

SUBJECT: Cancellation of voter registration of deceased persons or non-citizens

COMMITTEE: Elections — favorable, without amendment

VOTE: 7 ayes — Berman, Bohac, England, Anchia, Burnam, Farias, C. Howard
0 nays

WITNESSES: For — Ed Johnson, Harris County Tax Office; Kat Swift, Green Party of Texas; (*Registered, but did not testify*: April Brown, Texas Conservative Coalition; Dana DeBeauvoir, County and District Clerks Legislative Committee)

Against — None

On — Ann McGeehan, Office of the Secretary of State

BACKGROUND: Under Election Code, sec. 16.001(a), the local registrar of deaths is directed each month to prepare and file an abstract of each deceased adult's death certificate with the voter registrar in the deceased person's county of residence. Sec. 16.001(b) places the same requirement on the clerk of each court with probate jurisdiction for the preparation and filing of abstracts for each application for probate of a will or administration of an estate.

Under sec. 16.001(c), the Bureau of Vital Statistics on a weekly basis sends the secretary of state available information relating to deceased residents of the state. Periodically, the secretary of state forwards such information to voter registrars to assist them in identifying the deceased registered voters in each county. Sec. 16.031(b) requires the registrar to cancel a voter's registration immediately if the registrar learns that the voter is deceased through personal knowledge, a sworn statement from a close family member of the deceased voter, or from information received from the secretary of state.

Election Code, sec. 16.0332(a), requires voter registrars to take action upon receiving monthly lists from court clerks of persons excused or disqualified from jury service because of citizenship status. The voter registrar must deliver to each registered voter whose name appears on the

list a notice requiring the voter to submit to the registrar proof of U.S. citizenship in the form of a certified copy of the voter's birth certificate, U.S. passport, or certificate of naturalization or any other form prescribed by the secretary of state.

In 2003, the enactment of HB 1549 by Denny brought Texas into compliance with the federal Help America Vote Act (HAVA). Among its provisions was the creation by the secretary of state of an official statewide computerized list of registered voters in the state.

DIGEST:

HB 2247 would amend Election Code, sec. 16.001 to instruct registrars of deaths and court clerks to send the required information on deceased persons to the secretary of state, as well as to the voter registrar of the deceased person's county.

HB 2247 would amend Government Code, sec. 62.113 to direct court clerks to send monthly lists of persons excused or disqualified from jury service because of non-citizenship to the voter registrar of each county, and also:

- the secretary of state; and
- the county or district attorney, as applicable, for an investigation of whether the person committed a crime, including making a false statement on a registration application.

The bill would add Election Code, sec. 18.068 to direct the secretary of state semiannually to compare the statewide computerized voter registration list with information received from the Bureau of Vital Statistics regarding deaths and from court clerks regarding registered voters excused or disqualified from jury service because of non-citizenship. If the secretary of state determined that a voter on the registration list was deceased or was not a citizen, the secretary of state would send notice to the voter registrar of the appropriate counties.

Lists of persons excused or disqualified from jury service for non-citizenship compiled by court clerks could be used for no purpose other than those specified above .

The bill would include conforming language in secs. 16.031(b) and 16.0332 requiring a voter registrar to take action based on information received from the secretary of state.

The bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

HB 2247 would add reporting measures to ensure that Texas' voter registration rolls contained no deceased persons or non-citizens. The bill would enhance reporting requirements regarding the voter registration rolls in order to update the secretary of state's statewide voter list more quickly.

The names of deceased persons should be removed from voter rolls as soon as possible. This is partly out of respect for the feelings of surviving family members who would not wish to see the name of a dead loved one on the list, and partly because inaccurate voter registration lists create administrative costs, such as the expense of printing and mailing unnecessary voter registration certificates.

According to 2000 U.S. Census data, nearly 2 million non-citizens live in Texas, which constitutes 9.5 percent of the state's population. Increasing numbers of illegal immigrants could threaten the integrity of the election process in Texas. As a result, the state should double its efforts to ensure that voter registration rolls contain only U.S. citizens.

The reliability of the voter rolls in Texas is questionable. In June 2006, the Harris County tax assessor-collector and voter registrar testified before the U.S. House Administration Committee that he identified at least 35 non-citizens who either applied for or received voter registration cards. Since 1992, the Harris County registrar has cancelled 3,742 registered voters for non-citizenship. Officials in Harris County discovered non-citizens on the voter rolls when the district clerk received returned jury summons from people who were on the voter rolls but claimed not to be citizens and ineligible for jury service.

HB 2247 would give the secretary of state reliable information with which to verify the citizenship status of registered voters throughout the state. In addition, the bill would provide a process for the names of those found to be registered fraudulently to be forwarded to local prosecuting attorneys for the initiation of perjury proceedings.

**OPPONENTS
SAY:**

HB 2247 would be duplicative and unnecessary. The bill would impose layers of bureaucracy and could impose needless costs on local government entities for procedures that exist, in one form or another, in current law. For example, under Election Code, sec. 16.031(b), voter

registrars already receive lists of deceased voters from the secretary of state, so there is no need for this bill to include a duplicate version of this provision. In addition, voter registrars already report voter information to the secretary of state as a matter of course. In fact, county clerks and election administrators in some large counties report that they currently send such information to the secretary of state daily — a considerably higher standard than the bill would impose.

On the other hand, some counties with small populations impanel juries less than once a year on average, so there would be no need for those counties to take the trouble and expense to submit monthly reports. While it is important to preserve the integrity of the election process, this bill would be overly bureaucratic in its requirements, particularly in the absence of reliable evidence showing a widespread pattern of voting by non-citizens, let alone dead persons.

In the very few cases where non-citizens do manage to register to vote, the cause may have more to do with confusion and clerical errors than willful fraud. For example, in the recent *Heflin v. Vo* recount following a closely contested election for a seat in the state House of Representatives, a Norwegian living in Katy voted in the November 2004 election even though he was not a U.S. citizen. While the man could not recall registering, the application on file in the Harris County registrar's office indicated that he was not a citizen and appeared to bear his signature. The Harris County registrar acknowledged that his office erred in giving the non-citizen a voter card, and the vote was not counted. No amount of reporting or documentation required by this bill would eliminate such a clerical error.

HB 2247 could continue a bad legal precedent by further placing the burden of proof regarding citizenship on individuals rather than on voter registrars or clerks. The U.S. Citizenship and Immigration Services (USCIS) as well as other agencies subject to federal laws and regulations, has the burden of proving or disproving citizenship, not the individual. By sending to additional entities lists of persons excused or disqualified from jury service because of citizenship status, this bill could require more people to prove to voter registrars that they were indeed citizens.

OTHER
OPPONENTS
SAY:

There is some evidence to suggest that the increasing number of people summoned for jury service and disqualified for not being citizens stems from the desire to avoid jury service rather than deliberate fraudulent voter

registration. Rather than risking disenfranchisement of eligible voters, the Legislature should make education about the penalties for providing false information on a jury summons and enforcement of these laws a higher priority.

NOTES:

SB 1464 by Janek, a related bill that would require the secretary of state to cancel the voter registration of persons who were shown not to be U.S. citizens, passed the Senate by 23-8 (Ellis, Gallegos, Shapleigh, Uresti, Van de Putte, West, Whitmire, Zaffirini) on April 24 and has been referred to the House Elections Committee.