

The State of Texas



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Hope Andrade
Secretary of State

October 4, 2011

Mr. T. Christian Herren, Jr.
Chief, Voting Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Herren:

This is in response to your September 23, 2011, request for additional information concerning the submission of Senate Bill 14 (Chapter 123) passed in the 82nd Regular Texas Legislative Session. You have asked for five categories of additional information, and we will address each request below.

1. A detailed description of the voter education program that the State will implement pursuant to Section 5 of Chapter 123.

The Office of the Secretary of State is issuing a Request for Proposals (“RFP”) for the development and implementation of a comprehensive statewide voter education program. As specified in the RFP, the voter education program will focus on four critical areas: (1) how to register to vote; (2) how to comply with photo identification requirements; (3) polling place processes and procedures; and (4) how to properly cast a ballot. Attached is the ‘scope and tactics’ section of the RFP detailing the voter education program to be implemented, and the intended timeline for development and implementation. The RFP requires current research be the foundation of the voter education program, ensuring the use of “best practices” and most effective communications strategies and messages to achieve maximum success in reaching voters statewide and targeted sub-groups, including but not limited to minority voters, elderly voters, military and overseas voters, and young voters.

Additionally, our office is updating our standard online voter pamphlets such as “Texas Voting,” and “Services Available to Voters With Special Needs,” which appear along with other voter information provided at our “Votexas.org” website. As you are likely aware, all voter materials on our website appear in English and Spanish.

2. A detailed description of the efforts that the State will undertake, including the issuance of any rules, regulations, or written guidance, to inform and train state and county election officials regarding photo identification requirements, including, but not limited to, the implementation of the election identification card system; the acceptance and

handling of a voter's photo identification pursuant to Section 6 of Chapter 123; the verification of identity pursuant to Section 9 of the Act; and the manner in which the State will resolve discrepancies between information on presented identification and information contained on the list of registered voters. Please include a description of all materials that will be used to implement the program.

The Office of the Secretary of State has proposed two administrative rules as part of our effort to inform and train state and county election officials concerning voter identification requirements. On September 16, 2011, this office proposed rule 1 TAC 81.71, which concerns standards for determining when a voter's name on the photo identification substantially matches the voter's name on the list of registered voters; this proposed rule was forwarded to your office per your staff's request on September 8, 2011. The earliest possible date of adoption is October 16, 2011, and once adopted, the rule will be officially submitted to your office for preclearance. The rule is posted on the Secretary of State website, and may be found at this <http://www.sos.state.tx.us/texreg/archive/September162011/PROPOSED/1.ADMINISTRATION.html#14>. On September 23, 2011, the Office of the Secretary of State proposed rules 1 T.A.C. §§ 81.172, 81.173 and 81.174 concerning modifications to the administrative rules governing provisional voting, in part, in order to incorporate the six-day cure period provided for in Senate Bill 14. Three separate rules are required due to the various voting systems in use in the state, but the substance of the cure process is the same in each rule. The earliest day of adoption is October 23, 2011, and once adopted, the rules will be submitted to your office for preclearance. The rules are posted on the Secretary of State website and may be found at this <http://www.sos.state.tx.us/texreg/sos/index.html>. As explained more thoroughly in the response to Question 3 below, the DPS will be proposing an administrative rule concerning the process to obtain an election identification certificate.

Once these administrative rules are adopted and precleared, the educational materials that the Office of the Secretary of State prepares for local election officials will be updated accordingly. Specifically, the Handbook for Qualifying Voters, the 30 minute Qualifying the Voter video/DVD, and the Online Poll Worker training will be updated. As required in Section 7 of Senate Bill 14, all election judges and clerks will be required to complete at least one of the state prescribed training tools, in addition to any training that may be required by the local election authority. Enclosed are samples of the existing handbook and video, and if you are interested in reviewing the online training program, please let us know and we can provide you a log-in and password. Photo identification requirements will be fully integrated into the existing training regime in a similar fashion as the current voter identification requirements. In addition, the DPS website will have information about the election identification certificate and how people can obtain the card.

3. On September 15, 2011, the State provided a draft of proposed administrative rules developed by the Texas Department of Public (DPS) regarding the election identification certificate program:
 - a. Please advise of the State's plans and timing for publication of such rules, receipt of public comment and final rules enactment;

As stated above, the Department has initiated the administrative rulemaking process regarding the election identification certificate. The following is a projected timeline for the process:

September 27, 2011 – Proposed rules approved by Public Safety Commission for publication in the Texas Register;

October 3, 2011 – Rules will be submitted to the Texas Register by the Monday, noon deadline for the October 14th issue;

October 14, 2011 – Proposed rules published in the October 14, 2011 issue of the Texas Register;

November 14, 2011 – 30-day Comment period expires;

November 17, 2011 – The Public Safety Commission has not yet determined a date for their November meeting. However, meetings are often scheduled for the third Thursday of the month. If the November Public Safety Commission meeting is set for the third Thursday, that will be November 17, 2011. This would be the earliest point in time the rules could be adopted and approved for publication.

November 18, 2011 (or the day following the November Public Safety Commission meeting) the rules will be submitted to the Texas Register for publication

December 8, 2011 – Rules become effective (twenty (20) days following submission for publication)

If the Department receives a high volume of public comments or a request for a public hearing, this could possibly delay the presentation of the rules for adoption at the November PSC meeting. In that event, the rules would be placed on the agenda for the December PSC meeting. No date has been set for the December 2011 meeting. After the rules are adopted and approved for publication by the PSC, they are submitted to the Texas Register. The rules become effective twenty (20) days following submission for publication. If the rules are adopted in the December meeting, they will not be effective by January 1, 2012. However, this will not impede the initiation of the election identification certificate issuance program on January 1, 2012.

- b. Please provide a detailed description of the locations and dates when an individual may obtain a free election identification certificate, including, but not limited to: a description of all means of informing the public of the distribution process if any transportation or other assistance will be provided to individuals trying to obtain such a certificate, and whether such efforts at providing information and/or assistance will be focused on any groups of persons or particular areas of the state; and a description of all equipment and materials necessary to implement the program, as well as any renewal procedures; if applicable.

Once the election identification certificate issuance program is initiated, an election identification certificate may be obtained during regular business hours at any DPS driver license office location in the state. The DPS provided a detailed chart to the Department of Justice on September 15, 2011, and is enclosed is a copy of the chart. It contains a list of all driver license offices, the counties in which they are located, the hours each office is open and the number of employees in each office.

The DPS will provide notice of the election identification certificate program and related information on the DPS website. Additionally, the Office of the Secretary of State will incorporate education regarding the election identification certificate into the voter education program and into the election official training materials.

The DPS does not currently plan to provide transportation for individuals seeking to obtain a driver license, personal identification card, or election identification certificate.

The equipment and materials necessary to issue any card, driver licenses, personal identification card, or election identification card is extensive. DPS currently has all the necessary components in place to produce and issue the cards. This multi-faceted process includes the equipment, materials, and facilities to submit and process the application, transmit information to DPS headquarters and vendors for card production, the actual production of the card, quality assurance and control, and mailing to the cardholder.

The card will have a six-year term. Cardholders will have the ability to renew online one time before being required to return to the driver license office for an onsite renewal. This is the same as is allowed for a driver license or personal identification card. For example, a person who is issued an election identification card in 2012 will be able to renew that card online in 2018, but will need to appear at the DPS office for the 2024 renewal. Persons who are 70 years of age or older will be issued a card that does not expire.

4. Any additional rules, regulations, or written guidance that the Secretary of State or DPS plans to promulgate pursuant to the Act.

Neither the Office of the Secretary of State nor DPS currently plan to promulgate any additional rules or regulations concerning the Act. As described in the response to Question 2 above, the Office of the Secretary of State will be revising written training materials to incorporate the Act and the administrative rules which were proposed on September 16 and September 23, 2011. The Office of the Secretary of State will also include the DPS requirements for the election identification certificate program in all its training materials. In addition, as chief election officer, the Office of the Secretary of State may need to issue additional written guidance to local election officials, but we do not anticipate that any future guidance would arise to the level of an administrative rule or regulation.

5. With regard to the voter information provided on September 7, 2011, which indicated that 605,576 registered voters do not appear to have a Texas driver's license or other current form of photo identification issued by the DPS:
 - a. The number of registered voters in Texas, by race and by Spanish surname within county of residence, who currently possess a Texas driver's license or other form of photo identification issued by DPS that is current or has expired within sixty days. Please include a description of the manner in which you calculated these numbers;

Enclosed is a spreadsheet listing all 254 Texas counties, which shows the number of registered voters in each county. Please note that the statewide list of registered voters is a constantly changing database as it is continually updated by the counties. For the purposes of this question, all the voter data and the DPS data is current as of September 16, 2011. The spreadsheet breaks each county's voter registration data into three subsets. First, the spreadsheet shows the number of voters in each county who did not provide a Texas driver's license or personal identification card when they registered to vote. Providing a driver's license number or personal identification card number when registering to vote was optional until the federal Help America Vote Act was enacted in 2006. Second, the spreadsheet shows the number of voters in each county who did not provide a driver's license or personal identification card when they registered to vote, but whose voter record matches a driver/personal identification card record in the DPS database which means that the voter has been issued a driver's license or personal identification card. Third, the spreadsheet shows the number of voters in each county, who did not provide a driver's

license or personal identification card number when they registered to vote, that could not be matched with driver's license or personal identification card in the DPS database of licensed drivers and personal identification card holders. The matching criteria that we used to identify voters between the voter file and the DPS file was last name, first name, and date of birth.

The process to register to vote in Texas does not require a voter applicant to state his or her race. Accordingly, we do not collect voter registration data by race. However, we can run the list of Hispanic surnames as developed by the US Census Bureau against the list of registered voters to determine how many voters have Hispanic surnames. Enclosed is the Hispanic Surname List developed by the US Census that we have input to our statewide voter database for the purpose of performing the Hispanic surname query. For each of the three subsets of data described above, we have also broken out the data by Hispanic surnames.

- b. For the 605,576 registered voters who the State has advised do not have a Texas driver's license or personal identification card, please provide the number of such person by Spanish surname, as well as an estimated number by race, within county of residence; and

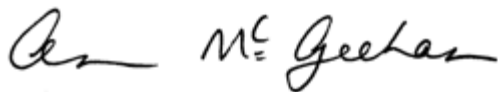
Please see the information provided on the attached spreadsheet.

- c. Describe any and all efforts, other than the requirements outlined in Section 5 of Chapter 123, to provide notice to these individuals of the requirements of S.B. 14 and the availability of a free DPS-issued identification.

Upon preclearance of Senate Bill 14, the Office of the Secretary of State intends to notify by mail each registered voter who may possess a Texas driver's license or personal identification card, but because of the matching criteria, may not have triggered a positive match when the official voter list was cross-referenced with the DPS data. This notification will explain the new photo identification requirements in Senate Bill 14 as well as explain how to obtain an election identification certificate, at no cost, from the DPS.

If you have any questions or need additional information, please contact Paul Miles, Staff Attorney at (512)475-2847 or myself at (512)463-9871.

Sincerely,



Ann McGeehan
Director of Elections

Enclosure

AM:PM:id