

## **BILL ANALYSIS**

C.S.H.B. 1549  
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Elections  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

In response to irregularities in voting during the 2000 Presidential election, the federal government, in 2002, passed the Help America Vote Act (HAVA). HAVA sets certain standards for election policy throughout the United States and allocates funds for individual states to update and reform their election systems. Although Texas did not have the magnitude of problems which occurred in other states, the state does need to modify certain election policies to meet the new federal requirements and to receive the allocated funding. CSHB 1549 makes the necessary changes in the Election Code required for successful implementation of HAVA.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the secretary of state in SECTION 7 (Section 18.064, Election Code), SECTION 8 (Section 18.065), SECTION 13 (Section 31.010, Election Code), and SECTION 36 (Sections 65.057 and 65.059, Election Code) of this bill.

### **ANALYSIS**

CSHB 1549 amends the Election Code to implement the federal Help America Vote Act of 2002 (HAVA). The bill authorizes the secretary of state to adopt rules as necessary to implement HAVA. The bill requires the secretary of state to adopt rules establishing state-based administrative complaint procedures to remedy grievances that meet certain requirements of HAVA.

#### **Election Improvement Fund:**

The bill creates the election improvement fund (fund), as a dedicated account in the general revenue fund consisting of certain federal, state, and local funds and depository interest earned on the assets of the fund. The bill sets forth provisions relating to the authorized appropriation of money in the fund. The bill provides that the fund is exempt from the application of provisions relating to the use of dedicated revenue. The bill requires the secretary of state, if the secretary of state determines that federal matching funds are available under HAVA, to certify to the comptroller the amount of state funds required to qualify for the maximum amount of federal matching funds. The bill requires the comptroller, on receipt of the certification, to deposit from funds otherwise available an amount equal to the certified amount into the fund.

#### **Voter Identification at the Time of Registration:**

For purposes of identifying the applicant, the bill provides that a registration application must include the applicant's Texas driver's license number; Department of Public Safety issued personal identification card (id card) number; the last four digits of the applicant's social security number, if the applicant does not have a driver's license or id card number; or if the applicant does not have a driver's license, id card, or social security number, another means of identification as prescribed by the secretary of state. The bill removes the requirement that the secretary of state, in designing the officially prescribed application for registration by mail, keep the application within a certain size.

The bill provides that a person may provide a copy of an acceptable document demonstrating proof of voter identity (acceptable document) along with the registration application to establish the applicant's identity. The bill adds 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 to the list of acceptable documents. The bill removes pre-printed checks and two other forms of identification from the list of acceptable documents.

The bill requires the secretary of state to prescribe procedures to inform an applicant who applies for registration by mail of the requirement that, before voting for the first time in an election for federal office, the applicant must provide a copy of an acceptable document. The bill sets forth requirements for these procedures.

The bill adds the identity of voters who registered by mail for the first time and who failed to provide a copy of an acceptable document at the time of registration to the items that each original and supplemental list of registered voters must include.

The bill requires the early voting clerk to provide to a voter who is voting early by mail in an election for federal office and who, according to the list of registered voters, did not provide a copy of an acceptable document at the time of initial registration by mail, a notice accompanying the balloting materials that informs the voter that the voter must provide a copy of an acceptable document in the official carrier envelope when returning the ballot. The bill provides that a ballot belonging to a voter to whom this notice was provided may only be accepted if the voter provided the required documentation or if the early voting ballot board determines that the person is eligible to vote.

The bill provides that provisions relating to the furnishing of an acceptable document to establish the voter's identity expire the earlier of January 1, 2006 or the date the secretary of state certifies that the statewide computerized registration list has been implemented.

#### Statewide Computerized Voter Registration List:

CSHB 1549 replaces the registration service program with a statewide computerized voter registration list (voter list) that serves as the single system for storing and managing the official list of registered voters in the state and assigns a unique identifier to each voter. The bill requires the secretary of state to implement and maintain the voter list. The bill sets forth the requirements for the voter list. The bill requires each voter registrar to provide to the secretary of state information necessary to maintain the voter list. Once the voter list is implemented, the bill requires each original and supplemental list of registered voters to contain the registration number of each voter as provided by the voter list.

Once the voter list is implemented, the bill repeals provisions relating to the state master file and information furnished by registrars.

#### Provisional Voting:

CSHB 1549 sets forth a system for those voters authorized to cast provisional ballots to replace the system of using ballots with stubs for voters who are challenged at the polling place. The bill repeals certain provisions relating to the use of ballot stubs for challenged voters. The bill repeals provisions relating to the challenge of a voter and the challenge of a person voting by mail.

The bill sets forth the eligibility of a voter to cast a provisional ballot.

The bill requires the secretary of state to prescribe the form of a provisional ballot and the necessary procedures to implement the casting, verification, and processing of provisional ballots.

The bill sets forth provisions regarding:

- the duties of the early voting ballot board, voter registrar, and election officers relating to provisional ballots;
- the procedures for the selection, preparation, and deposit of provisional ballots;
- the security of provisional ballots;
- the accepting of provisional ballots;
- the verification and counting of provisional ballots, the disposition of rejected and accepted

- provisional ballots, and the processing of accepted provisional ballots; and the preservation of provisional ballots and related records.

The bill requires the early voting ballot board, under rules adopted by the secretary of state, to implement a system to allow a person who casts a provisional ballot to access information on the disposition of the person's ballot. The bill sets forth requirements for the system.

#### Determining the Intent of a Voter:

The bill provides the methods by which the intent of the voter in marking a ballot may be determined. The bill provides that the manner in which an irregularly marked vote on a ballot from an electronic voting system is to be considered is the same as the manner in which the intent of a voter is determined for paper ballots.

#### Postings in the Polling Place:

The bill requires, rather than authorizes, the authority responsible for procuring election supplies to have a supply of sample ballots printed.

The bill adds information relating to voting for persons who register by mail, casting provisional ballots, the date and hours of the election, voting rights, and certain federal and state laws to the items that the instruction poster located in each polling place must contain. The bill authorizes the secretary of state, if it is not practical to fit all of the required information on one instruction poster, to provide for multiple posters to convey the information.

#### Tallying Late Votes in Certain Elections:

The bill requires the presiding judge to provide a separate ballot box for the deposit of ballots cast in an election for federal office in which a state or federal court order has extended the time for voting beyond the authorized hours for voting (authorized late ballots). The bill requires the early voting ballot board to count authorized late ballots with accepted provisional ballots. The bill provides that a voting system must provide a separate count of votes cast on authorized late ballots.

#### Requirements for Voting Systems:

The bill prohibits a voting system that uses mechanical voting machines or a punch card ballot or similar form of tabulating card from being used in an election. The bill prohibits a voting system that does not comply with the error rate standards of the voting system standards adopted by the Federal Election Commission from being used in an election.

#### Recounts:

The bill adds the records from which the operation of the voting system may be audited to the items that the custodian of voted ballots, voting machines or test materials or programs used in counting electronic voting system ballots is required to make available to the recount committee on presentation by a recount committee chair of a written order signed by the recount supervisor.

#### Early Voting By Mail Applications:

The bill provides that applications for early voting by mail and federal postcard applications also serve, as applicable, as a request for a ballot for, or registration by the applicant for voting in, each election for federal office that occurs on or before the date of the second general election for state and county officers that occurs after the date the application is submitted.

#### Change of Dates:

The bill provides that the May uniform election date is the third, rather than the first, Saturday in May. The bill authorizes the governing body of a political subdivision, not later than December 31, 2004, rather than 1999, to change the date for the election of officers to another authorized uniform election date.

The bill modifies the date for the runoff primary election to the third, rather than the second, Tuesday in

April following the general primary election.

The bill extends the last date for conducting the canvass of results for certain elections.

Designated Agency:

The bill provides that the secretary of state is the designated state office to provide information regarding voter registration and absentee ballot procedures to be used by persons eligible to vote under the federal Uniform and Overseas Citizens Absentee Voting Act, as amended.

Access by Persons with Disabilities:

The bill provides that each polling place that uses electronic voting systems must provide, not later than January 1, 2006, at least one voting station that complies with certain provisions in the federal Rehabilitation Act of 1973 and the federal Americans with Disabilities Act and that provides a practical and effective means for voters with physical disabilities to cast a secret ballot. The bill repeals the requirement that each electronic voting system that is acquired on or after September 1, 1999, meet these requirements for accessibility. The bill provides if the secretary of state certifies that federal law requires this accessibility for all forms of voting, that the accessibility requirements will apply to all polling places.

**EFFECTIVE DATE**

January 1, 2004. Provisions relating to the statewide computerized voter registration list and to the prohibition on punch card and lever voting machines take effect January 1, 2006.

**COMPARISON OF ORIGINAL TO SUBSTITUTE**

CSHB 1549 amends the original by adding provisions relating to the implementation of HAVA and gives the secretary of state rulemaking authority associated with this implementation. The substitute adds provisions creating the Election Improvement Fund and provides for the appropriation of state funds to qualify for matching federal funds.

The substitute amends the original by adding provisions relating to the requirement that registration applications include identification numbers. The substitute adds provisions relating to the statewide computerized voter registration list and provides that these provisions take effect January 1, 2006. The substitute also provides that provisions relating to the requirement that a voter who registers by mail provide a copy of an acceptable document to establish the voter's identity expire when this list is implemented. The substitute deletes the restriction on the size of applications for registration by mail.

The substitute repeals provisions relating to the challenge of a voter in the polling place. The substitute adds provisions that would authorize a voter who votes a provisional ballot to provide information to register to vote on the affidavit on the provisional ballot.

The substitute adds provisions that change the May uniform election date to the third, rather than the first, Saturday in May.

The substitute adds provisions relating to requirements for polling places using electronic voting systems to allow access by persons with disabilities. The substitute repeals the requirement that each electronic voting system purchased after September 1, 1999, meets the accessibility requirements.

The substitute adds provisions relating to the contents of and posting of an instructional poster in each polling place.

The substitute adds the provision naming the secretary of state as the designated state office to provide information on registration and absentee ballots for uniformed persons and certain voters overseas.

The substitute removes certain provisions relating to the tallying of late votes in elections extended by court order.

The substitute provides that a voter's intent on an electronic ballot is determined in the same manner as a voter's intent on a paper ballot.