

SUBJECT: Requiring voters to present proof of identification

COMMITTEE: Elections — favorable, without amendment

VOTE: 4 ayes — Berman, Bohac, England, C. Howard
0 nays
3 absent — Anchia, Burnam, Farias

WITNESSES: For — Tina Benkiser, Republican Party of Texas; Skipper Wallace, Texas Republican County Chairman’s Association; Bill Borden; Ed Johnson; (*Registered, but did not testify:* John Colyandro, Texas Conservative Coalition; Russ Duerstine, Tom Green County GOP; Carolyn Galloway, Texas Eagle Forum, Citizens for Immigration Reform; Mary Ann Collins)

Against — Lydia Camarillo, Southwest Voter Registration Education Project; John Courage and Teri Sperry, True Courage Action Network; Luis Figueroa, MALDEF; Sonia Santana, ACLU-Texas; Bryson McCall Smith, Coalition of Texans with Disabilities; Laurie Vanhoose, Advocacy, Inc.; Kenneth Flippin; (*Registered, but did not testify:* Joy Arthur, People for the American Way; Ken Bailey, Texas Democratic Party; Mario M. Champion, Latinos for Texas; Debra Cody and Connie Hooks, city of College Station; Kathryn Dean, ACLU; Mary Finch, League of Women Voters of Texas; Will Harrell, NAACP of Texas; Paula Littles, Texas AFL-CIO; Toni Milam, City of Buda; Tim Morstad, AARP; Rosa Pacheco, Gray Panthers; Jodi Park, Coalition of Texans with Disabilities; Marcelo Tafoya, LULAC; Suzy Woodford, Common Cause of Texas; Susan Barrick; Perry Dorren; Ysidro Gutierrez; Johnnie Jones)

On — Adrienne McFarland, Texas Attorney General’s Office; Ann McGeehan, Secretary of State; (*Registered, but did not testify:* Marty Forte, Dallas County Republican Party; Steve Raborn, Tarrant County Elections)

BACKGROUND: Election Code, sec. 63.001 requires a voter to present a voter registration certificate to an election officer when offering to vote at a polling place. Sec. 63.008 establishes that a voter who does not present a voter registration certificate when offering to vote, but whose name is on the list

of registered voters for the precinct, shall be accepted for voting if the voter executes an affidavit stating that the voter does not have the voter registration certificate at the polling place, and the voter presents proof of identification in a form described in sec. 63.0101, including:

- a driver's license or personal identification card issued to the person by the Department of Public Safety (DPS) or a similar document issued to the person by an agency of another state, regardless of whether the license or card has expired;
- a form of identification containing the person's photograph that establishes the person's identity;
- a birth certificate or other documentation confirming birth that is admissible in a court of law and establishes the person's identity;
- U.S. citizenship papers or a U.S. passport issued to the person;
- official mail addressed to the person by name from a governmental entity;
- a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or
- any other form of identification prescribed by the secretary of state.

In 2002, Congress enacted the Help America Vote Act of 2002 (HAVA) (42 U.S.C. Sec. 15301 et seq.), a comprehensive law governing state electoral administration. Among other things, HAVA requires first-time registrants who register by mail and have not voted in a federal election — or in cases where a state does not have a computerized, statewide voter registration system — to present, with the registration materials or at the polls, any of the following forms of identification:

- a copy of a current and valid photo identification (the original if voting in person); or
- a copy of a current utility bill, bank statement, or government check, paycheck or other government document that shows the name and address of the voter.

No voter can be turned away at the polls for failure to produce identification, and voters without proper identification in every state have some sort of recourse to cast a vote.

The 78th Legislature in 2003 enacted HB 1549 by Denny to implement changes necessary to Texas law for HAVA compliance.

DIGEST:

HB 218 would require a voter at the polls to present to an election officer the voter's registration certificate and a form of identification. Any one of the following forms of photo identification would satisfy the requirement:

- a driver's license or personal ID card issued by DPS that was current or had expired no more than two years earlier;
- a U.S. military ID card or a valid employee ID card;
- a U.S. citizenship certificate or a U.S. passport;
- a student ID card issued by a public or private higher education institution in Texas; or
- a concealed handgun license issued by DPS.

Alternately, the voter could satisfy the identification requirement by presenting any two of the following:

- a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter;
- official mail addressed to the person by name from a governmental entity;
- a certified copy of a birth certificate or other legal document confirming the birth and establishing the person's identity;
- U.S. citizenship papers;
- an original or certified copy of the person's marriage license or divorce decree;
- court records of the person's adoption, name change, or sex change;
- an ID card issued to the person by a state or federal governmental entity for the purpose of obtaining public benefits;
- a temporary driving permit issued by DPS;
- a pilot's license issued an authorized federal agency;
- a borrower's card from a Texas library containing the person's name; or
- a hunting or fishing license issued by the Parks and Wildlife Department.

If the voter's identity could be verified from the proof presented and the voter's name was on the precinct list of registered voters, the voter could proceed to vote.

A voter whose identity was verified by presenting the proof described above also could proceed to vote if the voter:

- did not present a voter registration certificate but the voter's name appeared on the precinct list;
- presented a correct voter registration certificate but the voter's name did not appear on the precinct list; or
- presented a voter registration certificate showing registration in a different precinct, if the voter swore that he or she was a new resident of the precinct and would vote only once.

A voter with or without a voter registration certificate who did not present proof sufficient to meet the identification requirements described above would be allowed to vote a provisional ballot.

HB 218 also would amend Transportation Code, sec. 521.422, to prohibit DPS from collecting a fee for a personal identification certificate issued to an eligible or registered voter who:

- executed an affidavit stating that he or she could not afford to pay the fee, who is a registered Texas voter; and
- presented a valid voter registration certificate or a voter registration application to DPS.

The bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

HB 218 would protect and strengthen the electoral system by requiring voters to present identification at the polls. The bill would establish a uniform, standard for voting at the polls, reduce voter fraud, bring voting in line with other transactions that require proper identification, and raise the bar in restoring election integrity.

Stricter identification requirements would not impose an unreasonable burden on voters. Instead, it would protect the rights of citizens and serve as a reasonable precaution to prevent ineligible people from voting. Proper identification is necessary to ensure that voters are who they say they are, that voters cast only one ballot each, and that ineligible voters — including illegal aliens, felons, and persons using the names of deceased voters — are denied the ability to vote. Cheating at the polls makes a mockery of the electoral process and dilutes the vote of every honest citizen.

Currently, all that is needed to vote is a registration certificate, but individuals are not required to show identification in order to register to vote. According to Harris County elections officials, at least 35 foreign nationals either applied or received voter registration cards that would have allowed them to vote. In one case, one of them voted four times in a general election.

While instances of fraud or multiple voting in U.S. elections are comparatively rare, even a small amount of fraud could tip a close or disputed election, and the perception of possible fraud contributes to low confidence in the system. For this reason, the Commission on Federal Election Reform, led by former President Jimmy Carter and former Secretary of State James A Baker III, recently concluded that a properly administered identification system could deter, detect, or eliminate several potential avenues of fraud, such as multiple voting or voter impersonation. The commission, which was formed to recommend ways to raise public confidence in the electoral system, also expressed concern that differing requirements from state to state could be a source of discrimination and said that a single, uniform ID for voting purposes — along the lines of REAL ID — would be less discriminatory, by ensuring fair and equal treatment to all voters. HB 218 would put many of the sensible principles advocated by this bipartisan election reform commission to work in Texas.

HB 218 would give voters a variety of ways to fulfill the identification requirements and would not force anyone to bear great costs in obtaining the necessary identification. Those who could not afford one would be eligible for a free identification card. While many citizens undoubtedly would choose to present a Texas driver's license out of convenience, the bill would allow a voter to present copies of common documents that citizens carry or receive in their everyday lives for purposes other than voting, such as paychecks, utility bills, mail from the government, and library cards. State and local election authorities can educate voters about the forms of identification that they would have to bring to the polls, and even if there were some initial confusion, voters quickly would learn what they should bring to the polls in order to vote.

Further, the bill would make it easier for a person of modest means to obtain a driver's license or state photo ID card to use as proof of identity for voting and a host of other purposes. Many activities in everyday life require the presentation of photo ID, including air travel and cashing checks. Society has adapted to these requirements and benefited from the

safeguards they provide. By requiring DPS to waive the fee to issue identification for a person who could not afford to pay the cost, HB 218 would enable many citizens to more fully participate in society by facilitating their ability to cash checks at banks and supermarkets, enter federal buildings, and board airplanes.

This is not an issue only for Texas. Photo identification laws are considered one of the most basic and necessary election safeguards by a host of countries, including Canada, France, Germany, Italy, Poland, Britain, India, and South Africa. But less than half of the states in the United States have photo identification requirements.

OPPONENTS
SAY:

The voter ID requirements in HB 218 would create substantial obstacles that would inhibit voter participation and likely would disproportionately affect certain groups, including the elderly, minorities, and low-income voters. By placing an extra burden on voters and creating confusion among election officials and the public alike, the bill effectively would lead to the needless disenfranchisement of many voters. Claims that voter fraud makes it necessary to demand identification at the polls are not supported by evidence. In fact, the actual impact of stricter ID requirements would not be reduction of voter fraud, but the suppression of legitimate votes. Citizens seeking to exercise their right to vote would be hassled and frustrated for no good reason.

While almost all voter fraud involves absentee and mail-in ballots, the bill would do nothing to make mail-in balloting more secure. Instead, it would attempt to address the nonexistent problem of voter impersonation at the polls. Evidence of such fraud is anecdotal at best, and the penalty for voter impersonation is a third-degree felony, a strong deterrent to anyone who might consider casting a dishonest vote. There is no question that election misconduct exists, including wrongful purges of eligible voters, vote harvesting, tampering with registration forms, and improperly handling mail-in ballots. In addition, Justice Department investigations have revealed voting irregularities related to voter confusion over eligibility, such as felons not being aware they may not vote in some states or people mistakenly filling out multiple registrations. But there is no evidence that voter impersonation at the polls is anything but a rare anomaly.

Rather than seeking to enact voter identification laws that needlessly inhibit voters, policymakers should examine empirical data to weigh the costs and benefits. Data suggest that the number of legitimate voters who

might fail to bring required ID to the polls would be several times higher than the number of fraudulent voters. A recent study issued by Rutgers and Ohio State universities prepared for the federal Election Assistance Commission indicates that minorities could be negatively affected by identification requirements and that voter identification requirements should be limited to the minimum needed to prevent duplicate registration and ensure eligibility.

Similar legislation that passed in several other states, including Missouri, Indiana, Ohio, Georgia, and Arizona, has either been invalidated by the courts or is being challenged. In addition, while citizens are required to show proof of identification in situations ranging from boarding an airplane to renting movies, none of those activities is a constitutional right.

Texas already has taken some steps to lessen the threat of fraud, including the implementation of HAVA requirements. Current registration requirements are sufficient because registrants must swear they are U.S. citizens under penalty of perjury. In addition, falsely claiming citizenship and voting fraud are federal offenses. Texas should attempt to curb voter fraud by vigorously prosecuting any election fraud cases rather than enacting a law aimed at solving a nonexistent problem.

OTHER
OPPONENTS
SAY:

The bill should require a grace period of at least one election to allow for the education of voters and election workers. The provisions in HB 218 would be a major departure from current law, and voters and elections officials would need time to learn about the new requirements.

In addition, military discharge papers should be accepted as non-photo proof of identification in HB 218.

NOTES:

The author intends to offer a floor amendment to delay the photo identification requirement until September 2008.

The fiscal note anticipates a cost of \$177,060 per fiscal year in general revenue-related funds to allow DPS to issue personal identification cards at no cost to certain applicants.

During the 2005 regular session, the Legislature considered similar legislation requiring voters to show identification at the polls. HB 1706 by Denny passed the House, but died in the Senate State Affairs Committee. The House amended a related bill, SB 89 by Averitt, to include provisions

similar to HB 1706, but SB 89 died in conference committee.
HB 218 originally was set on the April 17 Major State Calendar and was
recommitted to committee on April 16. The original vote in the Elections
Committee to report HB 218 was 4 ayes, 3 nays (Anchia, Burnam, Farias).