

- SUBJECT:** Requiring a voter to present proof of identification at a polling place
- COMMITTEE:** Elections — committee substitute recommended
- VOTE:** 5 ayes — Denny, Bohac, Anderson, Hughes, T. Smith  
1 nay — Anchia  
1 absent — J. Jones
- WITNESSES:** For — Don Alexander, Texas Association of Elections Administrators; George Hammerlein, for Paul Bettencourt, Harris County Tax Assessor Collector; Frank Reilly, Republican Party of Texas; B.R. "Skipper" Wallace, Texas Republican County Chairman's Association  
  
Against — Ken Bailey, Texas Democratic Party; Cliff Borofsky, Bexar County; Nina Perales, Mexican American Legal Defense and Educational Fund, Inc.; Laurie Vanhoose, Advocacy, Inc.; Suzy Woodford, Common Cause Texas; (*Registered, but did not testify:* Alison Brock, Unlock Your Vote Campaign; Paula Littles, Texas AFL-CIO; Anne C. McAfee)  
  
On — Ann McGeehan, Secretary of State's Office; Bruce Sherbet; Margaret Spinks, Texas Department of Public Safety; (*Registered, but did not testify:* Germaine Martinez, Texas Department of Public Safety)
- BACKGROUND:** Election Code, sec. 63.001 says a voter must present a voter registration certificate to an election officer when offering to vote at a polling place. Sec. 63.009 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's voter registration certificate at the polling place, and:
- the voter presents proof of identification in a specified, acceptable form; or
  - the affidavit is also signed by a person who is working at the polling place and who attests to the identity of the voter.

Sec. 63.0101 lists the following forms of documentation as acceptable proof of identification in lieu of a voter registration certificate or specified affidavit(s):

- 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 issued to the person;
- 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.

The 78th Legislature in 2003 enacted HB 1549 by Denny to implement changes necessary to comply with the Help America Vote Act of 2002 (HAVA). Among those changes was a requirement that an applicant voting for the first time in a federal election who applies for voter registration by mail must provide a copy of a document described in sec. 63.0101 (listed above) that establishes the applicant's identity. This provision is due to expire at the latest on January 1, 2006, the date by which the statewide computerized voter registration list must be operational.

**DIGEST:**

CSHB 1706 would require a voter, upon offering to vote, to present to an election officer at the polling place the voter's voter registration certificate and either one form of specified photo identification or two different forms of specified identification without a photo. If the voter's name were on the precinct list of registered voters or if the voter was eligible under other existing eligibility provisions, and if the voter's identity could be verified from the identification proof presented, the voter would be accepted for voting without a voter registration certificate.

The bill would modify the list of acceptable proof of identification for voting purposes, specifying the following as acceptable forms of photo identification:

- driver's license or personal identification card issued to the person by the DPS that had not expired or that expired no earlier than two years before the date of presentation;
- U.S. military identification card that contained the person's photograph;
- valid employee identification card that contained the person's photograph;
- U.S. citizenship certificate that contained the person's photograph;
- U.S. passport issued to the person;
- student identification card issued by a public or private institution of higher education located in Texas that contained the person's photograph; or
- license to carry a concealed handgun issued to the person by DPS.

The following documentation without a photo would be acceptable as proof of identification:

- copy of a current utility bill, bank statement, government check, paycheck, or other government document that showed the name and address of the voter;
- official mail addressed to the person by name from a governmental entity;
- certified copy of a birth certificate or other document confirming birth that was admissible in a court of law and established the person's identity;
- U.S. citizenship papers issued to the person;
- 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;
- identification card issued to the person by a Texas or U.S. governmental entity for the purpose of obtaining public benefits, including veteran's benefits, Medicaid, or Medicare;
- temporary driving permit issued to the person by DPS;
- pilot's license issued to the person by the FAA or another authorized, federal agency;

- library card, containing the person's name, issued to the person by a public library located in Texas ; or
- hunting or fishing license issued to a person by the Parks and Wildlife Department.

The bill would remove the following from the list of acceptable identification:

- driver's license or photo identification card issued to the person by another state;
- any form of identification containing the person's photograph that established the person's identity; and
- any other form of identification prescribed by the secretary of state.

The bill would change the specifications for a birth certificate to require that it be a certified copy and for a driver's license to require that it be current or not expired by more than two years.

The bill would require that a voter who did not show either photo identification or two forms of identification without a photo could be accepted for provisional voting if the person executed a provisional ballot affidavit. A voter accepted for provisional voting could present proof of identification to the voter registrar for examination by the early voting ballot board not later than the fifth day after the date of the election. The secretary of state could prescribe procedures as necessary to implement identification provisions for these voters who were accepted for provisional voting.

Proof of identification would be added to requirements for a provisional ballot to be accepted by the early voting ballot board. An election officer would indicate in the provisional ballot affidavit whether a person presented proof of identification.

CSHB 1706 also would amend Transportation Code, sec. 521.422, to prohibit DPS from collecting a fee for a personal identification certificate issued to a person who executed an affidavit stating that the person was financially unable to pay the required fee, who was a registered Texas voter and presented a valid voter registration certificate, or who was eligible for voter registration and submitted a voter registration application to DPS.

The bill would take effect September 1, 2005.

**SUPPORTERS  
SAY:**

CSHB 1706 would set a new standard in increasing voter confidence in voter registration rolls and election outcomes. No statutory provisions now provide for verifying the identity of those who present voter registration certificates at polling places, and this bill would close a potential loophole for fraud.

Along with the right to vote, voters have an obligation to be who they say they are. Every time a vote is cast fraudulently, it disenfranchises those who cast their votes legally. In Texas, those who register to vote in person do not have to show proof of identification but simply complete voter registration cards. Nothing prevents someone from registering for a family member or friend.

More and more arenas in everyday life require photo identification, including traveling on airplanes and cashing checks. Society not only has adapted to those requirements but has benefited from the safeguards. Now it is time to conform the voting system to provide such protection.

The bill would require that voters who had a voter registration card also show photo identification (ID) from an acceptable list or show two forms of acceptable identification without a photo. Voters who did not have a voter registration card but were on the registered voter list still could vote upon presenting the required identification—in most cases, a Texas driver's license. Those not able to present the required forms of identification still could vote a provisional ballot upon completing a related affidavit. This bill would not turn any voters away from the polls.

The bill would not be an onerous burden on Texas voters. According to current information from the National Conference of State Legislators (NCSL), five states now require some form of photo ID for voter identification, and 14 more require proof of identification that does not necessarily include the voter's picture.

Under current Texas law, those who register to vote by mail must provide a copy of a specified ID. This bill would reflect changes expected in future federal laws.

Authorizing DPS to issue personal identification cards without a fee to those unable to pay would assure inclusion of the state's diverse voting

population. The fiscal note attached to the bill would be \$130,110 for the cost to the Texas Mobility Fund of issuing the free ID cards. By all standards, this would be a remarkably low cost to preserve voting rights.

OPPONENTS  
SAY:

CSHB 1706 would address a perceived problem for which there is no evidence—voter fraud at polling places by registered voters. While anecdotes have surfaced of voter fraud in other settings, they do not involve registered voters with valid voter registration certificates. No one has quantified or even produced evidence of fraud among eligible voters at polling places, but the onerous requirements in this bill would disenfranchise some eligible voters.

The bill would discourage some voters by creating long lines at the polls as election officials tried to verify more forms of identification. It would force some people who did not have the specified photo ID or two of the other forms of identification to go home, locate acceptable identification if the voter possessed it, then return to the polls, perhaps to face even longer lines.

While a voter without proper identification could vote a provisional ballot under this bill, that could result in a voter who had voted faithfully by presenting a voter registration card for more than 60 years now having to vote a provisional ballot and wonder if it counted.

Disabled people are the largest population segment without IDs. Implementation of certain HAVA provisions—for example, having one accessible voting booth in every precinct in the state—is giving the disabled more opportunities to vote than ever before. CSHB 1706 could strip away many of those opportunities by forcing disabled voters to obtain photo IDs that they currently do not possess or otherwise need.

Granting free DPS personal identification cards to voters executing affidavits saying they were financially unable to pay for them would reach only some of the disabled population. However, the bill could create a circular path to securing proper photo identification. While the DPS card would be free under certain circumstances, obtaining one likely would require another form of identification for which there was a charge.

The bill also could discourage elderly voters who no longer drive and who live in retirement or nursing homes or with family members and who no longer receive utility bills in their names. Under the bill, the state of

Texas could have the distinction of throwing out the vote of a World War II veteran on a technicality.

Obtaining sanctioned forms of identification, such as a photo ID, certified birth certificate, or passport, would involve paying fees. With the cumulative fees this bill could cost some voters, it could be considered a backdoor poll tax.

This bill is inconsistent with the federal HAVA laws. HAVA requires only one form of identification and only for first-time voters who register by mail, while this bill would require two such forms of identification in order for anyone to vote. Texas need not get in front of federal legislation because of the potential for pre-emption issues until the details of any such future legislation are known.

When the state of Texas accepted HAVA federal funds, it agreed to certain conditions. As written, this bill could jeopardize additional HAVA federal funds for Texas, estimated at \$103.2 million. To avoid such a problem, the Legislature might have to create two different systems of voter identification – one system for first-time voters who registered by mail and who produced one form of acceptable identification and another system for all other eligible voters that met the criteria for proof of identification under this legislation.

This bill would not address sufficiently issues of illegal voting. It would not prevent unscrupulous people from assuming someone's identity and voting as that person during early voting. Instead, it would discourage eligible voters from participating in the democratic process.

When compared with other states, this bill would make Texas' voter identification requirements among the most stringent in the country. Good government should not impose more bureaucracy than is necessary to carry out its basic functions.

**OTHER  
OPPONENTS  
SAY:**

CSHB 1706 as written could create problems with practicality and enforceability. Mandating that every person who appears at a polling place to vote have specified proof of identification—beyond a voter registration card—would be a major departure from current law. A grace period of at least one election is needed to educate election workers and voters. Even that might not be sufficient time to change

habits among voters accustomed to needing only voter registration certificates to vote at the polls.

While citizens are required to show proof of identification in situations ranging from flying on an airplane to renting movies, none of those is a constitutional right and only *one* ID is necessary in such settings, not *two* as this bill would require.

Allowing a concealed handgun license to become an acceptable form of photo ID for voters would cause too much of a stir. Although a polling place is one of the designated locations where handguns are illegal, poll workers could become fearful that if they did not accept such documentation from a voter that the person might be carrying a gun and be dangerous. The state of Texas would be better off accepting a photo ID from a buyer's club, as Florida does.

With respect to the list of acceptable IDs without photos, various documents, including library cards, temporary driving permits, and (junior) hunting or fishing licenses all are issued to people under 18. These forms of documentation could generate more problems with voter eligibility and underage voting than they would solve. Also, acceptable IDs without photos should include military discharge papers.

**NOTES:**

The committee substitute differs from the introduced version by including requirements for proof of voter identification related to provisional ballots. Under the substitute, a voter who was accepted for provisional voting because the voter did not present the required proof of identification could offer proper proof to the voter registrar not later than the fifth day after the date of the election. It would require the secretary of state to prescribe procedures as necessary to implement this provision.

The fiscal note for CSHB 1706 anticipates a cost of \$130,110 each year to the Texas Mobility Fund to allow DPS to issue personal identification certificates at no cost to registered Texas voters with valid voter registration cards or who had submitted voter registration applications and executed affidavits stating they were unable to pay the required fee.