

SUBJECT: Allowing limited use of cell phones in voting stations

COMMITTEE: Elections — favorable, without amendment

VOTE: 4 ayes — Laubenberg, Fallon, Israel, Phelan

1 nay — Schofield

2 absent — Goldman, Reynolds

WITNESSES: For — Seth Mitchell, Bexar County Commissioners Court; George Hammerlein, Harris County Clerk's Office; Cinde Weatherby, League of Women Voters of Texas; Glen Maxey, Texas Democratic Party; (*Registered, but did not testify*: Rene Lara, Texas AFL-CIO; Steven Garza and Daniel Gonzalez, Texas Association of REALTORS; Kathy Haigler)

Against — Dana DeBeauvoir, County Clerks Legislative Committee; Alan Vera, Harris County Republican Party; John Oldham, Texas Association of Elections Administrators; (*Registered, but did not testify*: Gaudette; Kelly Horsley; Colleen Vera)

On — Janice Evans, County and District Clerks Association of Texas; Robin Chandler, Disability Rights Texas; Ashley Fischer, Office of the Secretary of State; Bill Fairbrother, TRCCA; (*Registered, but did not testify*: Keith Ingram, Office of the Secretary of State, Elections Division)

BACKGROUND: Election Code, sec. 61.014 prohibits a person from using a wireless communication device or any mechanical or electronic means of recording images or sound within 100 feet of a voting station. This restriction does not apply to election officers who are using the device to conduct their official duties or people employed at the location where a polling place is located while they are acting in the course of their employment. It also does not apply to the use of election equipment necessary to conduct the election.

If someone uses a wireless communication device or a means of recording

images or sound within 100 feet of a voting station, the presiding judge may require the person to turn off the device or to leave the polling place.

Election Code, sec. 62.0111 allows election judges to place notices of the prohibition of the use of certain devices, such as wireless communication devices, at one or more locations in the polling place where they can be read by persons waiting to vote. The wording of the notices is prescribed by the secretary of state.

DIGEST: HB 675 would allow someone in a voting station to use a mobile phone to access information that was downloaded, recorded, or created before the person entered the polling place.

Presiding judges could post notices at polling places regarding “use,” rather than “prohibition,” of certain devices, such as mobile phones.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY: HB 675 would allow voters to access valuable tools in the voting station by permitting them to use information stored on their cell phones. Because the length of ballots in some counties grows every year, remembering every candidate’s name in every election becomes difficult. This bill would allow voters to do their research before entering the voting booth, store the results of that research on an easily accessible digital file, and reference that information while in the voting station.

Permitting cell phone use as prescribed by HB 675 simply would update the law to reflect current technology. Current law already allows voters to bring written materials into the voting booth to help them cast their ballots. This bill would save voters the trouble of writing or printing materials by allowing them to access documents and files stored on their mobile devices.

Furthermore, current law places no restrictions on the use of cell phones

for individuals who vote by mail. There is nothing to stop a person who submits a mail-in ballot from using a cell phone or any other device while filling it out. It makes little sense to allow some voters the ability to use cell phones to assist them in the voting process and to leave others without this assistance.

HB 675 also could benefit people with physical and cognitive disabilities. Many people with disabilities rely on cell phones and tablets to access assistive technology. Allowing use of a mobile device could allow disabled individuals to vote without assistance from another person. This would give disabled individuals autonomy and privacy in the voting station.

While it could be difficult to ensure that voters were using their phones only to access stored data, voters already are using their phones at the polling places and in the voting booths, despite the prohibition in current law. This bill simply would make certain functions legal. In addition, any disturbances that arose from cell phone use would not differ from disturbances that could arise from people who attempt to talk to others while in the voting station.

This bill would not increase the risk of people using recording devices near voting stations. Voters currently are not prohibited from having their cell phones with them, only from using them, and they would be as likely to use a cell phone as a recording device under current law as they would be under the bill. Election judges across the state have had success putting tape over lenses and microphones on cell phones, which easily solves the problem of people using their cell phones as recording devices.

Even if people used their phones as recording devices, it is unlikely that they would capture anything confidential. Although a voter's ballot is confidential, the fact that they are voting is public record. Unless the person attempting to record a voter was close enough to record a completed ballot, the recording would not capture confidential materials.

The bill would alleviate one of the biggest points of contention between

election workers and voters on election day — cell phone use. Instead of focusing on voters' cell phone use, election workers could devote more attention to monitoring the voting process.

OPPONENTS
SAY:

HB 657 would amplify the current problem of cell phone use in polling places. Although the bill would restrict cell phone use to data already stored on the phone, enforcing that provision would be nearly impossible. Cell phone use could lead to issues such as disruption of the voting process, improper recording of the polling location, voter coercion, and electioneering.

Enforcement of limited cell phone use would be difficult and would vary across counties. Election workers generally do not approach voters in the voting station and would have difficulty discerning for what purpose voters were using their cell phones. If voters received certain information not stored on their phones while voting, it could constitute the offense of unlawfully influencing a voter. Interested parties also could pay or coerce voters to take pictures of their completed ballots as proof of their vote.

Use of cell phones at polling places could disrupt the voting process if voters failed to silence their cell phones or if they tried to have cell phone conversations while in the voting station. They also could attempt to take pictures, which might make other voters uncomfortable.

Allowing cell phone use could infringe on voters' right to cast a ballot in secret. Cell phones could be used to record or take pictures of people while they were in the voting booth, and the potential for this would diminish the feeling of and right to privacy in casting a ballot.

Failure to enforce cell phone use properly could lead to electioneering within the polling place. Overzealous voters could play campaign materials on their phones while standing at a voting station or have loud cell phone conversations in which they discussed candidates or ballot measures.

Even if it is possible for some of these issues to arise under current law,

allowing the use of cell phones at voting stations would make it more difficult for election workers to fulfill their duty of overseeing the voting process.

OTHER
OPPONENTS
SAY:

The bill should allow voters to use their cell phones while waiting in line but not at the voting station. Policing the cell phone use of individuals waiting in line to vote is a burden on election workers, who already have numerous responsibilities on election day. People often wait in line for several hours to vote and should be allowed access to their cell phones while waiting.

NOTES:

A companion bill, SB 1491 by Garcia, was referred to the Senate State Affairs Committee on March 19.