

SUBJECT: Accessible voting station exemption for local water district

COMMITTEE: Elections — favorable, without amendment

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

WITNESSES: For — Allan J. Lange, Lipan-Kickapoo Water Conservation District;
(*Registered, but did not testify:* Jim Conkwright, High Plains
Underground Water Conservation District No. 1)

Against — Sonia Santana, ACLU-Texas; Laurie Vanhooose, Advocacy,
Inc.; (*Registered, but did not testify:* Dennis Borel, Coalition of Texans
with Disabilities; Mary Finch, League of Women Voters of Texas; Terri
Sperry, True Courage Action Network)

On — Elizabeth Hanshaw Winn, Office of the Secretary of State

BACKGROUND: The Help America Vote Act of 2002 (HAVA), 42 U.S.C. sec.
15481(a)(3)(B) requires each polling place in a federal election 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.

In 2003, the 78th Legislature, in HB 1549 by Denny, added Election Code,
sec. 61.012, requiring 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. This provision brought the
state into HAVA compliance for federal elections without creating a dual
system for other elections held in the state.

The 70th Legislature in 1987 enacted the law relating to the creation, administration, power, duties, and taxing authority of the Lipan-Kickapoo Water Conservation District. Chapter 439, sec. 13 of the corresponding session laws allows for the election creating the district.

DIGEST:

HB 4076 would amend Acts of the 70th Legislature, R.S., 1987, ch. 439, by adding sec. 13A. The bill would establish that for an election held by the Lipan-Kickapoo Water Conservation District, other than an election held jointly with another election in which a federal office was on the ballot, the use of a voting station that met the requirements for accessibility under HAVA would not be required. The board would notify the secretary of state if the district did not provide at least one voting station at each polling place that met the accessibility requirements under HAVA.

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:**

HB 4076 would grant some relief to the Lipan-Kickapoo Water Conservation District for the unfunded mandate of HAVA-required voting systems. Various laws impose mandates on water districts, but provide no funding to meet the requirements. This rural district is particularly affected because its boundaries follow the aquifer and not counties lines. For that reason, the district, which usually has 100 to 125 people vote in its elections out of about 2500 registered voters, must comply with HAVA standards in three counties. Since 1991, upon receiving pre-clearance from the U.S. Department of Justice, the district has held elections in conjunction with school district elections. The last election under this arrangement cost the district \$1,222. In the future, the district cannot conduct elections in this manner because of certain HAVA requirements and the fact the district crosses county lines. The estimated cost for future district elections is \$3,500 to \$4,000.

All counties in Texas are required to have one voter accessible system at each polling place, and they received federal funding to make the initial purchase. Smaller political subdivisions like water districts have not received any funding for the systems. Election officials in this district always have provided accommodations for disabled voters and will continue to extend those services.

OPPONENTS
SAY:

HB 4076 would undo many years of hard-fought efforts to secure voting rights for disabled persons to have a chance to vote a private ballot. The bill could create an incremental process that would send a message that polling places did not have to comply with the Americans with Disabilities Act (ADA), and it could lead to more political subdivisions that did not want to pay the expense of electronic voting stations being relieved of that duty. Some disabled voters might not be able to cast a private ballot, resulting in the district's being vulnerable to ADA lawsuits.

A large number of disabled voters are visually impaired, and the required technology has affected them the most positively 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:

A number of 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. HB 3298 by Callegari, which would permit special districts, including municipal utility districts and water control and improvement districts to be exempt from the voting accessibility requirement was placed on the General Calendar for Monday, May 7. HB 731 by Kolkhorst, which would eliminate the voting accessibility requirement in any election other than a federal election, was heard in the Elections Committee March 21. HB 690 by B. Brown, which would waive the voting accessibility requirement in elections without a federal office for political subdivisions with a population of less than 7,500, has been referred to the Elections Committee.