

SUBJECT: Requiring a voter to present photo identification

COMMITTEE: Voter Identification and Voter Fraud, Select — committee substitute recommended

VOTE: *(After recommitted:)*

6 ayes — Bonnen, Aliseda, Harless, Hilderbran, Peña, L. Taylor

2 nays — Veasey, Hochberg

1 absent — Gutierrez

SENATE VOTE: On final passage, January 26 — 19-11 (Davis, Ellis, Gallegos, Hinojosa, Lucio, Rodriguez, Van de Putte, Watson, West, Whitmire, Zaffirini)

WITNESSES: For — Rebecca Bradford, Texas Federation of Republican Women; Kenneth Buelter, Goliad County Republican Party; Russ Duerstine, Tom Green County G.O.P and Election Support Association of Tom Green County; William (Butch) Marsalis, Panola County Conservatives; Tonja “Michelle” Smith, Concerned Women for America; B.R. (Skipper) Wallace, Texas Republican County Chairman’s Association; and 14 others representing themselves; *(Registered, but did not testify:* Allen Blakemore, Steven Hotze, Conservative Republicans of Texas; Catherine Engelbrecht, King Street Patriots; Travis Griffin, Republican Party of Texas; Cheryl Johnson, Sheryl Swift, Galveston County Tax Office; John Marler, Williamson County Liberty Alliance; Karen Marsalis, Panola County Republican Women; Bill Moore, Organizing for Liberty, Inc.; Linda Rogers, Texas Republican Co. Chairmen’s Association; Jonathan Saenz, Liberty Institute; and 28 others representing themselves)

Against — Gary Bledsoe, Texas NAACP; Sumit DasGupta, Network of Asian American Organizations; Luis Figueroa, Mexican American Legal Defense and Educational Fund (MALDEF); Anita Privett, League of Women Voters of Texas; Sonia Santana, ACLU-TX; Tova Wang, DEMOS; Andrew Joseph; Ramey Ko; Justin Levitt; *(Registered, but did not testify:* Joseph Arabie, Rene Lara, Texas AFL-CIO; Juan Flores, La Fe Policy Research and Education Center; Anthony Gutierrez, Boyd Richie, Texas Democratic Party; Austin Kaplan, The Liberal Austin Democrats; Genevieve Van Cleve, Capital Area Democratic Women; David

Weinberg, Texas League of Conservation Voters; Mary Brown; Tracy Ekstrand; Huey Fischer; Katherine Haenschen; Kathleen Hill; Katrina Meredith)

On — Rebecca Davio, Department of Public Safety; Jessica Gomez, Disability Rights Texas, formerly Advocacy, Inc.; David Maxwell, Office of the Attorney General; Ann McGeehan, Elections Division, Office of the Secretary of State; John O'Brien, Legislative Budget Board; John Woods, Student Government, University of Texas at Austin; Brian Kemp; Toby Moore; Chris Ward; Thomas Wheeler

BACKGROUND:

Current law requires a voter to present a voter registration certificate to an election officer before voting. If the voter's name is on the precinct list of registered voters, the voter is allowed to vote. A voter who does not present a voter registration certificate but whose name is on the precinct list of registered voters must be allowed to vote if the voter signs an affidavit stating that he or she does not have the certificate and presents one of the following forms of identification:

- a driver's license or personal identification card issued by the Department of Public Safety (DPS) or a similar document issued by an agency of another state, regardless of whether the license or card has expired;
- a form of photo identification that establishes the voter's identity;
- a birth certificate or other document confirming birth that is admissible in a court of law and establishes the voter's identity;
- U.S. citizenship papers or a U.S. passport;
- official mail addressed to the voter from a government entity;
- a copy of a current utility bill, bank statement, paycheck, government check, 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 federal Help America Vote Act (HAVA) (42 U.S.C. sec. 15301 et seq.), which requires first-time voters registering by mail to present, with the registration application or at the polls, one of the following forms of identification:

- a current and valid photo identification (a copy if voting by mail);
or

- a copy of a current utility bill, bank statement, paycheck, government check, or other government document that shows the voter's name and address.

Voters who fail to produce the proper identification at the polls may cast a provisional ballot by executing an affidavit stating that the person is registered in the precinct and is eligible to vote. The local early voting ballot board verifies and counts provisional ballots within a week after the election. It examines the affidavits and may accept and count a provisional ballot only if it determines from the affidavit or public records that the person was eligible to vote and had not previously voted.

Under Election Code, sec. 64.012, illegal voting includes knowingly voting or attempting to vote more than once, when ineligible, when impersonating another person, or when marking another person's ballot without that person's consent. The offense is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000), and an attempted offense is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

DIGEST:

CSSB 14 would require a voter to present to an election officer one form of photo identification at the polling place. Certain disabled voters and voters aged 70 years or older would be exempt from the photo ID requirement.

The bill would require advance notice of the identification requirements, voter education for the public, enhanced training for election judges and clerks, and provisional ballots for voters who lacked the necessary identification. It would enhance the penalties for illegal voting and authorize free DPS identification cards for voting.

Acceptable photo identification. Acceptable forms of photo ID would include:

- a driver's license or personal identification card issued by DPS that was current or had expired no more than 60 days earlier;
- a U.S. military identification card that contained a photograph that was current or had expired no more than 60 days earlier;
- a U.S. citizenship certificate that contained a photograph;
- a U.S. passport that was current or had expired no more than 60 days earlier; or

- a concealed handgun license issued by DPS that was current or had expired no more than 60 days earlier.

A birth certificate or other document confirming birth, a utility bill, or a bank statement no longer would be an acceptable form of identification.

Matching ID with registered voter names. A voter whose name was on the list of registered voters for the precinct and who presented the documentation described above would be allowed to vote. If the election official decided that a voter's name on the documentation was substantially similar to, but not an exact match with, the name on the list, the voter would have to submit an affidavit stating that he or she was the person on the list before being allowed to vote.

A voter who presented the required documentation but was not on the list of registered voters for the precinct could vote if he or she presented a voter registration certificate proving current registration in that precinct or proving current registration in a different precinct but in the same county if accompanied by an affidavit stating that the voter:

- was a resident of the precinct in which he or she attempted to vote or was otherwise legally entitled to vote in that precinct;
- was a resident of the precinct when the residence information was provided to the voter registrar;
- did not deliberately provide false information to obtain registration in a precinct where the voter did not reside; and
- was voting only once in the election.

After accepting the voter, the election officer would have to indicate acceptance of the voter on the poll list and enter the voter's name on the registration omissions list.

Exemptions. The bill would exempt from the photo ID requirement disabled voters who had a voter registration certificate indicating they qualified for the exemption. A voter registration applicant requesting this exemption would have to provide written documentation from the U.S. Social Security Administration confirming disability or from the U.S. Department of Veterans Affairs showing a disability rating of at least 50 percent. The applicant also would have to provide a statement that he or she did not have a form of the required identification.

The bill also would exempt from the photo ID requirement voters who were 70 years old by January 1, 2012, and who showed their voter registration certificates before voting.

Notice and training. Before the polls opened, the presiding judge would be required to post prominently outside of each polling place a list of the acceptable forms of photo ID. The information would have to be in at least 24-point font and separate from any other legally required notices.

Effective September 1, 2011, the secretary of state would have to develop training standards and materials on the acceptance and handling of photo ID as soon as practicable. The county clerk also would have to provide the training sessions for election judges and clerks as soon as practicable.

Provisional ballots. Voters who did not have a photo ID, in addition to those without a voter registration certificate who were not on the precinct list, would be allowed to cast a provisional ballot. The election officer would have to inform any voters not permitted to vote of their right to cast a provisional ballot and would have to provide in writing the identification requirements, the procedure for presenting the required identification, a map of where to present the identification, and notice that even if all procedures were followed, the provisional ballot would not necessarily be accepted.

A voter seeking to cast a provisional ballot would have to sign an affidavit stating that the voter was registered in the precinct and eligible to vote. The affidavit would have to include space for the election officer to indicate if the voter presented an acceptable form of photo ID.

A voter accepted for provisional voting for not having a photo ID would have six days after the election to present the required identification to a voter registrar for examination. Alternatively, the voter could execute an affidavit – under penalty of perjury – in the presence of a voter registrar claiming either indigence and inability to obtain identification without paying a fee or a religious objection to being photographed. The affidavit also would have to indicate that the voter was otherwise eligible to vote and had voted a provisional ballot solely because he or she lacked the required identification.

The early voting ballot board would have to accept a provisional ballot if it determined that in addition to being eligible to vote in the election, a voter

met the identification requirements when the ballot was cast or within six days after the election, or if the voter executed the required affidavit.

No charge for DPS ID for voters. CSSB 14 would amend the Transportation Code, sec. 521.422 to prohibit DPS from collecting a fee for a personal identification certificate issued to an eligible voter who had requested the identification certificate to comply with the voter identification requirements and who did not have another form of the required identification.

Illegal voting offense. CSSB 14 would make illegal voting a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) rather than the current third degree felony. Attempted illegal voting would be a state jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) rather than the current class A misdemeanor. The change in penalty for illegal voting would apply only to an offense committed on or after January 1, 2012.

Voter education and notice of identification requirements. Beginning September 1, 2011, each voter registrar would be required to notify voters of the identification requirements and describe those requirements when issuing each new or renewed voter registration certificate.

The secretary of state and the voter registrar of each county that maintained a website would have to provide online notice of the identification requirements. The secretary of state would be required to conduct a statewide effort to educate voters about the identification requirements, and each county clerk would be required to post prominently at the clerk's office a physical copy of the required notice.

Beginning September 1, 2011, an election officer would have to provide any voter who presented identification that did not comply with CSSB 14 with written notice of the identification requirements scheduled to begin with elections held after January 1, 2012, and information on how to obtain free identification. This section would expire September 1, 2017.

By September 1, 2011, state funds dispersed under Election Code, ch. 19 to finance voter registration also could be used for additional expenses related to coordinating or expanding voter registration. This section would expire January 1, 2013.

The bill would repeal regulations related to voter registration certificate errors and would make conforming changes.

The bill would take effect January 1, 2012.

**SUPPORTERS
SAY:**

CSSB 14 is commonsense legislation that would strengthen the election process. The bill would deter voter fraud, keep ineligible voters from voting, make voting correspond with other transactions that require photo ID, and restore and enhance public confidence in elections, which would promote higher turnout. Requiring most voters to show a government-issued photo ID and increasing the criminal penalty for voter fraud would help ensure the integrity of elections. The bill would guarantee continued access to the polls by providing exceptions for certain voters such as seniors and disabled persons and by authorizing free ID cards for eligible voters who lack a photo ID. In its interim report to the 82nd Legislature, the Texas House Committee on Elections recommended the enactment of legislation requiring voters to present photo ID at the polls.

Voter fraud drives honest citizens out of the democratic process and breeds distrust of government. Many everyday circumstances require citizens to present a photo ID, including air travel and cashing a check. Such safeguards benefit our society and enhance our security. When the deceased or other unqualified individuals are on the voter rolls, illegal votes may be cast, canceling out legitimate votes. Although real, voter impersonation is hard to prove because of existing law. Election officials who lack the authority to dispute a voter's identity hesitate to accuse someone of voting illegally. Since voters are not required to prove their identities at the polls, anyone can vote with anyone else's voter certificate. This lax screening process makes it impossible to know how many ineligible voters slip through the system. Stricter requirements would prevent people from voting with fake voter registration certificates and from voting more than once.

Even a limited incidence of voter fraud could tip a close or disputed election. The perception of possible fraud contributes to low confidence in the system. While increasing the criminal penalties for voter fraud, CSSB 14 also would go a long way toward deterring and preventing voter fraud before it occurred by requiring photo identification.

If the public's faith in the legitimacy of elections is bolstered, voter turnout will increase. Indiana and Georgia have the strictest voter ID requirements in the country, but they experienced record voter turnout in

2008, including among minorities. Georgia's voter turnout has been on the rise since 2004, and the state's voter ID law has not disrupted this upward trend.

Stricter identification requirements would not impose an unreasonable burden on voters, since the bill's requirements would be no more burdensome than the act of voting. Concerns about the bill's constitutionality are unfounded because the U.S. Supreme Court upheld Indiana's photo ID law in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008) when it ruled that requiring a photo ID imposes only a limited burden on a voter's rights and is justified by the state's interest in improving election procedures and deterring fraud. Furthermore, although voter ID laws in other states have been heavily litigated, plaintiffs have been unable to produce a single individual who either did not already have an ID or could not easily obtain one.

The bill's effective date of January 1, 2012, would allow sufficient time to educate citizens and election officials about the new requirements. Concerns about the cost of voter education should be assuaged by the secretary of state's prediction that ample federal HAVA funds exist for this purpose. Although cost is an important issue, the integrity of the election process is more precious than any dollar amount.

OPPONENTS
SAY:

CSSB 14 would unnecessarily complicate election procedures and would disenfranchise voters by creating a substantial obstacle to the right to vote. Eligible voters should not be needlessly hassled by the state and discouraged or intimidated from exercising their fundamental right to vote without legitimate justification, yet there is no proof that the barriers to voting that this bill would erect are needed at all. This bill would be an extreme, costly solution in search of a problem not proven to exist.

There is little or no evidence of the voter fraud that this bill purports to address. No proof exists of organized, widespread voter fraud at the polls, and any recent individual cases of voter impersonation are anecdotal at best. A 2009 interim report by the Texas House Elections Subcommittee on Mail-in Ballot Integrity found no evidence of noncitizens abusing the electoral system. Furthermore, in its interim report to the 82nd Legislature, the Texas House Committee on Elections acknowledged that based on testimony from the Texas Attorney General's Office, evidence of voter fraud is lacking. Such findings show that the current law is working and that this bill is unnecessary and unjustified.

According to a 2006 interim report by the Texas Senate State Affairs Committee, almost all evidence of voter fraud involves mail-in ballots. However, this bill would address only voter impersonation at the polls, not mail-in balloting. Policymakers should examine empirical data to weigh the tradeoffs between ballot security and ballot access before enacting laws based on anecdotal data or hearsay.

Texas already has taken steps to minimize fraud by implementing HAVA's requirements that each state cull its voter registration databases and remove any voters who are deceased or are convicted of a felony. Prospective voters already must prove their identity during the registration process and must swear under penalty of perjury that they are U.S. citizens.

Since the process of obtaining a photo ID is cumbersome and cost prohibitive for some citizens, CSSB 14 would suppress voting among eligible voters. Although voter turnout increased in Indiana and Georgia in 2008, this was attributable to the historic nature of that election rather than enhanced public confidence caused by voter ID laws.

According to the Brennan Center for Justice, up to 12 percent of eligible voters nationwide lack a photo ID. The percentage is even higher for seniors, minorities, people with disabilities, low-income voters, and students. Many of those citizens find it hard to obtain such identification because the required documentation — the ID required to obtain an ID — often is difficult to get. In Texas, it costs more than \$20 for a birth certificate, which would effectively require some to pay for the right to vote even if the photo ID itself were free.

Although the bill would allow those who need a photo ID to obtain one from DPS without charge, those persons still would have to navigate the state bureaucracy just to secure their right to vote. The bill would inhibit from voting those in the rural areas of the state where citizens may have to travel more than 100 miles to a DPS office. There is no DPS office in 77 of Texas' 254 counties. For such residents, voting by mail may not be an option, because current law allows only those who will be away from their county during Election Day or early voting or are sick or disabled, age 65 or older, or in jail to vote by mail. Furthermore, the bill would give election workers too much power and pave the way for discrimination, since poll workers might not administer identification procedures fairly or correctly. Slight discrepancies among names or addresses on ID cards,

voter registration cards, and the voting rolls – in addition to dated photographs on ID cards – could result in eligible citizens being denied the right to vote.

Although citizens must show proof of their identity when boarding an airplane or renting movies, these activities are not constitutional rights. This bill would give Texas one of most restrictive voter ID law in the nation. By unjustifiably and unduly burdening the exercise of a fundamental right, CSSB 14 would be open to invalidation as unconstitutional by going too far. Although the U.S. Supreme Court upheld Indiana’s photo ID law, Indiana’s law is less strict and allows voters to use a photo ID issued by any state or federal agency or by a state university. The U.S. Justice Department or a panel of three federal district judges in the District of Columbia are mandated by the Voting Rights Act to examine closely any changes to Texas’ voting laws due to the state’s history of voter suppression and could invalidate the bill for unjustifiably inhibiting minority voting rights.

The bill’s fiscal note of \$2 million does not accurately reflect its potential costs. The Legislative Budget Board acknowledged that the number of voters who would seek a free ID card is unknown. During a severe budget crisis, Texas should use its limited resources to investigate real voter fraud and vigorously prosecute violators rather than pursue a costly solution to a nonexistent problem.

OTHER
OPPONENTS
SAY:

Better alternatives exist to address potential election fraud. When executed properly, they would be less burdensome than a photo ID requirement. Signature comparison (comparing signatures used during voter registration and at the polls) has been used to determine legitimate mail-in ballots and could present a reliable alternative.

Texas should consider taking cues from states like Indiana, Michigan, and Georgia, whose less stringent voter ID laws contain photo ID alternatives such as student IDs, expired driver’s licenses, or valid employee ID cards with photographs.

Voter turnout in Texas is abysmal, which unlike illegal voting is a proven and demonstrable problem. Texas should enact laws that encourage rather than suppress voting. Allowing voter registration on Election Day (“same-day” or “election-day” registration) has boosted voter turnout in some

states. Since HAVA requires each state to create computerized voter lists that can be checked in “real time” for duplications and fraud, same-day registration not only would not increase voter fraud but actually would discourage it.

NOTES:

During floor consideration of SB 14 on March 21, the bill was recommitted to committee on a point of order. The committee reported the bill again, and the committee substitute is unchanged from the earlier version.

The committee substitute differs from the Senate-passed version by requiring disabled voters seeking an exemption to include documentation from the U.S. Social Security Administration or the U.S. Department of Veterans Affairs rather than from a physician. It also specifies that a concealed handgun license used as photo ID would have to be current or have expired no more than 60 days earlier. The substitute revised the language regarding the affidavit executed by a voter who could not provide proof of identification. It omitted a provision in the Senate version that would have made implementation of the bill contingent on a specific appropriation.

The bill’s fiscal note anticipates a cost of \$2 million in fiscal 2012 to inform the public of the new identification requirements. The secretary of state has indicated that federal HAVA funds may be available for this purpose, pending verification with the federal government. According to the Legislative Budget Board, the state’s lost revenue from issuing free photo ID cards cannot be determined because the number of people who would apply for the free cards is unknown.