

SUBJECT: Exemption for disabled voter accessibility in certain elections

COMMITTEE: Elections — committee substitute recommended

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

SENATE VOTE: On final passage, April 26 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing

BACKGROUND: Election Code, sec. 61.012 requires 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.

The Help America Vote Act of 2002 (HAVA), 42 U.S.C. sec. 15481(a)(3)(A) and (B) require each polling place to have at least one voting system accessible to individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities, in a manner that provides the same opportunity for access and participation as for other voters.

DIGEST: CSSB 1776 would add Election Code, sec. 61.013 to stipulate that for an election other than an election of a political subdivision that was held jointly with another election in which a federal office appeared on the ballot, certain political subdivisions would be exempt from having to provide at least one voting station that complied with the federal HAVA law on accommodations for persons with disabilities. The exception would be based on population criteria or on proof that the accommodation would create an undue burden.

A political subdivision would not have to meet the HAVA requirement that each polling place have at least one direct recording electronic voting system that was accessible to disabled voters if the political subdivision:

- was a county with a population less than 2,000 (if a disabled voter requested reasonable accommodation no later than the 21st day before the election, the clerk would be required to make the accommodation);
- was a county with a population of 2,000 or more but less than 5,000, and the county provided at least one voting station that met the requirements for accessibility under HAVA on election day;
- was a county with a population of 5,000 or more but less than 10,000, and the county provided at least one voting station that met the requirements for accessibility under HAVA on election day and during early voting by personal appearance;
- was a county with a population of 10,000 or more but less than 20,000 and the county made a showing that compliance with HAVA accessibility requirements constituted an undue burden, and provided at least one voting station on election day and during the period for early voting by personal appearance that met the requirements for accessibility under HAVA, and provided a mobile voting station that met the accessibility requirements of HAVA that during early voting by personal appearance was deployed at least once at each early voting polling place; or
- was a political subdivision located in one of the aforementioned counties and met the same requirements as the county in which the political subdivision was located.

The political subdivision could make a showing of undue burden by filing an application with the Secretary of State no later than 90 days before the election. A showing of undue burden could be satisfied by proof that the election costs of compliance constituted a significant expense for the county or political subdivision and reflected an increase of at least 25 percent to the costs of holding an election. The Secretary of State would have to make a determination within 20 days after the receipt of the application.

Counties or political subdivisions intending to provide fewer voting stations meeting accessibility requirements than required under HAVA would have to notify the secretary of state no later than 90 days before an election and, except those with a population of less than 2,000, would

have to publish notice of the location for each voting station that met the accessibility requirements of HAVA in a newspaper no later than 15 days before the start of early voting by personal appearance.

Political subdivisions located in more than one county could choose to be considered located in the county that contained the greatest number of registered voters of the political subdivision or for each portion of the political subdivision located in a different county, to be considered a separate political subdivision.

The Secretary of State would prescribe procedures and adopt rules as necessary to implement the bill. The bill would repeal the provision stipulating that the requirements to provide accommodations under Election Code, sec. 61.012 would apply only to a polling place that used an electronic voting system unless the secretary of state certified that federal law required application to all forms of voting at a polling place.

The bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSSB 1776 would represent a balanced compromise between the disabled community and small political subdivisions that have experienced real financial hardships in complying with accessibility requirements for voting. The bill would set up a tiered system that would reduce the burden on small counties and political subdivisions while maintaining the ability of disabled Texans to cast a secret ballot.

Some cities in Texas, especially small communities, face significant financial burden in complying with the HAVA requirement. At this point, the only voting systems that comply with the accessibility standards under federal law are the DREs, or direct recording electronic voting machines. They are extremely expensive and are unaffordable for some small cities.

All counties in Texas are required to have electronic machines, and they received federal funding to make the initial purchase. Continued funding for maintenance and operations is not available, however, and the machines are expensive to program. Smaller political subdivisions, such as cities, school districts, and MUDs, did not receive any funding for the machines. Even though some counties do hold joint elections, the expense of the machines often is passed on to the cities and school districts. Some small cities bought the voting machines, which increased the cost of their

elections by thousands of dollars, only to find out that they were under-utilized or not used at all. Others did not buy the voting machines but instead chose to lease them from the counties. However, if not enough of the machines are available to go around, some are forced to spend thousands of dollars or risk being noncompliant.

The primary expense of the electronic systems – once they have been purchased – is programming, or coding, and it must be done for every election. Some counties do the coding themselves, and others do not have the resources in-house to perform these duties, forcing them to pay a vendor to do it. Likewise, some counties are not in a position to hold joint elections because the communities are small and often have only a few employees who perform several governmental functions.

Elections administrators, government officials and advocates for the disabled will continue to be vigilant about voting accessibility and voting rights, and the bill would provide a good start in dealing with financial obligations and accessibility issues. The bill would follow current ADA requirements by allowing exceptions for small entities that could prove a financial burden, yet still would require them to provide some kind of reasonable accommodation. Also, disabled voters would retain the option of voting early by mail.

The House Elections Committee has indicated a desire to continue studying the implementation of HAVA and how its provisions affect the Texas electorate, while seeking reasonable and workable solutions for all parties concerned. Myriad financial reports that address the costs of elections indicate that the 20,000 population cut-off proposed in the bill would provide a reasonable number to begin allowing exemptions for accessible voting machines, as long as accommodations could be made for disabled voters.

**OPPONENTS
SAY:**

The 20,000 population cut-off is arbitrary and should be raised. There are still many small communities with slightly larger populations that would not be able to apply for an exemption to the HAVA voting accessibility requirement.

NOTES:

The Senate-passed version of the bill provided specific guidelines for the treatment of political subdivisions located in more than one county. The

House committee substitute would allow those counties to choose between options how they wanted to be treated for exemption purposes.