide a voting station that is accessible to disabled voters, and CSHB 1031 would allow a limited exception. At this point, the only voting system that complies with the accessibility standards under federal law is the DREs, or direct recording electronic voting machines. Electronic voting stations are extremely expensive and are unaffordable for some small cities.

All counties in Texas are required to have electronic machines and they received federal funding to make the initial purchase. Continued funding for maintenance and operations is not available, however, and the machines are expensive to program. Smaller political subdivisions like cities, school districts and MUDs, did not receive any funding for the machines, and even though some counties do hold joint elections, often the expense of the machines is passed on to the cities and school districts. Some small cities 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. Others did not buy the voting system but instead chose to lease them from the counties. However, if not enough of the machines are available to go around, some are forced to spend thousands of dollars or risk being noncompliant.

The primary expense of the electronic systems is programming, or coding. Some counties do the coding themselves, and other counties do not have the resources in-house to perform these duties, forcing them to pay a vendor. Likewise, some counties are not in a position to hold joint elections because the communities are small and often have only a few employees who perform several governmental functions.

**OPPONENTS
SAY:**

CSHB 1031 could 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 did not want to pay

the expense of electronic voting systems to become exempt. Some disabled voters would not be able to cast a private ballot, resulting in the city's being vulnerable to ADA lawsuits. If someone arrived to vote and no accommodation were available, that person would have a legitimate ADA complaint.

Under the requirements of ADA, if someone can prove an inability to provide certain accommodations because to do so would create an undue burden, then that person doesn't have to provide that accommodation but does have to provide an accommodation that would not create an undue burden. A better approach might be to balance the burden some counties are under with the needs of the disabled community by devising a formula for finding undue burden that would take into account the size of the political subdivision holding the election, which affects the amount of available funds and election workers. One solution might be for the county to provide at least one voting station that complied but not require each polling place to have such a system. Other solutions would be for the county to provide a mobile voting station that could be used during the early voting period or for a disabled voter simply to request a reasonable accommodation be made during the early voting period.

A large number of disabled voters are visually impaired, and this voting technology has affected them the most by allowing them, for the first time in their lives, 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:

Three bills would address similar issues. HB 690 by B. Brown would exempt authorities in cities of less than 7,500 from the requirement to have one accessible voting station. HB 731 by Kolkhorst would exempt authorities from having one accessible voting station if the election did not have a federal office on the ballot. Both bills are in the House Elections Committee. SB 1776 by Duncan, which would create a formula finding an undue burden and would establish ways to make reasonable accommodations for voters with disabilities, passed the Senate on the Local and Uncontested Calendar on April 26.