BILL ANALYSIS

Senate Research Center

C.S.H.B. 1549
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State Affairs
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Committee Report (Substituted)

DIGEST AND PURPOSE

In 2002, the federal government passed the Help America Vote Act, which sets standards for election policy in the states. C.S.H.B. 1549 changes the Election Code to implement the Help America Vote Act.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the secretary of state in SECTION 13 (Section 31.010, Election Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 13.002(c), Election Code, to provide that a voter registration application must include certain information.

SECTION 2. Amends Section 13.121(a), Election Code, to delete a provision prohibiting the application form for voter registration by mail from being larger than the form in use immediately prior to January 1, 1986.

SECTION 3. Amends Section 13.122, Election Code, by amending Subsection (a) and adding Subsection (d), as follows:

> (a) Deletes a provision that the official form must include a statement indicating that the furnishing of the applicant's driver's license number, personal identification card number, and social security number is optional.

> (d) 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 an applicant must provide a copy of the document described by Section 63.0101 that establishes the applicant's identity. Requires the procedures to include providing an instructional sheet to be distributed with the official registration application form describing the requirement and a method by which an applicant may submit the document along with the official registration application form. Provides that this subsection expires on the earlier of January 1, 2006, or the date the secretary of state certifies that the statewide computerized voter registration list has been implemented.

SECTION 4. Amends Section 18.005(a), Election Code, to provide that each original and supplemental list of registered voters must contain certain information about the voter as provided by the statewide computerized voter registration list and must, until Section 13.122(d) expires, identify each voter registered by mail for the first time who failed to provide a copy of a document described by Section 63.0101 establishing the voter's identity at the time of registration.

SECTION 5. Amends, effective January 1, 2006, the heading to Subchapter C, Chapter 18, Election Code, to read as follows:

SUBCHAPTER C. STATEWIDE VOTER REGISTRATION LIST

SECTION 6. Amends, effective January 1, 2006, Section 18.061, Election Code, as follows:

Sec. 18.061. New heading: STATEWIDE COMPUTERIZED VOTER REGISTRATION LIST. (a) Requires, rather than authorizes, the secretary of state to implement and maintain a statewide computerized voter registration list that serves as the single system for storing and managing the official list of registered voters in the state, rather than a registration service program to assist registrars in maintaining accurate lists of registered voters.

(b) Requires the statewide computerized voter registration list to contain certain information and perform certain functions. Deletes text related to the registration service program.

(c) Requires each voter registrar, under procedures prescribed by the secretary of state, to provide to the secretary of state on an expedited basis the information necessary to maintain the registration list established under Subsection (a). Requires the procedures to provide for the electronic submission of the information.

(d) Makes conforming changes.

SECTION 7. Amends, effective January 1, 2006, Section 18.064, Election Code, to modify statutory references to conform to other changes and to make other conforming changes.

SECTION 8. Amends, effective January 1, 2006, Section 18.065(a), Election Code, to modify statutory references to conform to other changes and to make other conforming changes.

SECTION 9. Amends, effective January 1, 2006, the heading to Section 18.066, Election Code, to read as follows:

Sec. 18.066. AVAILABILITY OF STATEWIDE COMPUTERIZED VOTER REGISTRATION LIST INFORMATION.

SECTION 10. Amends, effective January 1, 2006, Section 18.066(a), Election Code, to make conforming changes.

SECTION 11. Amends, effective January 1, 2006, the heading to Section 18.067, Election Code, to read as follows:

Sec. 18.067. UNLAWFUL USE OF STATEWIDE COMPUTERIZED VOTER REGISTRATION LIST INFORMATION.

SECTION 12. Amends Section 19.004, Election Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Provides an exception as provided by Subsection (d).

(d) Requires the secretary of state, if the secretary of state determines that federal matching funds are available under the federal Help America Vote Act of 2002, to certify to the comptroller the amount of state funds required to qualify for the maximum amount of federal matching funds. Requires the comptroller, on receipt of the certification, to deposit from funds otherwise available under this chapter an amount equal to the certified amount in the election improvement fund established under Section 31.011.

SECTION 13. Effective September 1, 2003, amends Chapter 31, Election Code, by adding Sections

31.010 and 31.011, as follows:

Sec. 31.010. IMPLEMENTATION OF FEDERAL HELP AMERICA VOTE ACT. (a) Authorizes the secretary of state to adopt rules as necessary to implement the federal Help America Vote Act of 2002.

(b) Requires the secretary of state to adopt rules establishing state-based administrative complaint procedures to remedy grievances that meet the requirements of Section 402(a) of the federal Help America Vote Act of 2002.

Sec. 31.011. ELECTION IMPROVEMENT FUND. (a) Provides that the election improvement fund is created as a dedicated account in the general revenue fund and consists of federal funds designated for election improvement, matching funds from the state or a political subdivision, and depository interest earned on the assets of the fund.

(b) Provides that money in the fund may be appropriated only to provide funding for certain purposes.

(c) Provides that the fund is exempt from the application of Section 403.095 (Use of Dedicated Revenue), Government Code.

SECTION 14. Amends Section 41.001(a), Education Code, to require a general or special election in this state to be held on the third, rather than first, Saturday in May, among other dates.

SECTION 15. Amends Section 41.0052(a), Election Code, to authorize the governing body of a political subdivision other than a county, not later than December 31, 2004, rather than 1999, to change the date on which it holds its general election for officers to another authorized uniform election date. Deletes a reference to an election on the new date being held before 2000.

SECTION 16. Amends Section 41.007(b), Election Code, to provide that the runoff primary election date is the third, rather than second, Tuesday in April following the general primary election.

SECTION 17. Amends Section 52.008(a), Election Code, to require, rather than authorize, the authority responsible for procuring the election supplies to have a supply of sample ballots printed.

SECTION 18. Amends Section 52.074, Election Code, as follows:

Sec. 52.074. New heading: PROVISIONAL BALLOT FOR CERTAIN VOTERS. Requires the authority responsible for having the official ballot prepared to have a provisional ballot, rather than a detached ballot stub, prepared in a form approved by the secretary of state for use by a voter who executes an affidavit in accordance with Section 63.011, rather than 63.010. Deletes the text of Subsection (b), regarding the form of the ballot stub. Makes conforming changes.

SECTION 19. Amends Section 61.005, Election Code, as follows:

Sec. 61.005. New heading: SECURITY OF BALLOTS, BALLOT BOXES, AND ENVELOPES. Makes conforming changes.

SECTION 20. Amends Subchapter A, Chapter 61, Election Code, by adding Section 61.012, as follows:

Sec. 61.012. ACCESS BY PERSONS WITH DISABILITIES. (a) Requires each polling place, not later than January 1, 2006, to provide at least one voting station that complies with certain laws and provisions regarding people with disabilities.

(b) Provides that Subsection (a) applies only to a polling place that uses an electronic voting system unless the secretary of state certifies that federal law requires the application of Subsection (a) to all forms of voting at a polling place.

SECTION 21. Amends Section 62.006, Election Code, as follows:

Sec. 62.006. New heading: PLACING BOX FOR DEPOSIT OF MARKED BALLOTS. Makes conforming changes.

SECTION 22. Amends Section 62.009(c), Election Code, to make a conforming change.

SECTION 23. Amends Section 62.011, Election Code, by amending Subsections (b) and (c) and adding Subsection (d), as follows:

(b) Provides that if it is not practical to fit all of the information required by this section on a single poster, the secretary of state is authorized to provide for the use of two or more posters to convey the information.

(c) Adds instructions that must be included on the poster.

(d) Requires the poster to also include further information.

SECTION 24. Amends Section 62.012, Election Code, to make conforming changes.

SECTION 25. Amends Section 63.008, Election Code, as follows:

(a) Deletes a provision regarding the signature of an affidavit by a person working at the polling place and who attests to the identity of the voter.

(b) Deletes a provision relating to the rejection of a voter under this section. Makes conforming changes.

SECTION 26. Amends Section 63.009, Election Code, to make conforming changes.

SECTION 27. Amends Section 63.0101, Election Code, to delete pre-printed checks and two other forms of identification as acceptable identification documents, and to provide that a copy of a current utility bill, bank statement, government check, paycheck, or other government document showing the name and address of the voter is acceptable as identification of the voter.

SECTION 28. Amends Chapter 63, Election Code, by adding Section 63.011, as follows:

Sec. 63.011. PROVISIONAL VOTING. (a) Authorizes a person to whom Section 63.008(b) or 63.009(a) applies to cast a provisional ballot if the person executes an affidavit stating that the person is a registered voter in the precinct in which the person seeks to vote, and is eligible to vote in the election.

(b) Requires a form for the affidavit to be printed on an envelope in which the provisional ballot voted by the person may be placed and to include a space for entering the identification number of the provisional ballot voted by the person. Authorizes the affidavit form to include space for disclosure of any necessary information to enable the person to register to vote under Chapter 13. Requires the secretary of state to prescribe the form of the affidavit under this section.

(c) Requires the person, after executing the affidavit, to be given a provisional ballot for the election. Requires an election officer to record the number of the ballot on the

space provided on the affidavit.

(d) Requires an election officer to enter "provisional vote" on the poll list beside the name of each voter who is accepted for voting under this section.

(e) Requires a person who is permitted under a state or federal court order to cast a ballot in an election for a federal office after the time allowed by Subchapter B, Chapter 41, to cast the ballot as a provisional vote in the manner required by this section.

SECTION 29. Amends Section 63.012(a), Election Code, to provide that an election officer commits an offense if the officer knowingly permits an ineligible voter to vote other than as provided by Section 63.011, rather than without having been challenged.

SECTION 30. Amends Section 64.001, Election Code, as follows:

Sec. 64.001. New heading: VOTER TO SELECT AND PREPARE BALLOT. Makes conforming changes.

SECTION 31. Amends Section 64.008, Election Code, as follows:

(a) Includes an exception as provided by Subsection (b).

(b) Requires a voter, after the voter has marked a provisional ballot, to enclose the ballot in the envelope on which the voter's executed affidavit is printed. Requires the person to seal the envelope and deposit it in a box available for the deposit of provisional ballots.

(c) Requires an election officer, at the time a person casts a provisional ballot under Subsection (b), to give the person written information describing how the person may use the free access system established under Section 65.059 to obtain information on the disposition of the person's vote.

SECTION 32. Designates Sections 65.001-65.015, Election Code, as Subchapter A, Chapter 65, Election Code, and adds a heading to read as follows:

SUBCHAPTER A. COUNTING VOTES GENERALLY

SECTION 33. Amends Section 65.009, Election Code, by adding Subsection (d), to set forth ways to determine the intent of a voter in marking a ballot.

SECTION 34. Amends Section 65.010(a), Election Code, to prohibit the counting of a provisional ballot that is not accepted under Subchapter B, rather than a ballot with an unsigned stub.

SECTION 35. Amends Chapter 65, Election Code, by adding Subchapter B, as follows:

SUBCHAPTER B. VERIFICATION AND COUNTING OF PROVISIONAL BALLOTS

Sec. 65.051. DUTY OF EARLY VOTING BALLOT BOARD. (a) Requires the early voting ballot board (board) to verify and count provisional ballots as provided by this subchapter not later than the seventh day after the date of an election.

(b) Provides that, except as provided by this subchapter, the conduct of the board is governed by the same procedures as are provided by Chapter 87.

Sec. 65.052. DUTY OF VOTER REGISTRAR. Requires the secretary of state to prescribe procedures by which the voter registrar of the county in which a provisional ballot is cast shall

provide assistance to the board in executing its authority under this subchapter.

Sec. 65.053. DELIVERY OF PROVISIONAL BALLOTS. Requires the presiding judge of an election precinct to deliver in person to the general custodian of election records the box containing each envelope containing a provisional ballot that was cast in the precinct. Requires the secretary of state to prescribe procedures by which the board may have access to the provisional ballots as necessary to implement this subchapter.

Sec. 65.054. ACCEPTING PROVISIONAL BALLOT. (a) Requires the board to examine each affidavit executed under Section 63.011 and determine whether to accept the provisional ballot of the voter who executed the affidavit.

      (b) Authorizes a provisional ballot to be accepted only if the board determines that, from the information in the affidavit or contained in public records, the person is eligible to vote in the election.

      (c) Requires the board, if a provisional ballot is accepted, to enter the voter's name on a list of voters whose provisional ballots are accepted.

      (d) Requires the board, if a provisional ballot is rejected, to indicate the rejection by marking "rejected" on the envelope containing the provisional ballot.

Sec. 65.055. DISPOSITION OF ACCEPTED PROVISIONAL BALLOT AND AFFIDAVIT. (a) Requires the board to open each envelope containing an accepted provisional ballot without defacing the affidavit located on the outside of the envelope and to remove the ballot.

      (b) Requires the board to place the ballot in a ballot box containing all the provisional ballots accepted for voting in the election.

      (c) Requires the board, for each accepted provisional ballot, to place the corresponding envelope on which is printed the voter's affidavit executed under Section 63.011 in a sealed envelope and to deliver the envelope to the general custodian of election records, to be retained for the period for preserving precinct election returns.

Sec. 65.056. DISPOSITION OF REJECTED PROVISIONAL BALLOT. (a) Requires the voter registrar, if the affidavit on the envelope of a rejected provisional ballot contains the information necessary to enable the person to register to vote under Chapter 13, to make a copy of the affidavit under procedures prescribed by the secretary of state. Requires the voter registrar to treat the copy as an application for registration under Chapter 13.

      (b) Requires the board to place the envelopes containing rejected provisional ballots in an envelope and to seal the envelope. Authorizes more than one envelope to be used if necessary.

      (c) Requires the envelope for the rejected provisional ballots to indicate the date and identity of the election, be labeled "rejected provisional ballots," and be signed by the board's presiding judge.

      (d) Requires a board member to deliver the envelope containing the rejected provisional ballots to the general custodian of election records to be preserved for the period for preserving the precinct election records. Prohibits the envelope from being placed in the box containing the accepted provisional ballots.

Sec. 65.057. PROCESSING ACCEPTED PROVISIONAL BALLOTS. (a) Sets forth

procedures for counting accepted provisional ballots.

(b) Requires the board, on counting the ballots under this section, to report the results to the local canvassing authority for the election.

Sec. 65.058. PRESERVATION OF PROVISIONAL VOTING RECORDS GENERALLY. Requires the returns of provisional ballots that are accepted, the accepted ballots, and other provisional voting records to be preserved after the election in the same manner as the corresponding precinct election returns.

Sec. 65.059. NOTICE TO PROVISIONAL VOTER. Requires the secretary of state to prescribe procedures to implement a system to allow a person who casts a provisional ballot under Section 63.011 to obtain access free of charge to information on the disposition of the person's ballot. Sets forth requirements for the system.

SECTION 36. Amends Section 66.003, Election Code, as follows:

(a) Requires four, rather than five, envelopes to be furnished to each polling place for use in assembling and distributing the precinct election records.

(b) Deletes instructions for labeling and addressing Envelope No. 5.

SECTION 37. Amends Section 66.021(b), Election Code, to make conforming changes.

SECTION 38. Amends Section 66.0241, Election Code, to make a conforming change.

SECTION 39. Amends Section 66.051(b), Election Code, to make a conforming change.

SECTION 40. Amends Sections 66.058(b), (c), and (d), Election Code, to make conforming changes.

SECTION 41. Amends Section 66.059, Election Code, to make conforming changes.

SECTION 42. Amends Section 67.003, Election Code, as follows:

Section 67.003. Requires each local canvassing authority to convene to conduct the local canvass at the time set by the canvassing authority's presiding officer on the eighth, rather than seventh, day after election day for the general election for state and county officers; or not earlier than the eighth, rather than third, day or later than the 11th, rather than sixth, day after election day for an election other than the general election for state and county officers.

SECTION 43. Amends Section 86.002, Election Code, by adding Subsection (f), as follows:

(f) Requires the clerk, for an election for a federal office, if the list of registered voters indicates that the voter did not provide a copy of a document described by Section 63.0101 establishing the voter's identity at the time of initial registration by mail, to provide with the balloting materials notice to the voter that the voter is required to provide a copy of a document described by Section 63.0101 establishing the voter's identity when returning the ballot. Requires the secretary of state to prescribe the form of the notice. Provides that this subsection expires on the earlier of two certain dates.

SECTION 44. Amends Section 86.005, Election Code, by adding Subsection (f), to require a voter, if the voter is required to provide a copy of a document described by Section 63.0101 establishing the voter's identity, to include the copy in the official carrier envelope. Provides that this subsection expires on the expiration of Section 86.002(f).

SECTION 45. Amends Subchapter C, Chapter 87, Election Code, by adding Section 87.0411, as follows:

Sec. 87.0411. ACCEPTANCE OF NEW VOTER IN ELECTION FOR FEDERAL OFFICE. (a) Provides that a ballot for which notice was provided under Section 86.002(f) may be accepted only if the voter provided the required documentation of the voter's identity, or the board determines that the person is eligible to vote.

(b) Provides that this section expires on the expiration of Section 86.002(f).

SECTION 46. Amends Section 101.005(c), Election Code, to require that an application be treated as if it requests a ballot for each election for a federal office, including a primary or runoff election, 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.

SECTION 47. Amends Section 101.006(a), Election Code, to provide that the submission of a federal postcard application that complies with the applicable requirements by an unregistered applicant constitutes registration by the applicant only for the purpose of voting in the election for which a ballot is requested and each election for a federal office that occurs on or before the date of the second general election for state and county officers tat occurs after the date the application is submitted.

SECTION 48. Amends Chapter 101, Election Code, by adding Section 101.013, as follows:

Sec. 101.013. DESIGNATION OF SECRETARY OF STATE. Designates the secretary of state as the state office to provide information regarding voter registration procedures and absentee ballot procedures, including procedures related to the federal write-in absentee ballot, to be used by persons eligible to vote under the federal Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. Section 1973ff et seq.), as amended.

SECTION 49. Amends Section 122.001, Election Code, by amending Subsection (a) and adding Subsections (d) and (e), as follows:

(a) Prohibits the use of a voting system in an election unless the system fulfills certain requirements, including compliance with the error rate standards of the voting system standards adopted by the Federal Election Commission.

(d) Prohibits the use of a voting system in an election if the system uses mechanical voting machines or a punch-card ballot or similar form of tabulating card, effective January 1, 2006.

(e) Requires a voting system, for an election for federal office in which a state or federal court order has extended the time for voting beyond the time allowed by Subchapter B, Chapter 41, to provide a separate count of the votes cast after the time allowed by that subchapter.

SECTION 50. Amends Section 124.006, Election Code, as follows:

Sec. 124.006. New heading: IMPLEMENTATION OF PROVISIONAL BALLOT SYSTEM. Makes conforming changes.

SECTION 51. Amends Section 127.130, Election Code, by adding Subsection (c-1), to provide that in any manual count conducted under this code, an irregularly marked vote on a ballot on which a voter indicates a vote by making a mark on the ballot is considered in the same manner as provided by Section 65.009.

SECTION 52. Amends Section 172.116(b), Election Code, to require the county executive committee to conduct the local canvass at the county seat not earlier than 6 p.m. on the second, rather

than first, Thursday or later than 1 p.m. on the second, rather than first, Friday after election day at the hour specified by the county chair.

SECTION 53. Amends Sections 203.012(a) and (b), Election Code, as follows:

(a) Requires the commissioners court to convene to conduct the local canvass not later than the 10th, rather than third, day after election day.

(b) Requires the governor to conduct the state canvass not later than the 14th, rather than seventh, day after election day.

SECTION 54. Amends Section 213.007(a), Election Code, to require the custodian of voted ballots, voting machines, or test materials or programs used in counting electronic voting system ballots, on presentation by a recount committee chair of a written order signed by the recount supervisor, to make the ballots, machines, or materials or programs, including the records from which the operation of the voting system may be audited, available to the recount committee.

SECTION 55. Amends Section 221.008, Election Code, to make a conforming change.

SECTION 56. Amends Sections 273.041, 273.042, and 273.043, Election Code, to make conforming changes.

SECTION 57. (a) Repealers: Sections 62.0081 (Presiding Judge to Prepare Ballot Stubs), 63.010 (Challenge of Voter), 65.005(d) (regarding a signed ballot stub), 66.0242 (Contents of Envelope No. 5), and 66.058(h) (relating to the destruction of ballot stubs), and Chapter 88 (Challenge of Person Voting by Mail), Election Code.

(b) Repealers, effective January 1, 2006: Sections 18.062 (State Master File), 18.063 (Information Furnished by Registrar), and 122.0011 (Access by Persons with Disabilities), Election Code.

SECTION 58. Effective date: Except as otherwise provided by this Act, January 1, 2004.