Future of TEAM:

TEAM has and will continue to be implemented in phases. These releases are outlined below:

**TEAM r2 – Enhanced VR Release – 2009**

- Application functions based on product version 4.0
- Enhanced Public Voter Inquiry Website
- Basic GIS (Graphical Information System) reporting features

**TEAM r3 – VR & EM Release – 2010**

- Application functions based on product version 5.0
- Enhanced GIS (Graphical Information System) reporting features
- Election Management (including Election Night Reporting, State Ballot Definition, & Candidate Filing components)
- Integrated Document Imaging Enhancements
- Imaged Signatures from DPS

Recommendations:

The Committee will continue to work with the Secretary of State’s Office to make sure the implementation of HAVA is continually met. As it stands, Texas is in full compliance with the current rules and regulations of HAVA and the Committee has no recommendations at this time.

The Committee applauds the work the Secretary of State’s Office did this past year regarding TEAM. The Secretary of State’s Office received much criticism on the new system when it was first released in 2007. They reacted quickly in resolving the problems associated with TEAM and were able to work out many of the bugs in the system. To-date they have been continually working on further improving TEAM. With help from TAG and the State Auditor’s Office, the committee believes the Secretary of State’s Office has TEAM well under control, and if a problem does arise they well remedy it as quick as practical.

One recommendation the committee does have is in regards to the incomplete data mentioned in the SAO report. The committee recommends the Secretary of State’s Office keep a more complete voting history on hand of death and felon records reported during previous periods, if they have not already begun to do so. The committee will work with the Secretary of State’s Office with this matter administratively first in order to avoid having to file legislation.
Charge No. 4

Study poll worker recruitment and training in Texas, and suggest possible statutory improvements.

Background:

Poll workers play a pivotal role in elections throughout the entire United States. For every election, a massive one-day work force must be recruited, trained, organized and mobilized. These workers will total around 2 million per federal election and work days exceeding 12 hours. The pay is minimum wage or slightly higher and most of the workers who perform this job see it as a duty to their state and their country. On Election Day, it is ultimately up the poll workers to oversee the running of our elections. Whether or not an election is run smoothly can be directly correlated to the kind of training poll workers receive and with the kind of service the poll workers are able to provide the voters. This makes it imperative that poll workers receive the best training and that experienced poll workers come back to run subsequent elections.

Throughout the United States, these poll workers are becoming harder and harder to recruit. Low pay and long hours, coupled with a few bad experiences, are just some of the factors keeping good poll workers from returning or new ones from becoming involved in the election process. Another factor becoming a problem is according to the U.S. Election Assistance Commission, the average age of today's poll workers is 72. Without new poll workers to fill their shoes, Election Day is sure to reach crisis mode. As Dana Debeauvoir (Travis County Clerk) pointed out in the committee's hearing, Travis County has never had 100% recruiting levels in the over the 21 years she has worked there. In Texas, the rules governing the primary elections and general elections are not parallel. The many steps involved in selecting poll workers sometimes leave county election officials limited time to train poll workers. These dilemmas leave the question in everyone's mind: What can be done?

This charge clearly recognizes the importance of poll worker training, recruitment, and retention. The Committee held a hearing in April 2008 and invited many county election officials, representing both large and small counties, poll workers, and advocacy groups to come discuss the issues they face every election and to provide solutions increasing poll worker recruitment and retention as well as improving overall poll worker training. The committee also had the honor of hosting Commissioner Gracia Hillman of the United States Elections Assistance Commission (EAC).

In this report, the committee will look at poll worker training in general, how the Secretary of State is involved with the training, what materials are available, and what is done on a local level. The Texas Department of Public Safety (DPS) also discussed with the committee what it would take to incorporate fraudulent document training for poll workers if a photo ID requirement was enacted in the State of Texas. This report covers the difficulties county election officials are faced with each election regarding training, recruitment, and retention. Once the problem areas are identified, considered the report will explore alternative methods Texas may be able to use in the recruitment and retention of poll workers. Finally, the committee will present recommendations to the 81st Legislature.
Training:

The State:

Training is a vital part of the modern poll worker. With provisional ballots, audio/sip-puff access for disabled voters, changing voter ID requirements in many states, and complex electronic voting systems, the job of a poll worker is getting harder. Without the proper training and proper tools for this training, poll workers cannot run an election successfully. Commissioner Hillman shared with the Committee some of the resources available to the states from the EAC. Texas, the committee found, has a very full "toolbox" of resources available for properly training poll workers.

Commissioner Hillman expressed her feelings on poll worker training, "Because accommodations should be provided to all voters, it creates a tall order for the poll workers. These poll workers directly reflect the electorate and have the opportunity to enhance the voting experience. Poll workers provide an important community service and deserve the very best training and work environment that we can provide them." The EAC has produced and distributed many materials to state and local election officials throughout the nation. Several manuals available include: Successful Practices for Poll Worker Recruitment, Training and Retention, A Guidebook for Recruiting College Poll Workers, A Compendium for State Poll Worker Requirements. The EAC has also developed two Quick Start Management Guides on poll workers and on polling places and vote centers. All these materials were developed. Commission Hillman pointed out, with input from election officials and other experts who have found creative ways to address poll worker recruitment, training, and retention.

Kim Kizer, the Director of Education and Outreach for the Secretary of State's Office (SOS), addressed the committee in regard to the role the SOS plays in training Texas poll workers. By statute, the Secretary of State adopts the standards for training and is responsible for developing the materials to standardize a training curriculum for poll workers statewide. The SOS is also charged with delivering these materials and adopting the training standards.

Ms. Kizer went over numerous methods of training the SOS provides. First, they have always provided face-to-face training, regional training, satellite training, or training through VHS or DVD. The SOS mails out training information to all political subdivisions, which are allowed to keep this training information as teaching aides. Various written materials are also provided for political subdivisions and include handbooks for election judges and election clerks on the procedures of early voting and qualifying voters on Election Day, as well as Election Worker training guides.

The newest form of training the SOS has to offer is quite unique. Texas has, to-date, the only statewide web-based On Line Poll Worker Training in the country. This format of training is available 24 hours a day, 7 days a week and was developed through talking with elections officials and poll workers. It is important to stress, the SOS does not feel this is a substitute for face-to-face training, but is merely an enhancement or "another tool in the tool box" as Kim Kizer so eloquently put it. An additional feature the online training has is a disabilities chapter. The SOS worked closely with the Coalition of Texans with Disabilities to create this chapter, for
the purpose of training poll workers on the etiquette one should use when assisting a voter with disabilities.

A survey prepared by the Secretary of State found nearly half of the poll workers have taken an online course before and 1 out of 4 is new to the program. At the end of the course, the poll worker is given a test and has two opportunities to pass this test. To pass, one must receive at least 70% or higher. If after the second time the poll worker does not pass, the poll worker will receive instructions to contact the political subdivision hiring them. Poll workers passing the test will be able to print out a certificate of completion. This certificate is then taken to the party chairs or entity hiring the poll workers proving the poll worker has in fact taken the course. Last year, of the 7,451 poll workers registered for the primary election, 2,881 of these poll workers utilized the course, 2,171 completed the course and passed, and 710 poll workers began the course without finishing. Interestingly, Ms. Kizer mentioned when the trainees were asked if they were satisfied, 70% said they were satisfied and nearly 70% of those respondents were 50 years old or older.

The online training is a living document, as Ms. Kizer explained, for the SOS. The SOS is always getting feedback from participating poll workers and is continually making enhancements. Polling trainees and getting feedback allows the SOS to address issues that may be difficult for the trainees to understand, and allows the SOS to add more information to the training program where necessary if users feel they need more training in a particular area. Trainees can even call or email the help desk for questions.

Where is this new program going? Response to the online poll worker training has been good and growing with each election. With any new program (especially with new technology) growth is slow at first, but the SOS has steadily increased the number of participants with each election since the launch in November of 2007 (159 counties of the 254 have utilized the training; 2,887 election workers have been trained.) In fact, the SOS has doubled the number of poll workers using the online training since the launch.

With changing technology and more adult distance learning, it was a natural progression to develop online training for the convenience of the poll worker. With higher costs of fuel and expenses to the county to conduct training, this is a very economical way to reach a potentially new audience in the poll worker arena. The SOS is hopeful the new rollout for this November 4, 2008 General Election, which includes a voting system simulation training component, will increase the numbers of users dramatically. This new technology will show the poll worker (1) how to set up the equipment at the polling place, (2) how to get the equipment ready for voters, and (3) at the close of the polls, procedures for transmitting the election results to the election authority. Additional features have been added to this online training are more robust management features for the Administrator (Learning Management System), and an online scheduler, which will allow the county to post all training classes on line, and allow the poll workers to register for those classes.

The SOS is optimistic about the training opportunities for Texas poll workers. Their hope is by providing the training in convenient, comprehensive mediums; they will not only be able to assist the counties in retention, but in recruitment as well.
On a Local Level:

Although state law requires the SOS to adopt standards and develop materials for training poll workers, most of the actual training of these poll workers is conducted on the local level. There are many great training programs county election officials provide. All of the county clerks and election administrators know the importance of face-to-face training. Bruce Sherbent of Dallas County (who has conducted poll worker training since 1987 in Dallas County as an Elections Administrator) shared with the committee in written testimony that he not only provides and stresses face-to-face training; he also takes advantage of the many other tools available for training and applies many supplementary tools to his training. These tools include the SOS Online Training Program, training labs, and additional website training tools the Dallas County Election Department website offers. He concluded the key to any successful election is directly tied to how well the poll workers are trained.

Despite the best efforts our county election officials put into training, there are inconsistencies in state law making it difficult for our poll workers to receive a superior training preparing them at the polls.

One issue is county election officials do not select poll workers. The problem is the county election officials may not even know who the election workers are until 20 days prior to the election. This gives our county election official just enough time to cover the basics of working at the polls. As pointed out in testimony by our county election officials; current demands are such there is no time for things like customer service training etc. Elections have become increasingly complex and training has grown longer to compensate for the additional information; but with time constraints forced on our county election officials it is difficult for them to make the proper bench marks.

Don Alexander (Denton County Election Administrator) for instance will have a room of about 400 people to take a two-hour course. As he pointed out there are 1.5 voters every minute on Election Day, and you can not send a new person out there who is not trained and does not have the experience to cope with the crowds. When it comes to training poll workers, time is what is needed most in order to properly train poll workers. Texas' county election officials have the tools to train our poll workers, but if they do not have the time then they are limited on what can be taught.

Another inconsistency is who can train poll workers. Although the Election Code states the county must provide one or more training sessions, the county is not the only one who can provide training. A governing body of a political subdivision other than a county may provide training, and the Election Code also states the county executive committee of a political party must provide training as well. A local political subdivision or a county executive committee may conduct its training jointly, but is not required to do so. As the committee found out during testimony, the political parties will contract with the county election officials to train the poll workers, but political parties sometimes will provide additional training or train the poll workers themselves.

Having this many options open leaves training inconsistent, not only among counties, but also
among precincts. The materials used are standardized, but training is not. At certain levels, it is of course impossible for a smaller county to provide the extra support a large county such as Dallas County can provide its poll workers. It would benefit the state, however, if there were more consistency within the Election Code concerning poll worker training.

Thinking in the Future:

What could we see in the future? With the possibility of a photo voter identification requirement being enacted in the State of Texas, the committee had Assistant Chief Robert Burroughs and Captain Robert Sells from the Department of Public Safety's (DPS) drivers' license division come and discuss what it would take to train poll workers for fraudulent document identification.

They both agreed the one hour course DPS offers would be adaptable and sufficient enough for poll workers. When asked if it was difficult to differentiate even after the 24-hour course between fraudulent and real drivers licenses, Captain Sells responded by saying, "No, once you get some hands-on training, then they are easy to spot. Employees at DPS can even spot them when they are in line."

Sells informed the committee a person with limited or no training could be able to tell what a fake ID looked like. DPS has found the best defense against fraudulent IDs is high quality licenses or documents. So what does one look for when looking for a fraudulent ID? There is security features used in Texas DPS looks for when determining between real and fake IDs. They look at the card stalk, the laminate, and how the picture feels. The card stalk for instance is a credit card style, but very pliable, also if you were to hold a UV light to a driver's license, the Texas would glow.

The gentlemen from DPS explained the time it takes for a trained person to differentiate between a real and a fake ID is less than two minutes; less than five minutes for the less trained. DPS mentioned if you were to use an ID for voter identification, it would be beneficial to use a state ID. Because all types of ID are susceptible to fraud, you would want to make it more restrictive on the type of IDs you allowed. The state driver's license and identification card already have built-in security devices other forms of ID do not.

One thing needing to be considered is there are only 12 people in the State of Texas certified to teach the fraudulent document training. This would spread training very thin not only for our election workers, but for our law enforcement officials. If this type of training were to transpire, the committee would need to look into whether or not staff of the Secretary of State's Office or other county election officials could be certified to teach a fraudulent documents course, therefore allowing the proper access to election workers. Adding this to the already numerous things election workers must train for would require more time be allowed for training. This of course is still just speculation, but is something the Legislature must consider when considering the use of photo IDs at the polls.

Overcoming Difficulties:

There were many key issues brought to the committee’s attention during the hearing affecting poll worker recruitment and retention. These issues were agreed upon across the board by both
large and small counties. Pay and the inconsistency between laws governing general elections and primary elections were heard the loudest amongst our county election officials. Other conflicts persisting are: recruiting on Tuesdays; allowing political parties 20 days prior to the election to turn in the list of poll workers; the growing complexity of elections and the increased levels of responsibility without giving more time for training; the overall length of Election Day; no shows; and current demands making it impossible for additional skill training like customer service training. These issues, coupled with the inconsistencies imbedded in the Election Code, work against county election officials making it difficult for anyone to recruit and retain poll workers. During the hearing, the committee talked in-depth with the State’s county election officials regarding these issues and discussed with them how these inconsistencies in law affect the recruitment and retention of poll workers.

Representative Farias asked the county election officials, "What would it take to retain the poll workers?" The most common response to this question was decent pay and a positive experience. Dana Debeauvoir, Travis County Clerk, told the Committee she has 560,000 registered voters in Travis County with approximately 200 precincts, and when she asked her precinct whether or not they had difficulty recruiting and why, of the precincts responding, 49% sited low pay as a reason.

Don Alexander (Election Administrator of Denton County) pointed out one of the main problems in retention of poll workers, especially in the primary, is due to state laws. Primary workers are only limited to seven dollars an hour, when some counties, like Denton, pay more during the general election.

Statutes concerning pay rate is inconsistent between the general election and primary elections. In the general election a poll worker is entitled to an hourly wage decided by the governing authority, which must at least be the federal minimum wage, while working a primary or a primary runoff election a poll worker receives only seven dollars an hour.\textsuperscript{97} This inconsistency hurts Texas when recruiting poll workers for primary elections. As cited by our county election official, in a general election someone may make $9.25 an hour and then are asked to turn around and work a primary election for $7 an hour. Also, during a presidential primary election, there is usually more working hours. Ms. Debeauvoir mentioned primaries limit the number of hours a poll worker is allowed to be paid. A poll worker may only receive pay for 14 hours of work instead of the real time it takes. As she pointed out, even if you are really sharp after a 14 hour day it will take 30 or 45 minutes just to close the polls, if there are not any lines. This of course could be remedied with allowing poll workers to get paid for the actual time it takes to work at and close the polls.

When asked whether or not the primary fund for appropriation covers all the needs for the individual counties, there was laughter amongst the county election officials, followed by a polite no. The appropriations, they pointed out, do not just cover salary expenses, but are also used for the programs implemented in conjunction with running the primary, i.e. training etc. As Ms. Debeauvoir explained, "What we are doing unintentionally by keeping these laws so inconsistent, is leaving the perception that one election is less important that the other."

Representative Burnam asked if the state needed to make the pay a fixed rate, for example ten dollars. The county election officials believed doing so would not fix any problems, because
some small counties might have a problem coming up with the money to provide for a fixed rate. They believed the primary election pay grade should be more in line with the general election pay grade. It was believed the way the law is set up is fair, letting the pay scale be up to the jurisdictions.

In Bexar County and Hidalgo County for instance, the county commissioner courts settled on what is called a living wage. It is what temporary county workers are paid. As the living wage gets raised, the pay rises accordingly. Allowing the counties to set their own pay rate would give them the discretion they need to be able to pay poll workers, according to a particular county’s budget.

Two other items having to deal with pay was training and pay for dropping off election materials at the end of an election. State law entitles an election judge or clerk to a flat rate of $25 for delivering election records, keys to ballot boxes or other election equipment, and dissemination of election supplies after an election. With increasing fuel costs and long distances to be traveled in Texas, this rate seems hardly worth the effort. The other pay issue is training. Only election workers in charge of the early voting polling places are eligible for compensation for training.

Another inconsistency in the law is in relation to recruiting poll workers and training them. The Texas Election Code is clear on who is to provide the materials and set the standards for training poll workers. It is inconsistent on who is supposed to train and recruit the poll workers.

The problem is the Election Administrators and County Clerks do not have access to the poll workers, the appointed presiding judges and alternative judges pick their own clerks. Section 32.031 of the Election Code provides the presiding judge of each election precinct appoints the election clerks (poll workers) for each election. The number of poll workers to be appointed is determined by the authority appointing the presiding judge. The law is also inconsistent on who the authority is who appoints the presiding judges. Authorities appointing presiding judges are different for county elections, elections for political subdivisions and for primary elections. In fact, in other elections ordered by counties the authority ordering the election must appoint the election judge. So there are at least three different ways to appoint presiding judges for elections county election officials must keep straight.

These poll workers, if possible, must be selected from different political parties. A list is submitted to the presiding judge no later than the 25th day before a general election or not later than the 10th day before a special election of at least two persons who are eligible for appointment by the county chair of the political party whose candidate for governor received the highest or second highest number of votes in the county during the most recent gubernatorial election. After the list is received the presiding judge has until five days after he received the list to turn it over to the local election official. This makes it 20 days prior to the election when an election official receives the list.

What tends to happen as mentioned during testimony is the county election official will have to find poll workers at the last moment when precinct judges are unable to. Allowing political parties to provide names 20 days prior to Election Day does not provide county election officials sufficient time to recruit and train poll workers when positions are unfilled.
Don Alexander (Election Administrator of Denton County) illustrated to the committee the difficulties he goes through each election. As Mr. Alexander said, “Just because it looks good on paper, doesn’t mean it will work that way.”

Mr. Alexander explained what really happens when recruiting poll workers. He first will send a letter to his party chairs in May telling them how many poll workers he will need for the following year. The parties have until the first of July to reply. Once the parties respond, Mr. Alexander takes the list of names before the commissioners’ court, who then appoints those people as election clerks. Next Mr. Alexander sends a letter to each person congratulating them on their recent appointment. He says he will then get a call from appointed clerks asking him what the heck he is talking about.

Sometimes it will be up to 48 hours before an election and Mr. Alexander will be "shotgun training" the new workers. As he explained, “People see what they are going to have to do and then turn around and say I can’t do this, I am out of here.” The reality is sometimes at the last minute a county election official will grab anyone who is eligible to work. So there is a possibility they may not have the proper people as prescribed by statute working the polls.

The majority of the county election officials the committee talked with had people working year-round looking for poll workers or keeping back-up poll workers handy. This is done to compensate for unfilled positions and for those workers who do not show up. Ms. Debeauvoir stated county election officials could have a 10% fall off rate (no shows, or workers breaking contract) during an election and must be prepared. Even Allison Harbison (Shelby County Clerk), because their county is smaller, will close the county clerks office on election day so she can go to the polling sites herself until election workers arrive to fill the void.

One can clearly see the statutes as written hinder an efficient electoral process, when it should be a tool of efficiency. This inconsistency does not stop there but continues with the training mechanism as well. County Clerks are required by law to provide one or more sessions of training to election judges and clerks in elections ordered by the governor or a county authority. Law also allows that political subdivisions may and that a county executive committee of a political party must provide training to poll workers. What happens numerous times are these political subdivisions and/or executive committees of political parties will contract with the county clerk or election administrator of the county to train their appointed poll workers. However, the possibility is there for poll workers to be trained three different ways for three different elections.

The general consensus between county election officials, both of small and large counties, was there needs to be consistency in the Election Code between the statutes governing general elections and primary elections. These inconsistencies wreak havoc on training, recruiting, and retaining poll workers as well as the over all efficiency of Texas’ electoral process. Once these statutes are fixed and are assisting our county election officials then they could concentrate more on the other problems dealing with recruiting and retaining poll workers.

These next issues are common during every election and are the “little things” keeping some poll workers from coming to the polls. For example, it is hard for counties, especially during primary
elections, to compete with the political parties. Those interested in government are recruited by the political campaigns.

Another difficulty poll workers often face during an election is the volume of questions flooding the polling place. Poll workers processing voters will get inundated with hundreds of questions. These are usually simple questions like: Who is on the ballot? What is on the ballot? Am I in the correct precinct? Although these questions are at most times simple, the sheer numbers of them can hold up processing lines.

Closing out polls proved to have difficulties associated with it. After 12 long hours, election workers must close out the polls, which entail a lot of paper work. This paper work as Ms. Debeauvoir put it, “is sort of color coded”, but it is still very confusing and could be made clearer for the election workers. According to Ms. Debeauvoir, in her survey of Travis County poll workers, 1/3 of them said the bureaucracy was so great they were not sure they could complete it successfully. In fact, the complexity of elections in general and the increased level of responsibility were cited most frequently as a reason for quitting.

Allison Harbison (Shelby County Clerk) wanted the committee to consider one important thing at the end of her testimony. It was to remember both large and small counties need to be treated separately, and she could not stress the importance enough. Becky Groneman (Oldham County District and County Clerk) shared with the committee just what Allison was referencing when she gave the committee her county’s profile. Oldham County has no colleges, its population is 2,150, there are only two high schools, the only state employees are DPS and TxDot (so the number of poll workers to recruit are very limited), it has seven voting precincts, and there are 1,400 registered voters. Ms. Groneman reminded the committee when considering legislation, what might work for a large county may not work for a small county and visa versa.

The overall consensus among the county election officials is state law and the bureaucracy it is coupled with needs to be simplified. If the State of Texas truly wants to increase recruiting and retention numbers in its poll workers, then the state must make it easier for people to work at the polls, i.e. high school students, college students, employed workers and others. It is also necessary to make statutes in the Election Code more consistent with one another to help county election officials run efficient elections, not hinder them.

New Pools:

The shortage of poll workers across the nation has many states scouring for new sources or pools of people to work the polls. What states are finding out is there are countless pools of people to use as resources if one looks around and uses their imagination. Some states have found these resources and have been applying new methods in order to engage these citizens in the electoral process. Getting new people involved of course takes time and hard work, but when these relationships are established with the local communities’ states find they will have an endless supply of poll workers. The committee talked to Commissioner Hillman, the local election officials and advocacy groups to come up with some new ideas the State of Texas could explore. Together the committee looked at ways and benefits of accessing county, state, and federal workers, businesses, local entities, college students and high school students.
It was agreed upon among the committee county, state, and federal workers would be great pools of people to access for Election Day. The committee asked Commissioner Hillman what other states have done in regards to allowing county, state, and federal workers to work as poll workers. While some states have actually designated Election Day a holiday, what those states have found is when Election Day is designated as a holiday, people tend to not show up. As the commissioner pointed out lives are busy and these employees are always looking for an extra day for other things.

Commissioner Hillman explained the USDA does in fact have a program encouraging its employees to work as poll workers. These employees volunteering their time do not have to take a personal day or a vacation day. They are compensated with their regular salary for that day, plus are paid for working at the polls, which is an added bonus. What states have found is the best approach is to “reassign” those employees for days they are working the polls instead of giving everyone a holiday off.

Jacque Callanen, Elections Administrator for Bexar County, shared with the committee just how effective this pool of resources actually can be. When she ran short of poll workers for the 2008 Primary, she called on her Commissioners Court for more workers. Bexar County sent county employees to rescue Jacque. The county employees were scheduled the day of the primary as being assigned another duty. Because of the county employees, Jacque did not have to worry about not having enough poll workers in her precincts.

Representative Burnam believed the state should be willing to absorb some of the costs on Election Day by “reassigning” those employees willing to participate as poll workers. Representative Bohac pointed out the benefits of doing so, “County employees are already trained, and they work for the government so they have a level of trust, they are tech savvy, and the accountability is already there.”

County, state, and federal employees would be excellent pools of resources. Allowing those to participate as poll workers without consequence of losing pay or taking a personal day would benefit the state on Election Day by providing an ample number of qualified poll workers. Additionally this practice would further instill the idea that Texas cares about elections and by allowing employees to keep their salary on top of election pay would create a new recruiting mechanism. This should save money in the long run, because when these employees continue to work the polls, the amount of money used to train new poll workers each year would go down.

Commissioner Hillman believed encouraging large businesses to allow employees to work the polls and getting the private sector involved is another option. She says it is a new concept for most, but when referring to working at the polls as a community service instead of party politics it is better received. As she pointed out, there are many large businesses with community service projects. While it is true many businesses could not afford the loss of employees on every election, they could be willing to allow employees to work federal elections.

Some states have made it law restricting businesses from penalizing employees for taking time off to serve as poll workers. Programs like “Official Election Sponsors” in Salt Lake County, Utah and “Champions of Democracy” in Franklin County, Ohio have successfully recruited poll workers from corporations including State Farm Insurance and America Electric Power Company
Inc. Commissioner Hillman continued to point out in testimony, allowing employees to volunteer does not necessarily cost corporations money if community service projects are properly budgeted for.

Karen Renick of Vote Rescue also shared many suggestions to find new pools of resources. She recommended looking at chambers of commerce, numerous cultural organizations, unions, and most importantly, former military personnel. As she pointed out, there are many of our veterans coming home and are actively looking for ways to get involved with their community. Working as a poll worker would be a great way for military personnel to get reacquainted with their community.

The average age of today’s poll worker is 72 years old. While their service is much appreciated, their numbers dwindle with each passing election younger generations replacing are not becoming involved. With more than 180,000 polling sites across the U.S., many states are turning to their young people in colleges and high schools to replenish their polls.

An interesting report the committee acquired related to recruiting college students as poll workers. Dr. Rachael Cobb, Associate Professor of government at Suffolk University, field-tested the EAC’s guide for recruiting college poll workers and recruited over 150 students to serve as poll workers on Election Day for the November 2006 election in Boston, Massachusetts. As Dr. Cobb points out, serving as a poll worker is one of the best ways for a student to learn about the “messiness” of democracy and the challenges faced to ensure each election is fair.

Dr. Cobb, as well as our own officials, stated some of the problems persisting are municipalities dealing with no shows on Election Day and the diminishing population of the average 72-year old poll worker. Additionally, as elections are becoming increasingly technology driven, election officials must find poll workers possessing high comfort levels with new technologies. College students are well educated, comfortable with computers, and can manage the physical aspect of poll working.

Dr. Cobb found start up costs for a college program was high, but once established were well worth the effort. It serviced the municipalities by providing new fresh poll workers while establishing a great learning service for the students. They feel once the program is up and running, the program will largely run itself and will endure overtime. In surveying the student poll workers, Dr. Cobb found 91% of their students were definitely or likely to participate as a poll worker in a future election, and 74% of them were satisfied or very satisfied with their overall experience.

With the number of colleges and universities in the State of Texas this seems like a great untapped source of poll workers. In 2004, as part of the Help America Vote Colleges Program, the U.S. Elections Assistance Commission began distributing grants for the development of poll worker recruitment initiatives. So far, the EAC has awarded one million dollars to 34 colleges, universities and non-profit organizations.

The committee was excited to learn recently the Texans Together Education Fund, a nonpartisan 501(c)(3) non-profit organizations, has been issued one of these grants to start a program that would train a new generation of Texas’ poll workers. The project is called Help Houston Vote
and is the first program of its kind in Houston, Texas. This program will target young adults with the purpose of placing them as trained assistant poll workers in Harris County Precinct One. Students will be required to take two poll worker training courses and will have to successfully complete the Texas Secretary of State’s Online Poll Worker Training.101 The committee is anxious to hear how successful this program becomes and will be looking forward to upcoming reports.

Colleges of course are not the only source of poll workers that could be accessed. County Boards of Elections have teamed up across the country in an effort to pursue high school students as well. Thirty-nine states and the District of Columbia have enacted laws allowing students under the age of 18 to serve at the polls in some capacity. Generally these laws require the student be at least 16 or 17 years old and must meet citizenship and residency requirements other poll workers must meet. Additionally these students must get permission from their principal and be students of good standing.102 This quote found in the Electionline.org briefing, Helping Americans Vote: Poll Workers, illustrates one benefit of involving high school students. “By developing the relationship with schools we have developed a continuing source of young people every year... Each year new high school seniors become involved,” is what Deborah Koch, a coordinator of central Ohio’s Youth at the Booth program, said.

During the committee hearing, Chairman Berman asked Commissioner Hillman how she thought the use of high school students was working throughout the U.S. She informed the committee the states who have been training high school students for a while now have gone through the transition period and now see how using high school students really benefit the polls. She believes with appropriate training, high school students are very useful as poll workers, and is a wonderful way to introduce young people to the electoral process.

One thing she mentioned, it is beneficial to have the youth there with the new technology and states using high school students do so because they do find them to be an asset. For instance in Franklin County Ohio, around 700 student poll workers participated in Ohio’s March 2008 Primary Election and so far there are over 1,000 youth poll workers signed up for the November 2008 presidential election. That is 1,000 out of the 6,832 total poll workers needed for Franklin County.103

Currently, Texas does not allow anyone under the age of 18 to work as poll workers; however Kim Kizer (Director of Education and Outreach for the SOS) thinks it is a viable option. She knows there are many community service groups in high school, such as Key Club, The National Honor Society, and many others. Ms. Kizer told the Committee she has seen the excitement build within students’ participating in student mock elections and believes the excitement would carry over in poll working. She has seen it work in other states like Ohio, California, and Indiana and does not see why it could not work in Texas.

Representative Howard suggested the state target students in the Mock Legislature Sessions and to home schooled students. Many county officials the committee talked to were agreeable, even excited about the idea. One witness in particular who was not thrilled of the idea of training high school students at the time was Allison Harbison of Shelby County. However, when committee staff talked with Ms. Harbison again at the Election Law Seminar she said she was having a change of heart and was warming up to the idea. Committee staff addressed a number of county
clerks and election administrators at the same election law seminar on how they felt about youth working the polls. Hundreds welcomed the idea, and even felt they would be able to find the required number of bilingual workers easier if able to access high schools. County election officials mentioned high school students are also comfortable with the oncoming technology and could be an asset in that field. Not to mention the younger crowd might be more apt at handling the long hours and the physical requirements involved with working the polls.

Allowing high school students to participate as poll workers could alleviate the Tuesday recruitment issue as well. Students could work those hours on Tuesdays normally spent in school, educating them first hand on what happens on Election Day. Also, as pointed out in testimony, some of the state’s smaller counties do not have access to state, county, or federal employees or college students so it would be beneficial if they could access high schools.

The State of Texas already has youth out-reach voting programs as a part of the Project V.O.T.E. (Voters of Tomorrow through Education) educational campaign. Programs include Mock Elections, Web Pages dedicated to young or first-time voters, and the SOS is planning more young-voter outreach possibly including MySpace and Facebook pages. The state does not allow 16-17 years old to participate as election workers. These programs could easily be used to reach out to potential high school students interested in becoming a poll worker. The State of Texas has the tools to access this untapped source of poll workers; it just needs to open the tool box. Involving the youth of Texas in the electoral process would teach and instill the importance of voting and could solve the shortage of poll workers.

Recommendations:

1. The committee believes the state will avoid out-of-pocket expenses if legislature passed legislation clarifying any county or state employee is eligible, based on permission from a supervisor, to work at the polls with salary. If the state clarified that county and state employees were eligible to work at the polls with salary, those employees willing participate could. Allowing these employees to keep their salary on top of what they make at the polls would add extra incentive for them to come back for future elections. The more “veteran” poll workers coming back means less money spent on training new poll workers.

2. In regard to military personnel, the committee believes it is worth looking into attaching to the Federal Post Card Application, information on how military personnel returning home can become involved with the electoral process and will work with the Secretary of State’s Office to see what it would take to do this.

3. In order to stimulate interest in the electoral process amongst Texas’ youth and to meet the need of a new generation of highly trained poll workers, the committee recommends that the 81st Legislature allow high school students with good standing the opportunity to work at the polls. The committee further recommends any absence due to being a poll worker is an excused absence and all high school students be compensated as any normal poll worker would.

4. The committee recommends the 81st Legislature work with county election officials to look at the possibility of setting aside one person working the polls voters with general questions regarding the election, precincts, etc. that most poll workers get caught up with. The idea being
if voters could go to this person for questions, the questions would not hold up the other poll workers processing voters, keeping the lines moving.

5. With the assistance of the county election officials, the committee recommends it work with the Secretary of State’s Office in creating a more efficient color coding system for closing out elections.

6. Most importantly, the Committee recommends the 81st legislature establish a priority in making the election code more consistent between the general and primary elections in regard to training programs and pay scales. It further recommends giving the county election officials more access to poll worker resources, more authority in training the poll workers and more authority in choosing who poll workers with approval from the political parties become. The committee believes consistency in elections will greatly assist the state’s county elections officials in running smoother and more efficient elections.
Charge No. 5

Monitor which counties are chosen by the Secretary of State for the new super precinct pilot program, and observe their progress.

Background:

During the 79th Regular Session House Bill 758 was passed, requiring the Secretary of State to create a pilot program in one or more counties to establishing the efficacy of the county wide election precinct concept (also termed "super precincts" or "vote centers").

The Secretary of State's Office solicited counties to participate in the pilot program at the August 2005 Election Law Seminar for County Clerks and Elections Administrators. At this forum the Secretary of State laid out guidelines for counties who wished to participate in the program. Lubbock County was the only county that submitted an application fulfilling all the requirements necessary to participate. (For clarification purposes, Lubbock referred to the concept as "Super Precincts", but the actual county wide polling places were called "Vote Centers").

Lubbock County made many efforts to inform their voters of the changes in the voting process. Lubbock worked with its mass transit authority to provide free bus service on Election Day to those who showed their registration certificate. This outreach was in response to concerns regarding expenses incurred on voters traveling to new precincts. The county also held a mock election prior to the November election to observe what problems could occur and established procedures to remedy those possible concerns. Because of the county's meticulous planning prior to the election, there were no significant set backs on Election Day.

Lubbock County provided 35 Vote Centers, replacing its usual 69 county election precincts. It did retain 8 of the regular precincts for the more rural areas. Upon the Secretary of States' request Lubbock conducted an exit survey. The results were as follows:

5,029 voters participated in the survey.

95.45% liked the Super Precinct concept.

90.63% found the Vote Center more convenient than voting at their home precinct.

98.39% found the Vote Center location easy to find.

50.13% chose the Vote Center close to home.

30.49% chose the Vote Center close to work.

95.18% would like to see the Super Precinct concept used in all future elections. (cities, school, water districts, etc. elections)
42.39% learned about the Vote Centers from television.

21.26% learned about the Vote Centers from the Elections Office Letter.

19.67% learned about the Vote Centers from newspapers. 108

Lubbock County Elections Administrator received 11 complaints forwarded from the county Democratic chair, most of which involved personnel or training issues. Regarding costs the Lubbock County Election Administrator stated there was no cost savings for November 2006, but she expected cost savings to begin once "start up" costs were absorbed. 109

Final observations from Lubbock County were as follows:

"Lubbock County found through the exit survey and personal encounters that voters love the concept of Super Precincts. There was no wrong place to vote using Vote Centers. We observed an improved sense of the electoral process.

From a managerial observation, we found improved coordination and efficiency. Overall, there was less stress except for the fact of being the "only pilot count in Texas". There was tremendous cooperation and communication from Party Chairs, County Commissioners, and all County departments to the media onto the voters.

The Vote Centers worked great for the voters and Lubbock County. We are not where we want to be without overall election turnout. We believe that the Super Precinct concept, if applied to all elections, over time, will improve the consistency, convenience and stability which voters desire and we believe that will lead to increased over all turnout for Lubbock County." 110

The New Program:

It was recommended to the Legislature by the Secretary of States' Office to continue the Super Precinct pilot program. Because of the positive results received from Lubbock County, the Legislature responded by passing House Bill 3105 by Representative Anchia.

House Bill 3105 requires the Secretary of State to establish a countywide polling place pilot program for the November 4, 2008 election. Under the continued program, selected counties will conduct Election Day voting at countywide voting locations, instead of providing polling places in each county election precinct as generally required under the Texas Election Code.

Participation in the pilot program was limited to interested counties which: (1) use direct recording electronic ("DRE") voting systems and (2) provide a computerized and linked voter registration list at each polling place. In addition, interested counties were required to conduct a public hearing and submit a transcript of the hearing to the Secretary of State prior to joining the program.

Lubbock and Erath counties will participate in the continuing pilot program this November. The
goal for the countywide precincts is twofold. Voters will be able to choose the most convenient location on Election Day which, for example, may be closer to their place of employment than their residence. For the participating counties, having fewer polling places will allow them to increase efficiency by having more voting system equipment at each location and more trained personnel at each of the countywide polling places.

Recommendations:

The election affected by this pilot program will not occur until November 4, 2008, so the committee cannot at this time make a determination on whether or not the program is a continued success. The Committee will continue to monitor this program and will have the Secretary of States Office report to the whole committee on this issue at the beginning of the 2009 session. The committee will then make recommendations to the House regarding the Super Precinct program.
Charge No. 6

Study the exemption in the Texas lobby contingent fee ban, which currently permits contingent fees and does not require lobby registration, for influencing the purchasing of goods or services by a state agency. Consider whether this exemption should be amended or repealed.

Background:

When Senate Bill 1 established the Texas Ethics Commission (TEC) in 1991, it additionally made two notable exceptions to the contingency fee provision in Section 305.022 of the Government Code. The exceptions the contingency fee ban does not apply to are: a sales commission payable to an employee of a vendor of a product or legal representation before a state administrative agency in a contested hearing or similar adversarial proceeding. 112

This charge deals specifically with Section 305.022 (c) of the Government Code concerning a sales commission payable to an employee of a vendor of a product. This charge also focuses on the lobby registration exemption created by Texas Ethics Commission Rule 34.5.

Important to note, it is not the contingency fee ban statute that does not require lobby registration, but the interpretation of the ban created by Ethics Rule 34.5. More importantly, the Ethics Rule came after the amendment to the contingency fee ban.

Interim Charge Six is a very complex issue. To study the issue in its entirety one must first look at the current statutes in the Texas Government Code and the Ethics Rules intertwined with this issue to see where we stand today. Second, it is necessary to look at the current issues at hand this charge addresses. Finally, a step by step look must be examined from the beginning of when the changes to the contingency fee ban took place to today to illustrate how it has evolved overtime.

After studying this process the committee will give its opinion on these issues and then recommend to the 81st legislature what it believes to be the best course of action during the 2009 session.

Statutes, Rules, and Issues at Hand

The statutes involved with this issue are:

1. Section 305.022 of the Government Code concerning the contingency fee ban and;

2. Section 305.003(a) of the Government Code concerning persons required to

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Section 305.022 is the statute housing the exception to the contingency fee ban.

§ 305.022. CONTINGENT FEES. (a) A person may not retain or employ another person to influence legislation or administrative action for compensation that is totally or partially contingent on the passage or defeat of any legislation, the governor's approval or veto of any legislation, or the outcome of any administrative action.

(b) A person may not accept any employment or render any service to influence legislation or administrative action for compensation contingent on the passage or defeat of any legislation, the governor's approval or veto of any legislation, or the outcome of any administrative action.

(c) For purposes of this section, a sales commission payable to an employee of a vendor of a product is not considered compensation contingent on the outcome of administrative action.

(d) This section does not prohibit the payment or acceptance of contingent fees:

(1) expressly authorized by other law; or

(2) for legal representation before state administrative agencies in contested hearings or similar adversarial proceedings prescribed by law or administrative rules.

The next statute tying into this issue is Section 305.003(a) of the Government Code.

§ 305.003. PERSONS REQUIRED TO REGISTER. (a) A person must register with the commission under this chapter if the person:

(1) makes a total expenditure of an amount determined by commission rule but not less than $200 in a calendar quarter, not including the person's own travel, food, or lodging expenses or the person's own membership dues, on activities described in Section 305.006(b) to communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative action; or

(2) receives, or is entitled to receive under an agreement under which the person is retained or employed, compensation or reimbursement, not including reimbursement for the person's own travel, food, or lodging expenses or the person's own membership dues, of more than an amount determined by commission rule but not less than $200 in a calendar quarter from another person to communicate directly with a member of the legislative or executive branch to influence legislation or administrative
action.

(*Note: According to The Ethics Commission Rule, thresholds have been changed by rule to $500 for expenditures and $1,000 for compensation.)

In her testimony to the committee Natalia Ashley, General Counsel for the Texas Ethics Commission, made clear Section 305.003(a) applies to everyone, lobbyists and non-lobbyists. One can easily see in these two statutes where confusion and questions could arise.

If a person is an employee of a vendor of a product and that person’s job is to sell items for the general day to day operation of an agency; does the employee have to register as a lobbyist? The exception in the contingency fee ban clearly states an employee is exempt from the contingent fee prohibition, but does the employee have to register since registration applies to everyone? An agency is clearly an executive branch of the government and the salesperson is clearly communicating to an executive branch and is clearly trying to influence the agency to buy products. An employee is just doing their job; must they have to register in order to properly carry out their job?

The TEC responded to these questions with Ethics rule 34.5 under Chapter 34-Regulation of Lobbyist.

§ 34.5. Certain Compensation Excluded

Compensation received for the following activities is not included for purposes of calculating the registration threshold under Government Code § 305.003(a)(2), and this chapter and is not required to be reported on a lobby activity report filed under Government Code, Chapter 305, and this chapter:

(1) requesting a written opinion that interprets a law, regulation, rule, policy, practice, or procedure administered by a state office or agency;

(2) preparation or submission of an application or other written document that merely provides information required by law, statute, rule, regulation, order, or subpoena, or that responds to a document prepared by a state agency;

(3) communicating merely for the purpose of demonstrating compliance with an audit, inspection, examination of a financial institution, or government investigation to interpret and determine compliance with existing laws, rules, policies, and procedures;

(4) communicating for the purpose of achieving compliance with existing laws, rules, policies, and procedures, including communications to show qualification for an exception of general applicability that is available under existing laws, rules, policies, and procedures;

(5) communicating in the capacity of one’s service on an advisory committee or task force.
appointed by a member;

(6) responding to a specific request for information from a member of the legislative or executive branch, when the request was not solicited by or on behalf of the person providing the information;

(7) communicating to an agency's legal counsel, an administrative law judge, or a hearings examiner concerning litigation or adjudicative proceedings to which the agency is a party, or concerning adjudicative proceedings of that agency;

(8) providing testimony, making an appearance, or any other type of communication documented as part of a public record in a proceeding of an adjudicative nature of the type authorized by or subject to the Administrative Procedure Act, Government Code, Chapter 2001, whether or not that proceeding is subject to the Open Meetings Law;

(9) providing oral or written comments, making an appearance, or any other type of communication, if documented as part of a public record in an agency's rule-making proceeding under the Administrative Procedure Act, Government Code, Chapter 2001, or in public records kept in connection with a legislative hearing;

(10) providing only clerical assistance to another in connection with the other person's lobbying (for example, a person who merely types or delivers another person's letter to a member); or

(11) communicating to a member of the executive branch concerning purchasing decisions of a state agency, or negotiations regarding such decisions.

This rule gave answers to the first line of questions. Yes, an employee is in communication with an executive branch of the government and is influencing their purchasing decision, which is an administrative action, but an employee of a vendor of a product does not have to register as a lobbyist.

With rule 34.5 brought more questions. Does a person have to be an actual employee or does the contingent fee exception apply to contracted individuals as well? Does the contingency fee ban apply to an employee or the efforts of an employee?

In 1996, TEC issued Rule 34.21 in response to these questions.

§ 34.21 Contingent Fees for Influencing Purchasing Decisions.

  Government Code, Section 305.022, does not prohibit contingent fees for efforts to influence state agency purchasing decisions.

Jack Gullahorn, who is the president and general counsel for The Professional Advocacy Association of Texas, made this statement in his testimony to the Committee during the
hearing:

"Through advisory opinions the commission now has a rule that says contingency fee ban does not apply to purchasing decisions in the registration requirement. By opinion the commission has clarified or broadened the definition of an employee of a vendor of a product to include an independent contractor, meaning lobbyist, consultant, hired person, so that exception includes anyone working for a vendor of a product and includes whatever a product is."

As one problem is fixed another problem is created unintentionally. What began as an exception for employees of a vendor of a product now encompasses private contractors, lobbyists, etc, as employees and also considers products to include services and service providers.

The issues the committee is taking in consideration are: Who is supposed to be considered an employee? What is supposed to be considered a "product"? Did the legislature intend to encompass all these entities or just the actual "employee" of a vendor of a product? Did the legislature intend for the term "product" to include everything from services to service providers, or did it mean the everyday products used for the general everyday operation of a state agency? Should the contingency fee exception be amended or repealed.

Another issue involves the definition of a purchasing decision. Jack Gullahorn raised the issue in his oral and written testimony. He stated in written testimony:

"Though the statutes prohibit contingent fees for legislative and administrative matters, and require registration for communication on administrative matters, the Ethics Commission has adopted rules and Advisory Opinions (upon which a person may rely as a defense against prosecution) that provide that the prohibition on contingent fees, and the requirement to register as a lobbyist under the compensation threshold do not apply to "purchasing decisions" of an administrative agency.

Because there is no definition of "purchasing decisions", a person is not able to know with assurance whether their conduct might violate the law. Because of these opinions and rules, many persons now believe that they do not have to register or report under the lobby act if they are involved in a "purchasing decision" of an agency, although registration and reporting is required for those crossing the "expenditure threshold". Additionally, there is a general belief that ANY purchasing decision is exempt from the ban on contingent fees; although that also may not be the case. However, since the rules give no guidance as to what a "purchasing decision" is, many believe that they are free to do any of this work on a contingent fee basis without risking violating the law."

The most important question arising is: Has the TEC interpreted the law in a manner consistent with legislative intent.
The Steps:

Once the statutes, rules and the issues are known, it is necessary to go to the beginning of this timeline, through a step by step process in order to fully understand how to address these problems and see exactly where the expansion of this statute began.

Step 1:
In 1991 Senate Bill 1 created the TEC and in the process amended Section 305.022 of the Government Code. This amendment created an exception to the contingency fee ban allowing it to be permissible for an employee of a vendor of a product to be paid on a contingency fee basis.

Step 2:
In 1993 the TEC was asked whether or not the efforts of a salesperson to selling materials to a state agency would require a sales person to register as a lobbyist and whether or not the communication between the state agency and the salesperson would be considered communications influencing an administrative action. This in turn brought up the question of whether the purchase by the agency would constitute an administrative action. Prior to this decision an administrative action did not include purchasing decisions.\textsuperscript{113}

The commission determined in Ethics Advisory Opinion No. 158 this kind of communication would be a communication to members of an executive branch (as the registration statute in Section 305.003(a) of the Government Code defines) and the decision being made to purchase said items would be an "administrative action". Therefore, the communications to encourage a state agency to buy certain products are communications to influence administrative actions.\textsuperscript{114}

Step 3:
At the same time Advisory Opinion No. 158 was issued TEC was asked whether or not lobby communications included investment bankers receiving compensation for communicating with an executive branch to influence an agency's action in selecting service providers, and if so would the communication require the investment banker to register as a lobbyist.

The commission issued Advisory Opinion No. 160 and concluded the selection of a service provider is considered a purchasing decision, and since there is a purchasing decision exemption by rule, the investment banker would not have to register as a lobbyist.\textsuperscript{115} It was at this point in time a purchasing decision was interpreted to include "the selection of a service or service provider".

The reasoning possibly being since the investment banker was influencing an "administrative action" (a purchasing decision) of an executive branch for a service provider, and since the purchasing decision must be of a product, then a service or a service provider must be a product; therefore making the investment banker "a vendor of a product."

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Step 4:
Soon after these advisory opinions were issued TEC adopted what would later become Rule 34.5 (11), which stated communication to a member of the executive branch concerning purchasing decision of a state agency or negotiations regarding such decision would not be included as compensation for calculating the registration threshold under Section 305.003(a) (2) of the Government Code. By this rule the commission created a purchasing decision exemption, exempting sales persons from having to register under Section 305.003(a) (2) of the Government Code.

Step 5:
In January of 1994 TEC was asked whether or not paying or agreeing to pay an employee or outside consultant a commission fee for soliciting, acquiring and closing underwriting projects for state bond issuers would violate Section 305.22 of the Government Code.

The commission again cited Section 305.022 (c), the question raised being, does Section 305.022 prohibit a contingent fee for efforts to influence a state agency's selection of a provider of investment banking services?

The commission determined in Advisory Opinion No. 185 the Government Code does not prohibit contingent fees for efforts influencing state agency purchasing decisions.

Step 6:
In 1996 TEC was asked to clarify whether or not Ethics Advisory Opinion No. 185 was meant to include contingent fees in the exemption, regardless the person was a regular employee of a vendor of a product or an independent contractor.

In Advisory Opinion No. 341 the commission concluded the focus of the opinion was the nature of the agency's decision a person is attempting to influence, not the employment relationship between the person attempting to influence a decision and the person he or she represents.

Opinion No. 185 applies to all contingent fees for efforts to influence agency purchasing decisions, regardless of whether the person attempting to influence an agency purchasing decision is working as an employee of a vendor of a product or as an independent contractor.

Studying this time line of events objectively, this opinion skewed sharply from what the committee believes was the original intent of Section 305.022(c) of the Government Code.

Step 7:
The following November after Advisory Opinion 341 was presented the TEC issued Ethics Rule 34.21, which encompassed the previous two advisory opinions. It read: "Government Code Section 305.022 does not prohibit contingent fees for efforts to
influence state agency purchasing decisions."

This step by step procedure clearly shows when, where, and how the scope of the contingency fee ban exemption was broadened.

**Legislative Intent: Addressing the Issues**

The committee understands the intricacies and the laborious decisions involved with the Texas Ethics Commission and does not believe the expansion of the scope of the contingency fee ban was done intentionally. It is also important to remind members of the legislature, this expansion was done over a number of years and these opinions were not passed by the members of the current TEC. In fact it was concerned members of the current TEC who brought this issue up for discussion in the 80th legislature and has asked again for the Legislatures' guidance.

The committee agrees with the commission that a "purchasing decision" is an administrative action. It agrees an employee communicating with a state agency to purchase products is a communication to influence an executive branch. The committee agrees an employee of a vendor of a product should not have to register to do their job.

Where the committee believes a sales person who is an employee of a vendor of a product should be exempted from registering as a lobbyist, the committee does not think an independent contractor is a traditional employee. However, it is not to say they could not be included through legislative discretion as long as there were restrictions in place.

Did the legislature intend for the term product to include everything from services to service providers? The committee believes the intent of the original legislation did not intend to include services or service providers, but to solely include the everyday products used for the general operation of a state agency. The committee realizes in an age where services are bought for the day to day operation of computers and office equipment the definition of product does need to be reexamined at this point in time.

On the matter concerning the TEC interpretation of the statute, while the committee believes the TEC was acting in good faith the committee does not agree the commission interpreted the statute in its original intent. While this committee is considering whether the current statutes as written is overly restrictive or if it should be further tightened, it does believe the language of the current statute should be enforced and not modified beyond its scope by administrative regulation.

**On Opinion 341:**

The committee would like to address Advisory Opinion No. 341 separately. To recount what was stated in Advisory Opinion No. 341 the TEC concluded the focus of the opinion was the nature of the agency's decision a person is attempting to influence not the employment relationship between the person attempting to influence a decision and the

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person he or she represents.\textsuperscript{120} The committee disagrees with this logic. It believes when Advisory Opinion 341 was interpreted to include independent contractor, it should have taken in account the actual employment relationship as the law states (an employee of a vendor of a product). Not to do so would be ignoring the actual intent of the original contingent fee exception which was this committee believes, to keep an employee from being penalized for doing their job as a sales person; i.e. making them register as a lobbyist.

The committee believes the interpretation was not intentional and applauds the work of the TEC, acknowledging service on the Texas Ethics Commission is voluntary. It also recognizes the legislative body is not always easy to work with and miscommunications can happen between itself and a state agency with regards to the intent of legislation.

\textbf{Recommendations:}

The committee believes the TEC should strengthen the public's right to know who is being compensated to lobby the state or purchasing decisions, and further believes the public policy of limiting or prohibiting contingent fees is an increasingly important goal as the size of many purchasing contracts increases to the millions of dollars. To help the commission carry out this charge the committee recommends the legislature:

1. Clarify in statute that an employee of a vendor of a product does not have to register as a lobbyist.

Make the determination of whether or not independent contractors should be included in this exception. This committee believes independent contractors should not unless restrictions are accompanied with them statutorily.

2. Define statutorily the word product, consider whether or not the term "product" should include services or service providers, or if it should be solely the tangible everyday products used to run the general day to day operations of a state agency.

In Natalia Ashley's testimony she informed the committee in Blacks Law Dictionary "product" is defined as follows: Something that is distributed commercially for use or consumption and that is usually (1) tangible personal property, (2) the result of fabrication or processing, and (3) an item that has passed through a chain of commercial distribution before ultimate use or consumption.

Tangible personal property is defined in Blacks Law Dictionary as follows: Corporeal personal property of a kind: personal property that can be seen weighted, measured, felt, or touched, or is in any other way perceptible to the sense, such as furniture, cooking utensils, and books.

3. Clarify how broad state agency purchasing decisions should be construed. Should the contingency fee ban apply to all purchasing decisions or just the purchasing decisions

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smaller in nature?

4. Request the TEC to repeal Advisory Opinion No. 341 until the legislature can make a determination on whether or not independent contractors need to be included into the contingency fee ban exception. The committee strongly suggests to the 81st legislature this was not the original intent of the contingency fee ban. However, if the legislative body does decide to include independent contractors into the exception, the committee does believe the Ethics Commission has the authority to set thresholds requiring “independent contractors” being paid on a contingency fee basis to register if “independent contractors” fall within certain monetary brackets.

The committee recognizes the importance of this issue and believes it must be dealt with during the 81st session. It is important to point out this issue was asked to be clarified during the 80th legislative session. A number of bills were introduced and passed out of committee, but due to time constraints legislation was never considered by the full House.

Another important note is during the interim of the 80th Legislature the TEC deliberated over many proposed rules either broadening or tightening the scope of Section 305.022 of the Government Code. The committee expressed its concerns in two letters to the commission as it has in this report. The TEC finally decided not to take action and is waiting for the guidance of the legislature.

The Committee asks the 81st Legislature make this issue involving contingent fees a priority. Clarifying these issues will allow the TEC to carry out their duties more effectively.
Charge No. 7:

Research the current Texas law prohibiting the use of public resources for political advertising, and determine whether the laws need to be amended to clarify that publicly funded e-mail systems may not be used for political communications.

Background:

Currently it is legal for someone who works for a political subdivision (including a school system) to send e-mails supporting or opposing a candidate or measure from a publicly funded computer. Section 251.001 (16) of the Election Code clearly does not have e-mail included in the definition of political advertising.

A number of questions arise because of this issue. Should e-mails supporting or opposing a candidate or measure be included in the definition of political advertising? Is sending e-mail supporting or opposing a candidate from a publicly funded computer considered a misuse of public resources? Are misuses of public resources equivalent to misuses of public funds? How do you regulate it?

Looking at it at first glance the answer sounds simple. One might conclude, "Employees of a political subdivision should not be able to send out e-mails opposing or supporting an officer or a measure, and doing so is a misuse of public resources. Why not include e-mails in the definition of political advertising? Would this not prevent employees from using publicly funded computers to send e-mails supporting or opposing a candidate or measure?" This solution sounds easy, however, if e-mails were included in the definition of political advertising all e-mails would have to be regulated, personal or otherwise.

To properly investigate this charge it is important to look at the laws and rules surrounding this issue, study the advisory opinions the Texas Ethics Commission (TEC) has issued, look at the reason why it would be difficult to include e-mails into the definition of political advertising and then look at the solution the committee believes would resolve this issue. Once the background of this charge is completed, the committee will give its opinion on the matter and recommend to the 81st Legislature what the best course of action would be.

Statutes, Rules and Advisory Opinions

Statutes:

The issue at hand is tied to many sections of the Election Code. First is the definition of political advertising as found in Section 251.001, which does not include e-mail. The next section involved is Section 255.003 of the Election Code, which prohibits an officer or an employee of a political subdivision from spending or authorizing the spending of public funds for political advertising. The section, which the committee believes to hold the solution, is found in Section 255.0031 of the Election Code. This section prohibits an officer or an employee of a political subdivision or state agency from using or authorizing the use of an internal mail system for the distribution of political advertising. Finally, the section providing difficulty to include e-mail
into the definition of political advertising is Section 255.001 or the Required Disclosure on Political Advertising section.

Below are the necessary statutes as written in code:

§ 251.001. DEFINITIONS. In this title:
(16) "Political advertising" means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that:
(A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or
(B) appears:
   (i) in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or
   (ii) on an Internet website.

§ 255.001. REQUIRED DISCLOSURE ON POLITICAL ADVERTISING. (a) A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising:
   (1) that it is political advertising; and
   (2) the full name of:
      (A) the person who paid for the political advertising;
      (B) the political committee authorizing the political advertising; or
      (C) the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate.
   (b) Political advertising that is authorized by a candidate, an agent of a candidate, or a political committee filing reports under this title shall be deemed to contain express advocacy.
   (c) A person may not knowingly use, cause or permit to be used, or continue to use any published, distributed, or broadcast political advertising containing express advocacy that the person knows does not include the disclosure required by Subsection (a). A person is presumed to know that the use of political advertising is prohibited by this subsection if the commission notifies the person in writing that the use is prohibited. A person who learns that political advertising signs, as defined by Section 255.007, that have been distributed do not include the disclosure required by
Subsection (a) or include a disclosure that does not comply with Subsection (a) does not commit a continuing violation of this subsection if the person makes a good faith attempt to remove or correct those signs. A person who learns that printed political advertising other than a political advertising sign that has been distributed does not include the disclosure required by Subsection (a) or includes a disclosure that does not comply with Subsection (a) is not required to attempt to recover the political advertising and does not commit a continuing violation of this subsection as to any previously distributed political advertising.

(d) This section does not apply to:

(1) tickets or invitations to political fund-raising events;

(2) campaign buttons, pins, hats, or similar campaign materials; or

(3) circulars or flyers that cost in the aggregate less than $500 to publish and distribute.

(e) A person who violates this section is liable to the state for a civil penalty in an amount determined by the commission not to exceed $4,000.

§ 255.003. UNLAWFUL USE OF PUBLIC FUNDS FOR POLITICAL ADVERTISING. (a) An officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising.

(b) This section does not apply to a communication that factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure.

(c) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

§ 255.0031. UNLAWFUL USE OF INTERNAL MAIL SYSTEM FOR POLITICAL ADVERTISING. (a) An officer or employee of a state agency or political subdivision may not knowingly use or authorize the use of an internal mail system for the distribution of political advertising.

(b) Subsection (a) does not apply to:

(1) the use of an internal mail system to distribute political advertising that is delivered to the premises of a state agency or political subdivision through the United States Postal Service; or

(2) the use of an internal mail system by a state agency or municipality to distribute political advertising that is the subject of or related to an investigation, hearing, or other official proceeding of the agency or municipality.

(c) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.
(d) In this section:
(1) "Internal mail system" means a system operated by
a state agency or political subdivision to deliver written
documents to officers or employees of the agency or subdivision.
(2) "State agency" means:
(A) a department, commission, board, office, or
other agency that is in the legislative, executive, or judicial
branch of state government;
(B) a university system or an institution of
higher education as defined by Section 61.003, Education Code; or
(C) a river authority created under the
corporation or a statute of this state.

Rules and Advisory Opinions:

The problem in the Election Code is it only addresses the misuse of public funds, not resources
and the misuse of an internal mail system, not an electronic mail system. Section 255.003 does
not include e-mail in the definition of political advertising, nor does Section 255.0031, titled
Unlawful Use of Internal Mail System for Political Advertising, include an electronic mail
system as an internal mail system. The exclusion of these two subjects makes it legal for any
employee or officer of a state agency or political subdivision to use a publicly funded computer
to send out e-mails supporting or opposing candidates and/or measures. ¹²¹

The questions the TEC often receive are whether the use of public resources for political
advertising is equivalent to using public funds for political advertising, therefore violating
Section 255.003 of the Texas Election Code? If so would using a computer owned by a state
agency or a political subdivision to distribute a communication made by e-mail supporting or
opposing a candidate and/or measure constitute as a misuse of public funds for political
advertising? ¹²²

In September of 1992 the commission was asked whether Section 255.003 of the Election Code
prohibited the use of a school districts internal mail system for the distribution of political
advertising. Since a school district's officers and employees of the district are prohibited from
spending or authorizing the spending of public funds for political advertising, the issue being
raised was whether or not the prohibition extends, not only to direct expenditures of public funds
for distributing political advertising, but also to the use of an existing internal mail system. The
TEC concluded in Ethics Advisory Opinion No. 45 any method of distribution involving the use
of school district employees on school district time or school district equipment would fall under
this prohibition.¹²³

In May of 2002 the TEC further emphasized Ethics Advisory Opinion No. 45 with Ethics
Advisory Opinion No. 443. The question being raised: Could a school district allow candidates
seeking election to a school district's board of trustees place campaign flyers in an area of a
school with no public access? This question presented two issues: (1) Whether the situation
described involves the "spending" of public funds and, (2) if so, would the public funds be spent
"for" political advertising.

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The TEC determined in Ethics Advisory Opinion No. 443 since the placement of campaign flyers would be in a place not accessible to the public then the act of placing those flyers would be presumably done on school time by school employees. Furthermore the "spending" of public funds, the TEC continued, would also include the use of facilities maintained by a political subdivision. The placement of those flyers anywhere besides a public forum would be considered "spending" public funds.

In 2006 the TEC wrestled with the question of whether or not the definition of political advertising was to include e-mails. After thoroughly studying the legislative history, the TEC determined the legislature clearly considered including e-mails in the definition of political advertising and chose not to.

The TEC came to this conclusion because H.B. 1606 (legislation amending the definition of political advertising in 2003) in its original form specifically included both e-mails and internet websites to the definition of political advertising. However, when H.B. 1606 went through the legislative process the final version did not include e-mails in the definition.

Based on this history the TEC passed a rule in July of 2006 stating the definition of political advertising does not include a communication made by e-mail. \textsuperscript{124} "The commission has since asked the legislature for guidance through its 2007 legislative task force recommendations to clarify whether or not e-mail should be included as political advertising.

Earlier in the 80\textsuperscript{th} Legislative Session Representative Phil King attempted to clarify this issue by filing House Bill 2508. This bill amended the \textbf{Unlawful Use of an Internal Mail System for Political Advertising} section of the Election Code. Currently this section makes it illegal for an officer or an employee of a political subdivision to use an internal mail system to distribute political advertising. Rep. King's bill would have extended this restriction to the electronic mail system with-in a political subdivision and would have included "political communication" instead of "political advertising." \textsuperscript{125} This bill passed out of the Committee on Elections, but did not pass through the process.

Below is the TEC rule passed in July 2006 clarifying the definition of political advertising:

\textbf{Chapter 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES}

\textbf{Subchapter A. GENERAL RULES}

\textbf{§ 20.1. Definitions}

The following words and terms, when used in \textit{Title 15 of the Election Code}, in this chapter, Chapter 22 of this title (relating to Restrictions on Contributions and Expenditures), and Chapter 24 of this title (relating to Restrictions on Contributions and Expenditures Applicable to Corporations and Labor Organizations), shall have the following meanings, unless the context clearly indicates otherwise.

\textbf{(1) Campaign communication--The term does not include a communication made by e-mail}

\textbf{(13) Political advertising:}
(A) A communication that supports or opposes a political party, a public officer, a measure, or a candidate for nomination or election to a public office or office of a political party, and:

(i) is published in a newspaper, magazine, or other periodical in return for consideration;
(ii) is broadcast by radio or television in return for consideration;
(iii) appears in a pamphlet, circular, flier, billboard, or other sign, bumper sticker, or similar form of written communication; or
(iv) appears on an Internet website.

(B) The term does not include a communication made by e-mail.

Opinions:

The committee agrees with the TEC, using public resources is equivalent to using public funds. The committee also believes using publically funded computers to send e-mails supporting or opposing a candidate is a misuse of public funds. However, the committee is in concurrence with the commission while using a publically funded computer to send e-mails supporting or opposing a candidate is a misuse of public funds, e-mails do not need to be included in the definition of political advertising.

The committee is taking this stance because one must take in consideration the Required Disclosure on Political Advertising statute. If e-mail was included in the political advertising definition, the enforcement of disclosure statements would apply to all e-mails, including personal e-mails. The committee feels this would be a gross over step in its legislative responsibilities, not only on a state level, but constitutionally as well.

The committee believes to properly remedy this issue; the 81st legislature should focus on Section 255.0031 of the Election Code. While creating the solution the committee would like the legislature expresses its intent loud and clear, so not to be misinterpreted. This recommendation for instance would not include members sending or receiving e-mails to staff regarding pieces of legislation being carried or any officer or employee of a political subdivision communicating through e-mail in regards to everyday business, which might discuss ordinances and/or legislation.

The Mayor of Haltom City, Bill Landford, expressed his concern at the committee hearing addressing this issue. He of course was aware of the offsets and abuse of public resources, but his primary concern was the application of the solution. Mayor Landford did not want anyone to be mislabeled for being unethical, while fully intending to follow the law. For instance receiving e-mails or sending e-mails regarding an election in general or everyday e-mails received or sent asking for the opinion of or facts on an ordinance. The committee recognizes the Mayor's concerns and would like to assure political subdivisions any solution suggested will take these concerns in full consideration and guarantees the intent of any solution will be to prohibit the use of publically funded computers from being used to send e-mails strictly supporting or opposing candidates or measures.
Recommendations:

After careful consideration the committee recommends the 81st Legislature revisit language in H.B. 2508 of the 80th session and include an electronic mail system to the prohibition of the use of an internal mail system for the distribution of political advertising. This would prohibit the use of publically funded computers or "resources" from being used by employees or officials of political subdivisions from sending e-mails supporting or opposing candidates and/or measures.
Charge No. 8

Monitor the agencies and programs under the committee’s jurisdiction.

Office of the Secretary of State:

The Secretary of State serves as the chief election official for the State of Texas. Under the Secretary's direction the Elections Division provides assistance and advice to election officials on the proper conduct of elections. This includes hosting seminars and elections schools, providing calendars, ballot certification, primary election funding, and legal interpretations of election laws to election officials. It also provides assistance to the general public on voter registration and other election issues.

The Elections Division administers and maintains the Texas Election Administration Management (TEAM) System, which is an online, HAVA compliant, voter registration application designed for county officials to maintain accurate and efficient voter registration rolls. The Committee on Elections had the pleasure of working closely with the Secretary's Elections Division this interim.

There were many opportunities for continued education concerning elections this interim. Committee staff attended four election law seminars, numerous in-house meetings with the Secretary of State's Office and observed the returns of three elections, including the March primary. With the approval and encouragement of the Chair, the chief clerk also coordinated numerous meetings between Ann McGeehan, the Director of the Elections, and the Committee member's staff. These meetings gave every office within the committee the opportunity to ask questions and keep up with projects and issues pertaining to the Elections Division.

The Elections Division was able to provide the committee with a briefing outlining the major projects and events happening throughout the interim or will happen in the upcoming months. For the readers clarification; the issues with reference to TEAM, HAVA and the Super Precinct pilot program have already been addressed in previous charges and will not be reexamined.

Briefing from the Elections Division of the Office of the Secretary of State:

Overview of Primary Election
The presidential primary election on March 4, 2008 yielded massive statewide voter turnout. While presidential primaries consistently garnered increased public interest, the race for the Democratic Party presidential nomination turned national focus to the Texas primary election.

To that end, the Elections Division fielded massive quantities of phone calls (234,483 incoming calls during Jan/Feb/Mar 2008) and responded to emails (5,294 during
Jan/Feb/Mar 2008) from voters around the state and country. The legal staff spent considerable time discussing primary election procedures with voters, party officials and county election officials. The voter registration staff handled calls from voters inquiring as to their voter registration status. Email inquiries pertained to many facets of the primary election voting process.

On March 4, 2008, the office staffed its customary, toll-free, Election Day phone bank. The phones calls were at the maximum level of queue for the majority of the day and evening. In addition, staff supported voters and election officials involved in many primary runoff elections statewide.

**Overview of May 10, 2008 Election**
The May 10, 2008 election featured statewide local elections, as conducted by a large number of cities, school districts, and various types of water districts. Secretary of State Elections Division staff fielded many legal and TEAM-related questions in advance of May 10th, as entities prepared in the weeks leading to Election Day.

On May 10, 2008, the office staffed its customary, toll-free, Election Day phone bank. Phone volume for this Election Day was consistent and represented the statewide nature of the elections taking place. On the heels of a successful primary election, the May 10th election provided an opportunity to assist many local political subdivisions in a timely and professional way.

**Preparing for Presidential Election**
The Secretary of State’s Office is preparing for the November 4, 2008 election turnout to parallel the historic turnout seen in the primary. They are creating an additional phone bank with temporary employees to support call volume surrounding the election; this phone bank will be managed and trained by permanent staff.

The November election law and procedure calendar has been added to the Secretary of State website; this detailed legal schedule provides extensive information to election officials, voters, and candidates relating to pertinent deadlines and legal procedures. A series of Frequently Asked Questions and Answers relating to the November 4, 2008 election are also posted on the website, [www.sos.state.tx.us](http://www.sos.state.tx.us).

The Secretary of State’s Office is also working with several state agencies to train agency employees to serve as state inspectors for the November election. A higher number of inspector requests for this election are anticipated and the office has tailored its preparation accordingly. The office plans to train 200 individuals, so that between 100 and 150 inspectors can be deployed statewide on November 4, 2008. Inspectors serve as official observers who monitor the conduct of elections and file written reports of their findings.
Pilot Program for Emailing Ballots to Overseas Military Voters

Senate Bill 90 requires the Secretary of State to establish a pilot program for the November 4, 2008 election. Under the program, participating counties may email blank ballots and related balloting materials ("balloting materials") to qualified overseas military voters. Participation in the program is open to counties who wish to participate and feel comfortable using the technology required to do so. As of mid-July, Bexar, Brazoria, Dallas, Victoria, and Zavala Counties will participate. This is the first incarnation of this pilot program, and notably permits the transmittal of balloting materials to qualified voters who request that these materials are emailed to them because they have not received the ballot provided by postal mail. These voters must mark their ballots and return them by postal mail. This program has the goal of enhancing the efficiency of the voting process in overseas military situations, which often prove difficult for the time-sensitivity of ballot return.

With regards to implementation of the program, the Office of the Secretary of State has established procedures in the form of administrative rules. These rules are currently in public comment period in the Texas Register, following their July 11, 2008 publication. Staff is currently preparing the preclearance submission of these rules and procedures to the U.S. Department of Justice, which has pre-cleared the bill which created the program. Finally, the office has sent a detailed explanatory memo to all counties to garner participants for the program while detailing the program’s provisions.

Address Confidentiality Program

Senate Bill 74 created an address confidentiality program to assist victims of family violence, sexual assault, or stalking, and authorized the Secretary of State to adopt administrative rules as needed to administer voting procedures for participants in this program. The program facilitates the goal of confidentiality by requiring the creation of a confidential voting roster which is explicitly protected from public disclosure. Voters who avail themselves of these procedures then vote by mail, using an alternate mailing address created by the Office of the Attorney General.

With regards to implementation of the program, the Elections Division has worked extensively with the Office of the Attorney General to discuss the procedures necessary to successfully implement the program. The Office of the Secretary of State has drafted administrative rules which outline these procedures, which are currently in public comment period in the Texas Register, following their July 11, 2008 publication. Staff has submitted a preclearance submission of these rules and procedures to the US Department of Justice, which has pre-cleared the bill which created the program.

Voting System Parallel Monitoring Project

The Elections Division will audit three counties on Election Day, November 4, 2008, to test the accuracy of their voting systems. The audit counties are: Bexar, Guadalupe and Travis Counties. These counties use separate vendors, therefore, the inquiry will procure valuable data from a cross-section of voting machines used across the state. The audit
### 2006 Election Day Cost

<table>
<thead>
<tr>
<th>Cost Category</th>
<th>Primary</th>
<th>Runoff Primary</th>
<th>Total</th>
</tr>
</thead>
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<td>Ballot Printing</td>
<td>$1,113,595.50</td>
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<td>$1,480,413.74</td>
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<td>Electronic voting</td>
<td>$1,132,989.05</td>
<td>$691,373.33</td>
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<td>Notice publications</td>
<td>$18,883.25</td>
<td>$11,986.85</td>
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<td>Election poll supplies</td>
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<td>Voting Equip &amp; transport</td>
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<td>Poll rental</td>
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<td>Election workers</td>
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<td>Central Counting Stations Workers</td>
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<tr>
<td>Technical &amp; Site Support</td>
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<td>Contract Services Admin Fee</td>
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<td>Miscellaneous</td>
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<td>$258,221.04</td>
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<tr>
<td><strong>Total Primary Election Day Exp.</strong></td>
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<td><strong>$3,744,796.14</strong></td>
<td><strong>$12,378,199.94</strong></td>
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</tbody>
</table>

### 2006 Administrative Costs

- **Office rent**: $188,380.02
- **Office personnel**: $827,320.04
- **Administrative payroll taxes**: $97,480.74
- **Phone & Utilities**: $99,011.85
- **Furniture & equipment rental**: $12,674.53
- **Office Equipment**: $60,807.95
- **Office supplies**: $79,784.40
- **Postage**: $36,795.64
- **Legal fees**: $50,280.47
- **Ballot Re-Print**: $22,539.17
- **Miscellaneous**: $60,213.44

**Total Administrative Cost**: $1,535,288.26

- **Chair Compensation**: $281,344.71
- **SOS Seminar Travel Expenses**: $65,373.63

**Total Administrative Expenses**: $1,535,288.26

**Total 2006 Primary & Runoff Cost**: $14,260,206.54
will take place as programmed units are selected randomly, pulled out, and tested during the hours that polls are open on Election Day.

**Online Poll Worker Training**
The online poll worker training program developed by the Office of the Secretary of State has been very well-received throughout the state. To enhance this program for November, the office added a voting system component to the existing online poll worker training. This year a separate component for each certified voting system was developed and instructs workers on set-up, testing, voting, and closing down the polls.

**Primary Election Financing**
State primary funds are issued to county chairs overseeing the conduct of primary elections, in accordance with Chapter 173 of the Texas Election Code. These funds, as well as funds collected from candidates for filing fees, are used to pay primary election expenses.

Upon submission of a primary election cost estimate form, the Office of the Secretary of State reviews the estimate making sure requested funds are in compliance with Chapter 173 of the Texas Election Code and the Administrative Rules Chapter 81 Subchapter F adopted by this agency.

- Seventy-five (75%) of the approved estimated cost is advanced to the chair to cover Election Day and administrative expenses. The county chair will receive a pre-populated estimated cost report based on expenses report from 2006 Primary Final Report for Primary and Runoff expenses. If a primary and/or runoff were not held in that county, the chair would submit a completed estimated report for the primary and/or runoff.

- After the primary and runoff, chairs remit a final cost report of actual expenses. This office then remits the remaining twenty-five (25%) or, if upon calculating the actual expenses a surplus is due, the excess funds are returned to the primary fund.

The Office of the Secretary of State is currently processing the 2008 Final Cost Reports, but on the following page is a summary of approved 2006 primary costs.
Changing of the Guard

On a side note: Secretary of State Phil Wilson stepped down as Secretary of State in July of 2008 to pursue other endeavors. Governor Perry appointed Esperanza "Hope" Andrade to take up the mantel as Texas' 107th Secretary of State. The committee welcomes Madam Secretary to her new office and is looking forward to working with her and her staff.
Texas Ethics Commission:

In 1991 the Texas Ethics Commission (TEC) was created by a constitutional amendment approved by Texas' voters. The commission is made up of eight commissioners serving for four year terms. Four are appointed by the governor, two are appointed by the Lieutenant Governor and two are appointed by the Speaker of the House. Each party in the Senate and the House has members representing them by submitting lists of nominees to the proper state officials for appointment, making the commission a bi-partisan effort.¹²⁷

This commission was given both statutory and constitutional duties to administer and enforce. These duties range from, but are not limited to political contributions and expenditures, political advertising, lobbyist registration, reports and activities, personal financial disclosure of state officers, conduct of state officers and employees, recommending the salary of members of the legislature, the Lieutenant Governor and the Speaker of the House (subject to approval by the voters) and for setting the per diem of the members of the Legislature and of the Lieutenant Governor. Any other powers or duties of the commission are to be determined by the Legislature.¹²⁸

In order to monitor this agency, committee staff attended bi-monthly commission hearings and had numerous one on one meetings with both the general counsel and the executive director of the Texas Ethics Commission this interim. The TEC reported to the committee on the effects incurred by H.B. 89 by Branch, the increased number of complaints and the number of new attorneys hired as a result of these complaints, the number of rules adopted this year, and the number of Ethics Advisory Opinions issued by the TEC.

HB 89-General-Purpose Political Committees:

H.B. 89 by Representative Branch adds Section 254.164 to the Election Code which applies to general-purpose political committees, including county executive committees. The bill provides that the TEC may not impose a civil penalty on a general-purpose political committee for a reporting violation if the committee did not exceed certain contribution or expenditure thresholds during a particular reporting period. Specifically, the TEC may not impose a civil penalty for a reporting period if the report in question shows that the general-purpose political committee: 1) did not accept political contributions totaling $3,000 or more, 2) did not accept political contributions from a single person totaling $1,000 or more, or 3) did not make or authorize political expenditures totaling $3,000 or more during the reporting period covered by the report or during either of the two reporting periods preceding the report. This bill became effective September 1, 2007.

As directed by SECTION 2 of H.B. 89 the TEC has been tracking the impacts this act would have and will give a complete report to the Legislative body no later than
December 31, 2008. To fulfill the requirements of this interim charge TEC has provided the committee with the number of general-purpose committees receiving a waiver under H.B. 89 from the dates of September 1, 2007 through August 11, 2008. This information includes the type of report for which the waiver was granted, the number of waivers given to each general-purpose committee, and the total number of committees receiving waivers since the law became enacted. This summary was provided by the TEC.

<table>
<thead>
<tr>
<th>Rpt Type</th>
<th>Number of Reports</th>
<th>Dollars</th>
<th>Rpt. Definition</th>
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</thead>
<tbody>
<tr>
<td>MPAC</td>
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<td>$32,000.00</td>
<td>monthly filing general-purpose committee</td>
</tr>
<tr>
<td>JAN</td>
<td>40</td>
<td>$20,000.00</td>
<td>January semiannual</td>
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<tr>
<td>JUL</td>
<td>31</td>
<td>$15,600.00</td>
<td>July semiannual</td>
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<tr>
<td>E30</td>
<td>11</td>
<td>$6,500.00</td>
<td>30th day before the election</td>
</tr>
<tr>
<td>E8</td>
<td>15</td>
<td>$18,500.00</td>
<td>8th day before the election</td>
</tr>
<tr>
<td>RUN</td>
<td>6</td>
<td>$4,900.00</td>
<td>8th day before runoff election</td>
</tr>
<tr>
<td>A10</td>
<td>2</td>
<td>$2,000.00</td>
<td>10th day after treasurer termination</td>
</tr>
<tr>
<td>FIN</td>
<td>1</td>
<td>$500.00</td>
<td>final/dissolution report</td>
</tr>
<tr>
<td>OTH</td>
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</tr>
<tr>
<td>Totals</td>
<td>170</td>
<td>$100,000.00</td>
<td></td>
</tr>
</tbody>
</table>

**Texas Ethics Commission Sworn Complaints:**

During 2008 the number of sworn complaints has continued to increase. These complaints have placed a corresponding burden on the legal division to timely process, investigate, and prepare sworn complaints for resolution by the Commission. To help alleviate this burden Governor Perry recently approved a grant allowing the TEC to hire two additional attorneys and one administrative support personal.

The table on the next page illustrates the number of sworn complaints filed since 1992:
<table>
<thead>
<tr>
<th>CALENDAR YEAR</th>
<th>NUMBER OF COMPLAINTS FILED</th>
<th>PERCENTAGE INCREASE/DECREASE</th>
</tr>
</thead>
<tbody>
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<td>1992</td>
<td>49</td>
<td></td>
</tr>
<tr>
<td>1993</td>
<td>42</td>
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<tr>
<td>1994</td>
<td>88</td>
<td>110 % increase</td>
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<tr>
<td>1995</td>
<td>66</td>
<td>25 % decrease</td>
</tr>
<tr>
<td>1996</td>
<td>88</td>
<td>33 % increase</td>
</tr>
<tr>
<td>1997</td>
<td>100</td>
<td>14 % increase</td>
</tr>
<tr>
<td>1998</td>
<td>103</td>
<td>3 % increase</td>
</tr>
<tr>
<td>1999</td>
<td>42</td>
<td>59 % decrease</td>
</tr>
<tr>
<td>2000</td>
<td>93</td>
<td>121 % increase</td>
</tr>
<tr>
<td>2001</td>
<td>75</td>
<td>19 % decrease</td>
</tr>
<tr>
<td>2002</td>
<td>141</td>
<td>88 % increase</td>
</tr>
<tr>
<td>2003</td>
<td>91</td>
<td>35 % decrease</td>
</tr>
<tr>
<td>2004</td>
<td>217</td>
<td>138 % increase</td>
</tr>
<tr>
<td>2005</td>
<td>251</td>
<td>16 % increase</td>
</tr>
<tr>
<td>2006</td>
<td>270</td>
<td>8 % increase</td>
</tr>
<tr>
<td>2007</td>
<td>238</td>
<td>12 % decrease</td>
</tr>
<tr>
<td>2008 (As of 8/11/08)</td>
<td>302</td>
<td></td>
</tr>
</tbody>
</table>

*This table was provided by the TEC.*
Rulemaking and Advisory Opinions:

During this interim the TEC made many amendments to their administrative rules and issued a number of advisory opinions. Thirty-three rules were adopted between June 2007 and December 2007. In this same time period six rules were repealed, and as of January 2008 through August 11, 2008 the TEC has adopted 12 rules. To date there are nine administrative rules being considered, but have yet to be adopted. Only three advisory opinions were issued between June 2007 and December 2007 by the TEC. As of August 11 there have been four advisory opinions issued for 2008.

Below lists the administrative rules added and repealed during the 80th Legislative interim followed by a brief summary of the advisory opinions issued. This information was provided by the TEC.

Rules Adopted in 2007 (June 2007 through December 2007).

§ 18.7. Timely Reports and Complete Reports (General Rules Concerning Reports)

§ 20.1. Definitions (General Rules)

§ 20.19. Reports Must Be Filed on Official Forms (General Rules)

§ 20.20. Timeliness of Action by Electronic Filing (General Rules)

§ 20.21. Due Dates on Holidays and Weekends (General Rules)

§ 20.56. Reporting a Pledge of a Contribution (General Reporting Rules)

§ 20.62. Reporting Staff Reimbursement (General Reporting Rules)

§ 20.65. Reporting No Activity (General Reporting Rules)

§ 20.211. Semiannual Reports (Reporting Requirements for a Candidate)

§ 20.213. Pre-Election Reports (Reporting Requirements for a Candidate)

§ 20.215. Runoff Report (Reporting Requirements for a Candidate)

§ 20.217. Modified Reporting (Reporting Requirements for a Candidate)

§ 20.221. Special Pre-Election Report by Certain Candidates (Reporting Requirements for a Candidate)

§ 20.223. Form and Contents of Special Pre-Election Report (Reporting Requirements for a Candidate)
§ 20.305. Appointing an Assistant Campaign Treasurer (Reports by a Specific-Purpose Committee)

§ 20.307. Name of Specific-Purpose Committee (Reports by a Specific-Purpose Committee)

§ 20.317. Termination Report (Reports by a Specific-Purpose Committee)

§ 20.323. Semiannual Reports (Reports by a Specific-Purpose Committee)

§ 20.325. Pre-Election Reports (Reports by a Specific-Purpose Committee)

§ 20.327. Runoff Report (Reports by a Specific-Purpose Committee)

§ 20.329. Modified Reporting (Reports by a Specific-Purpose Committee)

§ 20.333. Special Pre-Election Report by Certain Specific-Purpose Committees (Reports by a Specific-Purpose Committee)

§ 20.335. Form and Contents of Special Pre-Election Report by a Specific-Purpose Committee Supporting or Opposing Certain Candidates (Reports by a Specific-Purpose Committee)

§ 20.417. Termination Report (Reporting Requirement for a General-Purpose Committee)

§ 20.423. Semiannual Reports (Reporting Requirement for a General-Purpose Committee)

§ 20.425. Pre-Election Reports (Reporting Requirement for a General-Purpose Committee)

§ 20.427. Runoff Report (Reporting Requirement for a General-Purpose Committee)

§ 20.429. Option to File Monthly (Reporting Requirement for a General-Purpose Committee)

§ 20.431. Monthly Reporting (Reporting Requirement for a General-Purpose Committee)

§ 20.437. Form and Contents of Special Pre-Election Report (Reporting Requirement for a General-Purpose Committee)

§ 26.2. Newsletter of Public Officer of a Political Subdivision (Political and Legislative Advertising)
§ 34.43. Compensation and Reimbursement Threshold (Registration Requirement)

§ 50.1. Legislative Per Diem (Legislative Salaries and Per Diem)

Rules Repealed in 2007 (June 2007 through December 2007).

§ 20.25. Affidavit (General Rules)

§ 20.27. Electronic Filing of Telegram Reports (General Rules)

§ 20.31. Use of Political Contributions for Contributions to Speaker Candidate (General Rules)

§ 34.19. Conflicts of Interest (General Provisions)

§ 34.61. Registration Fee (Completing the Registration Form)

§ 34.62. Temporary Increase in Registration Fee (Completing the Registration Form)


§ 8.3. Subject of an Advisory Opinion

§ 20.13. Out-of-State Committees (General Rules)

§ 20.29. Information about Out-of-State Committees (General Rules)

§ 20.50. Total Political Contributions Maintained

§ 20.220. Additional Disclosure for the Texas Comptroller of Public Accounts

§ 20.435. Special Pre-Election Reports by Certain General-Purpose Committees

§ 34.11. Attribution of Expenditure to More Than One Person; Reimbursement of Lobby Expenditure

§ 45.1. Application (Texas Facilities Commission and Comptroller of Public Accounts)

§ 45.3. Definitions (Comptroller of Public Accounts)

§ 45.5. Definitions (Texas Facilities Commission)

§ 45.7. Rebates (Comptroller of Public Accounts)

§ 45.9. Rebates (Texas Facilities Commission)
**Rules Considered but Not Yet Adopted in 2008.**

§ 12.57. Contents of a Complaint (Filing and Initial Processing Of a Complaint)

§ 20.577. Reporting Schedule for a Candidate for State Chair

§ 22.33. Expenditure Limits of the Judicial Campaign Fairness Act

§ 34.5. Certain Compensation Excluded (General Provisions)

§ 34.21. Contingent Fees for Influencing Purchasing Decisions (General Provisions)

§ 34.22. Contingent Fees for Influencing Purchasing Decisions (General Provisions)

§ 34.45. Entity Registration

§ 34.65. Compensation Reported by Lobby Firm Employee

§ 34.85. Individual Reporting Expenditure by Entity

**Ethics Advisory Opinions Issued in 2007 (June 2007 through December 2007).**

**Ethics Advisory Opinion No. 475**

The making of charitable contributions according to the proposed solicitation program is not a permissible solicitation expense for purposes of Section 253.100(b) of the Election Code.

**Ethics Advisory Opinion No. 476**

The attached newsletter is “political advertising” as defined in Section 251.001(16) of the Election Code and therefore public funds may not be used to pay for the newsletter.

**Ethics Advisory Opinion No. 477**

A former employee of a regulatory agency would not violate Government Code Section 572.054(b) by working on a private company’s bid for an agency contract that utilizes the standard specifications as described in this request that the requestor participated in writing as an agency employee.
Ethics Advisory Opinions Issued in 2008.

Ethics Advisory Opinion No. 478

The use of political contributions to pay a premium of a “judges’ claims made professional liability insurance policy” that only covers expenses incurred in connection with claims or lawsuits brought against a judge in his official capacity as a public officeholder does not constitute a personal use.

Ethics Advisory Opinion No. 479

Placing a candidate on notice that a general-purpose committee will base its decision on whether or not to support the candidate on the candidate’s responses to the specific questions listed above would constitute legislative bribery under Section 302.032 of the Government Code. Whether a candidate has been placed on such notice is a fact question and, as we have stated in previous opinions, an advisory opinion cannot resolve fact issues.

The legal value of an Ethics Advisory Opinion is to provide a defense to prosecution for activities that, in the opinion of the Ethics Commission, are not in violation of the laws under the jurisdiction of the Ethics Commission. We cannot provide that type of defense in this request because we cannot anticipate the different circumstances in which the specific questions listed above may be asked.

Ethics Advisory Opinion No. 480

Title 15 of the Election Code does not prohibit an officeholder from using political contributions to compensate a county employee for vacation time that the employee was unable to take due to carrying out his or her county responsibilities on assignments connected with the activities of the officeholder’s office. The officeholder may use personal funds to make the payment to compensate the employee for the lost vacation time and may seek reimbursement from political contributions provided that the expenditure from personal funds is reported as required by title 15 of the Election Code. The court employee may accept the compensation at issue under Section 36.10(a) (2) of the Penal Code. It is important to note that if the judge is subject to the Judicial Campaign Fairness Act, the reimbursement at issue must be in compliance with the limits set by the Act.

Commission Recommendations for Legislative Action:

The Texas Ethics Commission is currently in the process of making Legislative Recommendations to the 81st Legislature. Chairing the Legislative Task Force is Commissioner Ross Fischer. He is accompanied by fellow Commissioners Jim Graham, Paula M. Mendoza, and Wilhemina Delco. Commissioner Fisher stated at the Commissions August 15, 2008 hearing the Task's Force goal was to update the recommendations at the October meeting, discuss and make any necessary changes and then take a final vote on the recommendations at the December meeting. This report will be available to the whole House on or before December 31, 2008.
Recommendations:

The Committee recommends continuing its work with the Texas Ethics Commission and with the Office of the Secretary of State to ensure all projects are a continued success.
ENDNOTES

2 Douglas W. Jones, A Brief Illustrated History of Voting, (The University of Iowa, Department of Computer Science, 2001)
3 id.
4 id.
5 id.
6 id.
7 id.
8 id.
9 id.
10 www.eac.gov/News
11 www.eac.gov/News/eac-announces-intention-to-suspend-systest-labs/base_view
12 HAVA SECTION 301 Voting System Standards
13 University of California, Overview of Red Team Reports for Top to Bottom Review, Matt Bishop Principle Investigator (University of California, Davis)
14 id.
15 id.
16 id.
17 id.
18 id.
19 http://www.pewcenteronthestates.org/uploadedFiles/audit%20trail.pdf
20 Sharon Dunn, Director of Elections Cobb County, Georgia, Pilot Project: Voter Verifiable Paper Audit Trail (Cobb County, Georgia December 21, 2006)
21 id.
22 id.
23 id.
24 id.
25 id.
26 id.
27 Testimony given by Michael Shamos to The U.S. Senate Committee of Rules and Administration on July 25, 2007
30 Texas House of Representatives Committee on Elections, Interim Report to the 80th Texas Legislature (House Reproduction, 2006), 16.
31 Amy Young, Memo to the Honorable Mary Denny Chair of Elections, Subject: Vote Fraud in Texas (June 14, 2006), 2.
32 Amy Young, Memo to the Honorable Mary Denny Chair of Elections, Subject: Vote Fraud in Texas (June 14, 2006), 2.
33 Pre-Election Day & Absentee Voting by Mail Rules; http://www.electiononline.org
34 Texas Election Code, Chapter 82: Eligibility for Early Voting
35 Texas Election Code, Chapter 84: Applications for Ballot
36 Provisional Ballot Verification; http://www.electionline.org
37 Memorandum to Members of the House Committee on Elections, from Ann McGechan, Director of Elections Re. Overview of Provisional Voting Laws,(2008)
38 id.
39 Memorandum to Secretary Phil Wilson from Ann McGechan, Director of Elections, Purging Voter Registration Files (2008)
40 id.
id.

Memorandum to Secretary Roger Williams from Ann McGeehan, Director of Elections, Information Requested at the April 26, 2006 Interim Hearing

Texas State Auditors Office, An Audit Report on The Voter Registration System at the Texas Secretary of State’s Office, (Texas State Auditors Office, November 2007) 7

http://www.sos.state.tx.us/elections/historical/70-92.shtml

Texas State Auditors Office, An Audit Report on The Voter Registration System at the Texas Secretary of State’s Office, (Texas State Auditors Office, November 2007) i

id. 2

id. 2

id. 5

id. 1

id. 7

id. 8

id. 7

id. 8

id. 8

id. 8

Amy Young, Memo to the Honorable Mary Denny Chair of Elections, Subject: Vote Fraud in Texas (June 14, 2006), 3.

http://www.electiononline.org

Syllabus; Crawford Et Al. V. Marion County Election Board Et Al. October Term, 2007, Argued January 9, 2008- Decided April 28, 2008. 1

id. 3

id. 3

Elections Division, Florida SOS, State of Florida Identification Background, provided by Maria Matthews, Assistant General Counsel, Elections Division, Florida Secretary of State

Jeffery Milyo, The Effects of Photographic Identification on Voter Turnout in Indiana: A County-Level Analysis, (Publication from Institute of Public Policy, University of Missouri, November 2007) 14


id. 17


Timothy Vercellotti and David Anderson, Protecting the Franchise, or Restricting It? The Effects of Voter Identification Requirements on Turnout, (Rutgers University) i

Texas Secretary of State, Elections Division, Monitoring of HAVA Implementation Interim Charge: Briefing from the Elections Division of the Secretary of State (Texas Secretary of State: Austin, TX. 2008) 1

id. 2-3

Section 301 (d) of HAVA

Texas Secretary of State, Elections Division, Monitoring of HAVA Implementation Interim Charge: Briefing from the Elections Division of the Secretary of State (Texas Secretary of State: Austin, TX. 2008) 4

id. 6-7

id. 7

id. 7-8

id. 8

id. 8-9

Section 303 (B) of HAVA

Texas State Auditor's Office, An Audit Report on the Voter Registration System at the Texas Secretary of State's Office, Report No. 08-612 (Texas State Auditor's Office: Austin, TX November 2007) i-ii

id. ii

id. ii-iii

id. iii

id. 7

Texas Secretary of State, Elections Division, Monitoring of HAVA Implementation Interim Charge: TEAM, (Texas Secretary of State: Austin, TX; 2008) 2

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Case 1:12-cv-00128-RMC-DST-RLW   Document 241-8   Filed 06/27/12   Page 53 of 79
1992) 1

124 Texas Ethics Commission, Recommendations for Statutory Changes (Austin, Texas: Texas Ethics Commission
Task Force, January 2007) Exhibit B

125 Texas Senate State Affairs Committee, Bill Analysis of C.S.H.B. 2508 by King, Phil (Austin, Texas: Senate State
Affairs Committee 2007)

126 http://www.sos.state.tx.us/elections/index.shtml
127 http://www.ethics.state.tx.us/tec/commissioners.htm
128 http://www.ethics.state.tx.us/tec/duties.htm
Lisa Ried

From: John Sepehri [JSepehri@sos.state.tx.us]
Sent: Wednesday, July 20, 2011 6:24 PM
To: Travis Richmond; Jeff Boyd
Subject: RE: SB 14 Submission

I am going to call Jimmy at 4 pm tomorrow. We can do it from my office, yours or Jeff's office as two please.

Yes—Jimmy sent a document with suggested edits this afternoon where they heavily marked up our draft, especially the portions staff worked on and less so to the minority impact statement which was my primary contribution. OAG did, however, delete the last argument I put into the minority impact statement, and I might want to talk to you guys about that as well as Jeff's comments before I call OAG.

Could you two meet for a half hour before the 4 pm call?

In the meantime, I will forward you and Jeff the OAG suggested revisions for you to peruse as you wish and at your leisure.

JS

From: Travis Richmond [mailto:travis.richmond@governor.state.tx.us]
Sent: Wednesday, July 20, 2011 5:53 PM
To: Jeff Boyd; John Sepehri
Subject: RE: SB 14 Submission

John – I only see Jeff’s edited document, is there one Jimmy sent?

Where is the 4 pm meeting?

From: Jeff Boyd
Sent: Wednesday, July 20, 2011 5:52 PM
To: Travis Richmond; 'John Sepehri'
Subject: RE: SB 14 Submission

That would be good.

Jeffrey S. Boyd
General Counsel
Office of Texas Governor Rick Perry
1100 San Jacinto Blvd.; Fourth Floor
Austin, Texas 78701
512/463-1788
jeff.boyd@gov.texas.gov

From: Travis Richmond
Sent: Wednesday, July 20, 2011 5:52 PM
To: Jeff Boyd; 'John Sepehri'
Subject: RE: SB 14 Submission

I am happy to join tomorrow if you guys want.
From: Jeff Boyd  
Sent: Wednesday, July 20, 2011 5:18 PM  
To: 'John Sepehri'; Travis Richmond  
Subject: RE: SB 14 Submission

John –
I’ve only had time to skim through it while marking edits on the attached. Substantively, for lack of time I will defer to the OAG and you. If there are specific issues you’d like me to consider, I’m happy to do so if you will let me know what they are.
Jeff Boyd

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General Counsel  
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512/463-1788  
jeff.boyd@gov.texas.gov

From: John Sepehri [mailto:Sepehri@sos.state.tx.us]  
Sent: Wednesday, July 20, 2011 5:00 PM  
To: Jeff Boyd; Travis Richmond  
Subject: SB 14 Submission

OAG had some significant suggested revisions, not too unexpectedly from my point of view, particularly to the non-minority impact statement portions. They did, however, delete in its entirety one section I threw in at the end of the minority impact statement. I don’t feel too strongly about it and think I see why. But I do want to discuss with them.

Do you all want to join in the discussion we plan tomorrow afternoon to provide any thoughts from your end? Did you want to see their suggested changes or do you prefer we work it out with them and then you can see the combined SoS/OAG version? Or some other approach? Just let me know.

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Lisa Ried

From: Jeff Boyd
Sent: Wednesday, July 20, 2011 5:18 PM
To: 'John Sepehri'; Travis Richmond
Subject: RE: SB 14 Submission
Attachments: photo Identification Submission (2) (JSB edits).docx

John –
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JS
June __, 2011

Mr. T. Christian Herren, Jr.
Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

RE: Submission under Section 5, Voting Rights Act, of Senate Bill 14, Chapter 123, 82nd Legislature, 2011.

Dear Mr. Herren:

We hereby request expedited consideration of this submission under 28 C.F. R. § 51.34. The Legislature of the State of Texas has enacted Senate Bill 14, Chapter 123, 82nd Legislature, 2011 (the “Act”), relating to requirements to vote, including presenting proof of identification. As described in more detail below, the Act requires local election officials and the Office of the Secretary of State to develop voter education programs, and polling place official training programs, and create and revise election forms and postings beginning September 1, 2011. An expedited response from your office will allow the state to promptly implement comprehensive education of voters and local election officials. Accordingly, a decision from your office by August 20, 2011, would be appreciated.

Pursuant to the requirements of 28 C.F.R. § 51.27, the following information is submitted with respect to the Act:

(a) & (b) A copy of the Act is enclosed herewith. An electronic copy of the Act is also available at http://www.sos.state.tx.us/statdoc/bills/index.shtml.

(c) The Act amends the Texas Election Code (the “Code”) and the Texas Transportation Code to require voters to present a current form of photo identification in order to qualify to vote in person at the polling place in elections held in the state of Texas. The Act creates exemptions for certain disabled voters with disabilities, voters whose religious beliefs prevent them from being photographed for identification, and those voters who have lost their identification in disasters. A new post-election cure process is created in the Act to allow individuals who were unable to present their identification at the
polling place to cast provisional ballots, which will be counted if the voter presents identification do-so at the voter registrar’s office within 6 days after the election, in order to have their provisional ballots counted. In addition, the Act creates a new election identification certificate, is created, which is available from the Texas Department of Public Safety, free of charge for voters who do not have access to any other acceptable form of photo identification. The provisions of the Act go into effect for elections held on or after January 1, 2012, and the Secretary of State’s office is charged with both voter and poll worker education on the new requirements. Finally, the criminal penalty for illegal voting is raised to a second degree felony.

SECTION BY SECTION REVIEW

SECTION 1 of the Act amends Section 13.002 of the Code by adding new subsection (i), which provides that a voter registration applicant who wishes to be exempt from the identification requirements of Section 63.001(b) of the Code must present with his or her application: (1) written documentation either from the Social Security Administration stating the applicant has a disability, is disabled or from the Department of Veterans Affairs indicating the applicant has a disability rating of at least 50 percent; and (2) a statement that the applicant does not possess one of the acceptable forms of identification described under Section 63.0101 of the Code.

Section 13.002 was added to the Code by Senate Bill 616, Chapter 211, 69th Legislature, 1985 (precleared on August 16, 1985), and amended by Senate Bill 1441, Chapter 436, 70th Legislature, 1987 (precleared on August 31, 1987), House Bill 612, Chapter 472, 70th Legislature, 1987 (precleared on August 31, 1987), House Bill 613, Chapter 920, 70th Legislature, 1987 (precleared on August 31, 1987), Senate Bill 221, Chapter 2, 71st Legislature, 1989 (a non-substantive change not subject to preclearance), House Bill 74, Chapter 916, 73rd Legislature, 1993 (precleared on September 13, 1993), House Bill 1914, Chapter 390, 74th Legislature, 1995 (precleared on October 13, 1995), House Bill 127, Chapter 797, 74th Legislature, 1995 (precleared on January 16, 1997), Senate Bill 500, Chapter 454, 75th Legislature, 1997 (precleared on August 11, 1997), House Bill 1549, Chapter 1315, 78th Legislature, 2003 (precleared on November 20, 2003), House Bill 1268, Chapter 1049, 79th Legislature, 2005 (precleared on October 21, 2005), House Bill 417, Chapter 614, 80th Legislature, 2007 (precleared on November 16, 2007), Senate Bill 74, Chapter 1295, 80th Legislature, 2007 (precleared on September 27, 2007), Senate Bill 1969, Chapter 87, 81st Legislature, 2009 (a non-substantive change not subject to preclearance), House Bill 536, Chapter 91, 81st Legislature, 2009 (precleared on July 15, 2009), and most recently House Bill 1448, Chapter 632, 81st Legislature, 2009 (precleared on August 5, 2009).

SECTION 2 of the Act amends Section 15.001 of the Code by adding new subsection (c). The new language provides that the registration certificate issued to a voter who met the disability exemption requirements of Section 13.002(i) of the Code must indicate on the certificate that the voter is exempt from the identification requirement other than presentation of the certificate itself.
Section 15.001 was added to the Code by Senate Bill 616, Chapter 211, 69th Legislature, 1985 (precleared on August 16, 1985), and amended in Senate Bill 1441, Chapter 436, 70th Legislature, 1987 (precleared on August 31, 1987), House Bill 1914, Chapter 390, 74th Legislature, 1995 (precleared on October 13, 1995), House Bill 127, Chapter 797, 74th Legislature, 1995 (precleared on January 16, 1997), and Senate Bill 932, Chapter 532, 80th Legislature 2007 (precleared on November 19, 2007).

SECTION 3 of the Act adds new Section 15.005 to the Code, which requires that a notice of the identification requirements and a detailed listing of the forms of acceptable identification to be included with each voter registration certificate and certificate renewal mailing from the county voter registrar. The Secretary of State is required to provide the wording of the notice.

SECTION 4 of the Act makes a conforming amendment to Section 15.022 of the Code to require the voter registrar to correct a registration on receipt of the registrations omissions list or an affidavit submitted under Section 63.006 from a voter swearing that he or she has been placed in the incorrect precinct by the voter registrar’s office.

Section 15.022 was added to the Code by Senate Bill 616, Chapter 211, 69th Legislature, 1985 (precleared on August 16, 1985), and amended by Senate Bill 280, Chapter 54, Chapter 54, 1987 (precleared on August 24, 1987), House Bill 74, Chapter 916, 73rd Legislature, 1993 (precleared on September 11, 1993), and most recently House Bill 127, Chapter 797, 74th Legislature 1995 (precleared on January 16, 1997).

SECTION 5 of the Act adds new Section 31.012 to the Code. Effective September 1, 2011, the Secretary of State and county voter registrars are required to provide information concerning the new identification procedures on their respective websites. The information must be provided in each language in which voter registration materials are available in the state and county. The Secretary of State must provide the wording of the notice. Section 31.012(b) also requires the Secretary of State to conduct a statewide education effort regarding the new identification requirements, and Section 31.012(c) requires each county clerk to post a physical copy of the notice in a prominent location in their offices in each language in which voter registration materials are available in the county.

SECTION 6 of the Act is effective September 1, 2011 and adds Section 32.111(c) to the Code, which requires the Secretary of State to include the new identification requirements and procedures in its poll worker training materials.

Section 32.111 was added to the Code by Senate Bill 616, Chapter 211, 69th Legislature, 1985 (precleared on August 16, 1985) and amended in House Bill 1695, Chapter 1316, 78th Legislature, 2003 (precleared on November 20, 2003).

SECTION 7 of the Act is effective September 1, 2011, and amends Section 32.114(a) of the Code to require that the county clerk must conduct one or more training sessions using the training materials prepared by the Secretary of State regarding the new voter identification requirements. Each election clerk must complete the portion of training
from the county clerk pertaining to voter acceptance and handling of the new identification requirements.

Section 32.114 was added to the Code by Senate Bill 616, Chapter 211, 69th Legislature, 1985 (precleared on August 16, 1985). It was amended by House Bill 74, Chapter 916, 73rd Legislature, 1993 (precleared on September 11, 1993), House Bill 1603, Chapter 864, 75th Legislature, 1997 (a non-substantive change not subject to preclearance) and House Bill 1695, Chapter 1316, 78th Legislature, 2003 (precleared on November 20, 2003).

SECTION 8 of the Act adds new Section 62.016 to the Code. The new section requires the presiding judge of each polling place to post a notice listing the acceptable forms of identification outside each polling location. The list must be in 24-point font or greater (?), and posted separately from other required notices.

SECTION 9 of the Act amends Section 63.001 of the Code. Section 63.001(b) of the Code is amended to require a voter to present one form of identification as set out in Section 63.0101 of the Code to an election official at the polling place in order to qualify to vote. Prior law required voters to present a current voter registration certificate and or another form of identification if the voter did not have his or her current registration certificate.

Section 63.001(c) of the Code is amended to create a new procedure under which the polling place election official reviews the identification to determine whether the voter’s name is on the precinct list of registered voters. If the exact name does not appear on the list, but the election official can determine, using standards adopted by the Secretary of State, that a substantially similar name on the list is in fact the voter, the voter shall be accepted after completing an affidavit attesting to the fact that the voter is the person on the list. Under Section 63.001(d) of the Code, if the voter’s identity is verified from the documentation provided under Section 63.001(c) of the Code, the voter is accepted for voting.

Section 63.001(g) of the Code is added and provides that a voter who does not meet the identification requirements may only vote provisionally. The election judge is required to inform the voter of his or her eligibility to cast a provisional ballot and provide the voter with a form listing the acceptable forms of identification. This form must be created by the Secretary of State, and list the requirements for presenting identification, provide information on the post election identification procedure set out in Section 65.0541 of the Code, include a map showing the location where the identification may be presented, and include a notice that, if the post election procedure is followed; and the voter is found to have been eligible to vote at the precinct, the provisional ballot will be accepted.

Section 63.001(h) of the Code is added and provides that disabled voters with disabilities are exempt from the identification procedure if the voter’s registration certificate contains a disability exemption notation in accordance with Section 15.001(c) of the Code.
Section 63.001 was added to the Code by House Bill 616, Chapter 211, 69th Legislature, 1985 (precleared on August 16, 1985) and amended by House Bill 127, Chapter 797, 74th Legislature, 1995 (precleared on January 16, 1997) and most recently House Bill 1603, Chapter 864, 75th Legislature, 1997 (a non-substantive change not subject to preclearance).

SECTION 10 of the Act amends Section 63.0011(a) of the Code. The section is amended to provide that a federal or state judge or the spouse of a federal or state judge whose residence address has been omitted from the precinct list of registered voters under Section 18.005(e) of the Code shall be asked by the polling place election official whether the residence address on their identification is current and whether the voter has changed residence in the county.

Section 63.0011 was added to the Code by House Bill 127, Chapter 797, 74th Legislature, 1995 (precleared on January 16, 1997). It was later amended by House Bill 41, Chapter 594, 80th Legislature, 2007 (precleared on October 2, 2007) and by House Bill 3069, Chapter 927, 81st Legislature, 2009 (precleared on September 9, 2009).

SECTION 11 of the Act adds new Section 63.0012 to the Code. The new section is effective September 1, 2011, and requires that if a voter submits an insufficient form of identification when qualifying to vote at a polling place, election officials must distribute a notice to voters regarding the new identification requirement that will be effective for elections held on or after January 1, 2012, along with the process for obtaining a free identification card from the Texas Department of Public Safety (TDPS) under new Chapter 521A of the Texas Transportation Code. The new form must be designed by the Secretary of State. Section 63.0012 of the Code expires on September 1, 2017.

SECTION 12 of the Act amends Section 63.006 of the Code, providing that a voter whose name is not on the precinct list but presents a valid form of identification shall be accepted for voting if the voter also presents a registration certificate indicating the voter is registered in the precinct or is registered in a different precinct in the same county and executes an affidavit stating the voter is a resident of the precinct where offering to vote, was a resident of the precinct at the time the information on the residence address was last provided to the registrar, did not deliberately provide false information to the registrar, and will vote only once in the election. Under Section 63.006(b) of the Code, after the voter is accepted, the voter’s name is entered on the registration omissions list.

Section 63.006 was added to the Code by House Bill 616, Chapter 211, 69th Legislature, 1985 (precleared on August 16, 1985) and amended by House Bill 1603, Chapter 864, 75th Legislature, 1997 (a non-substantive change not subject to preclearance).

SECTION 13 of the Act amends Section 63.009 of the Code to delete the procedure under which a voter who has no certificate and whose name is not on the precinct list of registered voters could vote after the voter registrar confirmed the voter’s eligibility and the voter completed two separate affidavits. Under the change, the voter who has no certificate and whose name does not appear on the precinct list would have to vote provisionally and complete the provisional voter affidavit.
Section 63.009 was added to the Code by House Bill 616, Chapter 211, 69th Legislature, 1985 (precleared on August 16, 1985). It was amended by House Bill 75, Chapter 728, 73rd Legislature, 1993 (precleared on September 13, 1993), House Bill 330, Chapter 1078, 75th Legislature, 1997 (precleared on October 8, 1997), House Bill 331, Chapter 1349, 75th Legislature, 1997 (precleared on September 2, 1997), and most recently by House Bill 1549, Chapter 1315, 78th Legislature, 2003 (precleared on November 20, 2003).

SECTION 14 of the Act amends Section 63.0101 of the Code to which removes all non-photographic identification from the forms of identification acceptable for voting at the polling place. The deleted forms of identification include the birth certificate or other documents confirming birth and admissible in a court of law, citizenship papers that do not contain the person's photograph, official mail addressed to the voter from a governmental entity, copies of a current utility bill, bank statements, paychecks, or other government documents that show the name and address, but not the photograph, of the voter. Additionally, the Act amends this Section to delete the authorization for the Secretary of State to prescribe additional forms of identification, as deleted.

Also deleted as acceptable identification at the polling place are driver's licenses and personal identification cards issued by other states.

Added to the list of acceptable forms of identification are a United States military identification card that contains the person's photograph and has not expired or that expired no earlier than 60 days before the date of presentation, a concealed handgun carry license issued by the TDPS that has not expired earlier than the 60th days before the date of presentation, and the an election identification certificate issued by the TDPS, as set out in Chapter 521A, Texas Transportation Code.

Finally, the TDPS-issued driver’s license and personal identification card and the United States passport remain valid identification but, in a change from prior law, must be current or have expired not earlier than the 60th day before the date of presentation.

Section 63.0101 was added to the Code by House Bill 330, Chapter 1078, 75th Legislature, 1997 (precleared on October 8, 1997). It was amended by House Bill 331, Chapter 1349, 75th Legislature, 1997 (precleared on September 2, 1997), by House Bill 1603, Chapter 864, 75th Legislature, 1997 (a non-substantive change not subject to preclearance), and most recently by House Bill 1549, Chapter 1315, 78th Legislature, 2003 (precleared on November 20, 2003).

SECTION 15 of the Act amends Section 63.011 of the Code to add a requirement that the provisional ballot affidavit include a space for the election officer to indicate whether the voter presented a valid form of identification.

Section 63.011 was added to the Code by House Bill 1549, Chapter 1315, 78th Legislature, 2003, (precleared on November 20, 2003), and later amended by House Bill 2823, Chapter 1073, 80th Legislature, 2007 (precleared on September 24, 2007).
SECTION 16 of the Act amends Section 64.012 of the Code to increase the penalty for illegal voting in an election to a second degree felony from a third degree felony and to increase the penalty for attempted illegal voting to a state jail felony from a Class A misdemeanor.

Section 64.012 was added to the Code by Senate Bill 616, Chapter 211, 69th Legislature, 1985 (precleared on August 16, 1985), amended by House Bill 1603, Chapter 864, 75th Legislature, 1997 (a non-substantive change not subject to preclearance), and by House Bill 54, Chapter 393, 78th Legislature, 2003 (precleared on November 21, 2003).

SECTION 17 of the Act amends Section 65.054(b) of the Code. The amendment first clarifies that a provisional ballot shall be accepted (rather than may be accepted) if the early voting ballot board determines the provisional ballot affidavit envelope was properly completed and the voter is eligible to vote in the election. Section 65.054(b)(2) of the Code is added to create three exceptions to allow acceptance of the provisional ballot assuming if the voter was not challenged and voted provisionally solely because of the lack of identification: (1) the voter must have met the identification requirements either at the time the ballot was cast or submitted to the county voter registrar after the election per Section 65.0541 of the Code; (2) a voter with a religious objection to being photographed may complete an affidavit stating the objection and that the voter has consistently refused to be photographed for any governmental purpose during the period the voter has held the religious belief; and (3) the voter may complete an affidavit asserting that he or she does not have valid identification due to a natural disaster declared by the President of the United States no earlier than 45 days prior to the date the ballot was cast, which caused the destruction of the voter’s identification or the inability to access the voter’s identification.

Section 65.054(b) was added to the Code by House Bill 1549, Chapter 1315, 78th Legislature, 2003, (precleared on November 20, 2003), and later amended by House Bill 2823, Chapter 1073, 80th Legislature, 2007 (precleared on September 24, 2007).

SECTION 18 of the Act adds new Section 65.0241 to the Code. Under this new section, a voter who cast a provisional ballot because he or she did not present an acceptable form of identification at the polling place may correct the problem by presenting a valid identification to the voter registrar not later than the 6th day after the date of the election or by completing one of the affidavits set out in Section 65.054(b)(2)(B) (religious objection) or (C) (natural disaster objection) in the presence of the registrar. The Secretary of State is charged with prescribing the procedures to implement this section.

SECTION 19 of the Act amends Section 66.0241 of the Code to conform changes related to SECTION 12 of the Act, relating to which documents are placed in Envelope Number 4, which is given to the county voter registrar after election day to make updates to the voter registration list.

SECTION 20 adds Chapter 521A to the Texas Transportation Code. Section 521A.001(a) requires the Texas Department of Public Safety (TDPS) to issue election identification
certificates to persons who stating that they are obtaining the certificate to comply with the identification requirements set out in Section 63.001 of the Code because they do not have one of the acceptable forms of identification listed under Section 63.0101 of the Code. At the time the person applies for the election identification certificate, the person must be either a registered voter and must either presents a valid registration certificate or apply for voter registration at that time. Section 521A.001(b) provides that TDPS may not charge a fee for issuance of the election identification certificate or a duplicate certificate. Under Section 521A.001(c), the election identification certificate may not be used or accepted as a personal identification certificate. Under Section 521A.001(d), an election official may not deny a person who presents an election identification certificate the ability to vote on the basis that the person failed to submit a TDPS driver’s license or personal identification card. Section 521A.001(e) requires TDPS to design the election identification certificate to be similar in form but distinguishable by color from the driver’s license and personal identification certificate. TDPS may cooperate with the Secretary of State in designing the form. Under Section 521A.001(f), TDPS may require applicants for the election identification certificate to furnish the same information required for a driver’s license under Section 521.142 of the Transportation Code. Section 521A.001(g) authorizes TDPS to cancel and require surrender of an election identification certificate if TDPS determines the holder was not entitled to the certificate or provided incorrect/misleading information on the certificate application. Finally, under Section 521A.001(h), an election identification certificate expires on a date set by TDPS, except that certificates issued to voters 70 or older do not expire.

SECTION 21 of the Act repeals Section 63.007 of the Code and Section 63.008 of the Code to conform with changes in SECTIONS 12 and 13 of the Act.

SECTION 22 of the Act requires the Secretary of State to adopt training standards and develop training materials to implement the changes to polling place procedures under the Act as soon as practicable after September 1, 2011. In addition, as soon as practicable the county clerk is required to provide a session of training under Section 32.111 of the Code that incorporates the new Secretary of State training standards.

SECTION 23 of the Act provides that the change in law set out in SECTION 16, increasing the penalty for illegal voting to a second degree felony and attempted illegal voting to a state jail felony, applies only to offenses committed on or after January 1, 2012. Offenses committed before that date are covered by the law in effect at the time of the offense, and an offense is considered to have been committed before January 1, 2012, if any element of the offense was committed prior to that date.

SECTION 24 of the Act provides that, effective September 1, 2011, county voter registrars may use state funds disbursed under Chapter 19 of the Code for expenses connected with voter registration drives and other activities designed to increase voter registration. This section expires on January 1, 2013.

(d) The submitting authority is the Honorable Hope Andrade, Secretary of State of Texas, in her capacity as chief elections officer of Texas. The Secretary of State's office may be reached at P.O. Box 12060, Austin, Texas 78711-2060, (512) 463-5650.
(c) Not applicable.

(f) Not applicable.

(g) The authority responsible for the passage of the Act was the Texas Legislature.

(h) The Act was adopted pursuant to the provisions of Tex. Const. art. III, § 30.

(i) The Act was passed by the Texas Senate on January 26, 2011, and by the Texas House with amendments on March 24, 2011. The Senate adopted the conference committee report on May 9, 2011, and the House adopted the conference committee report on May 16, 2011. The Act was signed by Governor Rick Perry on May 27, 2011.

(j) The training provisions, the notice of identification requirements in SECTION 11, and the state funds disbursement requirement in SECTION 24 take effect on September 1, 2011. The remaining provisions will take effect on January 1, 2012.

(k) The provisions of the Act have not been implemented.

(l) These procedures will affect the residents of the State of Texas.

(m) The reason for the change provided for in the Act is to ensure the integrity of the voting process by allowing registered voters to vote and preventing ineligible voters from voting, while providing safeguards to ensure that no eligible voter is prevented from having his or her ballot counted in an election.

(n) The Act will not affect members of any racial or linguistic minority differently from the way the general public is affected. The Act does not have the intent and will not have the effect of diluting the voting strength of any racial or linguistic minority. The preceding conclusions are demonstrated by the provisions of the Act, the Department of Justice (the “DoJ”) having pre-cleared similar laws passed in other states such as Georgia, the lack of any successful Section 2 challenge to those laws (and Indiana’s similar photo identification law), analysis of voting data in states that have had similar photo identification laws in place for some time, and the widespread public support photo identification laws enjoy, including among minority communities.

The Act requires the use of photo identification documentation that is commonly utilized by the vast majority of the public. As former United States Supreme Court Justice John Paul Stevens acknowledged in that court’s decision upholding Indiana’s photo identification law against constitutional attack, modern life requires photo identification to transact even the most mundane business. Indeed, in delivering the judgment of the United States Supreme Court, Justice Stevens, joined by Chief Justice Roberts and Justice Kennedy, approvingly cited the following statement of the Commission on Federal Election Reform co-chaired by former President Jimmy Carter and Secretary of State James A. Baker III: “Photo identification cards are currently needed to board a plane, enter federal buildings, and cash a check. Voting is equally important.” Crawford v.
Marion County Elect’n Bd., 128 S.Ct. 1610, 1618 (2008). Commensurate with such sentiments, the Act provides for the acceptance of: a state-issued driver’s license or personal identification card, a United States military identification card, a United States passport, a United States citizenship certificate, and a concealed handgun license [or an election identification certificate?]. Section 13 of the Act. Indeed, while there are only 12,604,131 registered voters in Texas, there are currently about 17,008,051 active Texas driver’s licenses and identification cards. The obvious inference is that Texas’ new photo identification requirements will not dilute minority voting strength because minorities are likely to possess or be able to obtain such widely used identification at rates similar to White voters.

To allay any conceivable concern to the contrary, no matter how unwarranted, the Act includes extensive voter education provisions and other safeguards. The Act requires state and local authorities to engage in a thorough voter education and outreach program including the following elements: inclusion of the new requirements on new voter registration cards and renewal cards issued to all registered voters beginning late this year, inclusion of the requirements on the Secretary of State’s web site in all languages required for election materials in Texas and on local registrars’ websites in the locally requisite languages, physical inclusion of the requirements in all county clerks’ offices in such languages, physical posting of the requirements at prominent places within polling locations, and a statewide voter education program conducted by the Secretary of State. See Sections 3, 4, 5 and 8 of the Act. Historically, Texas’ statewide voter education efforts have included print and electronic media such as radio and television and have included specific efforts to reach minority communities. In sum, the Act clearly seeks to ensure every voter, regardless of their race, education level, or station in life, is fully informed about the new requirements.

In the event that the state’s extensive voter education and outreach efforts escape a small number of voters, the Act takes still more precautions. For example, it provides for a “cure” period whereby a voter may return after casting a provisional ballot to present the required ID if the voter failed to do so at the polls. Indeed, the Act requires election workers to specifically inform such provisional voters of the acceptable forms of photo identification. See Sections 9 and 11 of the Act. It also requires election clerks to take specific training over on the Act’s requirements so that all voters will receive like treatment when they present themselves for voting in person. See Sections 6 and 7 of the Act. The Act even provides for difficulties that may arise in clerical handling of Hispanic surnames by instructing election workers to utilize set standards for accepting voters whose photo identification documents include spellings of their names that may not be identical to but are substantially similar to the spellings on poll lists in polling locations. See Section 9 of the Act. Lastly, to the extent persons belonging to racial or linguistic minorities disproportionately suffer from poverty and thereby currently lack photo identification, the Act creates an entirely new identification document that the state must provide free of charge to voters who attest to their inability to pay for other acceptable forms of identification.

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1 For elections conducted after January 1, 2012, election workers must provide notice of the acceptable forms of photo identification to all voters presenting identification that does not meet the requirements of the Act and information on how such voters can obtain acceptable identification for free. Section 11 of the Act. DOESN’T THIS APPLY TO ELECTIONS AFTER 9/1/2011?
forms of identification. See Section 20 of the Act. This truly remarkable litany of fail
safe educational and other efforts to ensure no disparate negative impact on minority
voters should alone demonstrate that no such impact will occur.

The framework Texas has created in its photo identification law to root out voter fraud
without negatively impacting minority voters is consistent with similar photo
identification regimes in other states that DoJ has pre-cleared. For example, DoJ pre-
 cleared Georgia’s photo identification laws in 2005 and 2006. Georgia’s law is highly
very similar to the Act in that Georgia requires the following forms of photo
identification for in person voting: a Georgia driver’s license, an identification card
issued by any Georgia state entity or the United States; a valid United States passport;
an employee identification card issued by any Georgia state entity, the United States, or
local political entity; a United States military identification; or a tribal identification
card. Georgia Stat. Ann. Section 21-2-417(a). Like Texas, Georgia has included a “cure”
period (of more limited duration than the Texas cure period), and free photo identification
for economically distressed voters lacking other approved forms of identification, and has
Sections 21-2-417(b), 418, and 419. In fact, DoJ first pre-cleared Georgia’s photo
identification law even before Georgia enacted its free ID provision and the most recent
extensive voter education mandate, which Georgia added in a subsequent legislative
session.²

DoJ should also consider the history of Indiana’s photo identification law when
evaluating the Act. Indiana enacted an in person voting photo identification law similar
to the Act, which requires voters to present photo identification that is issued by the
United States or State of Indiana issued, which includes the name of the voter in a
form that conforms to the voter’s registration record and an expiration date. The
identification must be current or have expired after the date of the most recent general
those voting in person at a precinct polling place located at a state licensed care facility
where they reside and those attesting to indigency or a religious exception to being
photographed. See Ind. Stat. Ann. Sections 3-10-1-7.2(e), 3-11-8.25.1, 3-11-10-1.2, 3-
11.7-5-1, and 3-11.7-5-2.5. Indiana voters not qualifying for an exception and failing to
meet the photo identification standard are allowed to vote provisionally and later provide

² DoJ has also pre-cleared photo identification laws in other states such as Arizona, Louisiana, and Alabama. The
Arizona law requires voters to present either one form of photo identification with a voter’s name and address on it
or two forms of non-photo identification that contain the person’s name and address. See Ariz. Stat. Ann. Section
16-579. Louisiana’s law does not allow voters the use of a non-photo ID; however, it allows voters unable to
present a photo ID to sign an affidavit or present other evidence concerning the voter’s identity. See Louisiana Stat.
Ann. Section 18: 562. Alabama’s law requires voters to present either one form of photo identification or one form
of non-photo documentation issued by government, a utility, or a bank. Lastly, Florida enacted a photo identification
law that does not allow for the use of non-photo ID, although the entirety of that state is not subject to Voting Rights
Act pre-clearance and the law allows for provisional ballots to be accepted by local authorities if those authorities
conclude the ballot was legitimately cast. See Florida Stat. Ann. Title 9, Sec. 101.043.
the required identification. See Ind. Stat. Ann Sections 3-11-8-25.1, 3-11-7.5-2.5, 3-11.7-5-1, and 3-11.7-5-2.5.3

Various plaintiffs challenged Indiana’s statutory regime on federal and state constitutional grounds and federal and state statutory grounds, claiming the law would negatively impact minority communities. See Indiana Democratic Party v. Todd Rokita, 458 F.Supp.2d 775, 820-43 (So. Dist. Ind. 2006), aff’d by, 472 F.3d 949 (7th Cir. 2007), aff’d by, 128 S. Ct. 1610 (2008). Although the claims did not include Voting Rights Act dilution claims, they did include allegations that the State of Indiana violated voting rights provisions of the Civil Rights Act of 1964. See id. at 839-42 (discussing claims under 42 U.S.C. 1971). Moreover, in considering the gamut of plaintiffs’ claims, the courts at the trial and appellate levels clearly considered concerns that Indiana’s law would negatively impact members of minority communities. See, e.g., 458 F.Supp.2d at 795-96; Crawford v. Marion County Elect’n Bd., 472 F.3d 949, 952 (7th Cir. 2007), aff’d by, 128 S. Ct. 1610 (2008); 128 S. Ct. at 1614.

At every level, the federal courts upheld Indiana’s law with concerns about the Indiana law’s effect on minority groups prominently before them. In doing so, the trial court wrote:

Despite apocalyptic assertions of wholesale voter disenfranchisement, Plaintiffs have produced not a single piece of evidence of any identifiable registered voter who would be prevented from voting pursuant to [the Indiana photo ID law] because of his or her inability to obtain the necessary photo identification. Similarly, Plaintiffs have failed to produce any evidence of any individual, registered or unregistered, who would have to obtain photo identification in order to vote, let alone anyone who would undergo any appreciable hardship to obtain photo identification in order to be qualified to vote . . .

Plaintiffs’ inability to provide the names or otherwise identify any particular affected individuals persists despite various polls and surveys that were conducted for the specific purpose of discovering such individuals . . .

[It is a testament to the law’s minimal burden and narrow crafting that Plaintiffs have been unable to uncover anyone who can attest to the fact that he/she will be prevented from voting despite the concerted efforts of the political party and numerous interested groups who arguably represent the most severely affected candidates and communities.

458 F.Supp.2d at 822-23. The Seventh Circuit added that there was “something remarkable about the plaintiffs considered as a whole” as there was not a single one “who intend[ed] not to vote” because of the Indiana law. 472 F.3d at 951-52.

3 For a more complete recitation of Indiana’s statutory scheme as well as evidence of the actual practice in Indiana elections, see Indiana Democratic Party v. Todd Rokita, 458 F.Supp.2d 775, 786-87 (So. Dist. Ind. 2006), aff’d by, 472 F.3d 949 (7th Cir. 2007), aff’d by, 128 S. Ct. 1610 (2008).
On review by As for the United States Supreme Court, Justice Stevens explained in the Court’s [lead majority?] opinion for the Court, that, given Indiana’s provision of free photo identification, in most instances, "the inconvenience of making a trip to the [Bureau of Motor Vehicles], gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting." 128 S.Ct. at 1621. And after speculating that such burdens could impose a special burden on a small number voters, such as those in economic distress, Justice Stevens noted that the record before the Court simply provided no basis to conclude Indiana’s law placed excessively burdensome requirements on any class of voters. See id. at 1623. Moreover, Justice Stevens directly addressed and rejected a dissenting opinion urging arguments typical of those positing that photo ID laws dilute minority voting strength, such as assertions that tens of thousands of Indiana citizens did not possess photo identification or that some of those citizens might not have readily available public transportation to obtain such identification. See id. at 1623 n. 20.

Three other justices who joined in the judgment of the Court refused to even entertain, at least for constitutional purposes, a person by person analysis of the burdens of a voting regulation when the regulation has non-discriminatory purpose and is generally applicable. See id. at 1625-1627. Justice Scalia wrote for those justices as follows: "The universally applicable requirements of Indiana’s voter-identification law are eminently reasonable. The burden of acquiring, possessing, and showing a free photo identification is simply not severe, because it does not 'even represent a significant increase over the usual burdens of voting. And the state’s interests . . . are sufficient to maintain that minimal burden. That should end the matter." Id. at 1627. Tellingly, no one has since made a record reflecting an excessive or disparate burden on any class of persons in Indiana on any legal basis, whether under federal constitutional or statutory grounds. This is especially significant because Indiana is a state with significant minority population groups. See: Indiana Quick Facts from the US Census Bureau. In sum, the fact that Indiana’s law remains intact and that state’s statute books more than three years after the United States Supreme Court’s Crawford decision is strong evidence that the Act will also produce no evidence of disparate impact on members of racial or ethnic minorities.

Analysis of voting patterns in Indiana since the implementation of that state’s photo identification regime reflects why no one has lodged a successful legal challenge. Professor Jeffrey Milyo, a professor of public affairs and economics who has been affiliated with the University of Missouri, the University of Kansas, and the Cato Institute, specifically looked at voting patterns in Indiana before and after the implementation of photo ID requirements in a publication for the Institute of Public Policy at the University of Missouri’s Harry S. Truman School of Public Affairs. He compared turnout between the 2002 and 2006 midterm elections and implemented various control factors or “sensitivity checks” to isolate the effects of Indiana’s photo ID law. See Jeffrey Milyo, The Effects of Photographic Identification on Voter Turnout in Indiana: A County Level Analysis, Institute of Public Policy, University of Missouri Harry S. Truman School of Public Affairs at 1, 7 (December 2007). Professor Milyo
specifically sought to identify the effects of photographic identification on “turnout in counties with a greater percentage of minority, poor, elderly, or less educated populations.” See id. He concluded that, while overall voter turnout in Indiana increased about two percentage points from 2002 to 2006, turnout in counties with greater percentages of minority or poor voters increased by even more, and that the most consistent effect of photo identification in Indiana was to increase turnout in counties with a greater percentage of Democrat-leaning voters. See id. at 1, 7.  

In light of Indiana’s experience, it should not be surprising that data from Georgia—the state with the other implemented photo identification requirement most similar to the Act—reflects no dampening of minority turnout. As the attached material from the Georgia Secretary of State’s Office reflects, minority turnout increased after Georgia adopted photo identification. And it did so for both Hispanics and African Americans in both presidential and midterm election cycles (2004 to 2008 and 2006 to 2010). In sum, the evidence not only reflects no negative turnout impact on minority voters, but actually suggests that photo identification laws may have bolstered turnout—a result some proponents of photo identification predicted could occur because they argued photo identification would boost confidence in the electoral system.

That prediction correlates with one last metric that suggests the Act will not negatively impact minorities: the strong public support that exists throughout the country for photo identification laws across partisan and even racial lines. For example, one poll reported that 82% of Americans, including 75% of Democrats, believe that “people should be required to show a driver’s license or some form of photo ID before they are allowed to vote.” John Fund, Stealing Elections: How Voter Fraud Threatens Our Democracy 5, 136 (2004). A Wall Street Journal/NBC poll in 2006 similarly found that 80% of voters favored a photo ID requirement, with 62% favoring it strongly. Only 7% were opposed. John Fund, Jimmy Carter is Right, WALL ST. J., May 22, 2006. Still another survey concluded that: (1) 95% of people who identify themselves as conservatives or Republicans supported voter ID requirements; (2) slightly more than 70% of moderates and independents expressed support; and (3) two-thirds of Democrats supported the idea; as did 60% of people who identified themselves as liberal and 50% calling themselves “very liberal.” Stephen Ansolabehere, Elting R. Morison Professor, Dep’t of Pol. Sci., MIT, Paper Presented at N.Y.U.Ann.Surv.Am.L. Symp.: “Access Versus Integrity in Voter Identification Requirements” at 4-5 (2007). The latter survey found that over 70% of Whites, Hispanics, and African-Americans supported such requirements. Id. at 5. These sorts of results are replicated in Texas, where a February 2011 poll showed:

Support for requiring photo IDs for voters is overwhelming, with 75 percent in favor and 17 percent opposed. It's favored by virtually every subgroup in the survey: Republicans, independents and Democrats; whites, blacks and Hispanics; men and women; and urban, suburban and

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4 Findings such as Professor Milyo’s may explain why a heavily Democratic state such as Rhode Island recently adopted a requirement that voters present photographic identification to vote in person even though Democratic politicians have often opposed photo ID. See Rhode Island Governor Signs Voter ID Bill, Yahoo News, July 7, 2011, http://sg.news.yahoo.com/rhode-island-governor-signs-voter-id-bill-211606786.html. Notably, a minority Democrat sponsored the measure in the Rhode Island state senate. Id.
rural. Hispanics — one of the populations many fear would be disadvantaged by such a law — favor showing photo IDs by a 68 percent to 22 percent margin. Democrats favor it by a 58 to 32 percent split, independents by a 70 to 19 percent margin.

Ross Ramsey, *UT/TT Poll: Texans Are Ready to Roll the Dice*, Texas Tribune, Feb. 23, 2011, [http://www.texastribune.org/texas-issues/gaming-gambling/uttt-poll-texans-are-ready-to-roll-the-dice/](http://www.texastribune.org/texas-issues/gaming-gambling/uttt-poll-texans-are-ready-to-roll-the-dice/). This pattern of support also apparently manifested itself in actual voting in Arizona, since that state’s photo identification requirement originated in a citizen initiative. Exit polls reflected that minority voters backed the initiative, Proposition 200, even though it included multiple highly controversial measures, such as proof of citizenship when registering to vote and evidence of legal residency when applying for some government benefits. See CNN.com Election Results, November 17, 2004, [http://www.cnn.com/ELECTION/2004/pages/results/states/AZ/01/epolls.0.html](http://www.cnn.com/ELECTION/2004/pages/results/states/AZ/01/epolls.0.html); Lourdes Medrano and Enric Volante, *Prop. 200 had Hispanic Support*, Ariz. Daily Star, November 4, 2004. It is doubtful that there would be so much minority support for photo identification laws if minority citizens thought their members of their race would be negatively impacted by photo identification laws. The Department should respect the judgment of so many of the citizens the Voting Rights Act is designed to protect.

But to the extent the Department seeks more information regarding the lack of disparate impact on any racial or linguistic minority, please contact:

The Honorable Aaron Peña (joint sponsor)  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910  
(512) 463-0426

The Honorable Larry Gonzales (co-sponsor)  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910  
(512) 463-0670

The Honorable Jose Aliseda (co-sponsor)  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910  
(512) 463-0645

(o) There is no past or pending litigation concerning the subject matter of the Act.

(p) The procedure for the adoption of the change is not subject to preclearance.

If you have any questions or need additional information, please contact Paul Miles, Staff Attorney, Elections Division, at (512) 463-5650.
Sincerely,

Ann McGeehan
Director of Elections

Enclosure

AM:PM:id
Lisa Ried

From: John Sepehri [JSepehri@sos.state.tx.us]
Sent: Wednesday, July 20, 2011 5:00 PM
To: Jeff Boyd; Travis Richmond
Subject: SB 14 Submission

OAG had some significant suggested revisions, not too unexpectedly from my point of view, particularly to the non-minority impact statement portions. They did, however, delete in its entirety one section I threw in at the end of the minority impact statement. I don’t see too strongly about it and think I see why. But I do want to discuss with them.

Do you all want to join in the discussion we plan tomorrow afternoon to provide any thoughts from your end? Did you want to see their suggested changes or do you prefer we work it out with them and then you can see the combined SoS/OAG version? Or some other approach? Just let me know.

JS