

BILL ANALYSIS

C.S.H.B. 259
By: Simmons
Elections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested observers note that Texas law does not address the regulation of electioneering outside a certain distance from the entrance to a polling location, and they contend that this has led to many communities passing so-called nuisance sign bans. These observers assert that such bans have prevented candidates and their supporters from exercising their free speech rights during early voting and on election day. C.S.H.B. 259 seeks to limit the regulation of electioneering outside certain prescribed limits of a polling location.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 259 amends the Election Code to prohibit the entity that owns or controls a public building being used as a polling place or early voting polling place, at any time during the voting period or early voting period, from prohibiting electioneering, including the posting, use, or distribution of political signs or literature, on the building's premises outside the prescribed limits within which electioneering is prohibited during the respective voting period. The bill authorizes such an entity to enact reasonable regulations concerning the time, place, and manner of electioneering.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 259 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Sec. 43.031, Election Code, is amended to read as follows:

POLLING PLACE IN PUBLIC BUILDING. (a) In this subchapter, "public building" means a building owned or controlled by the state or a political subdivision.

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

(b) Each polling place shall be located inside a building.

(c) The building selected for a polling place shall be a public building if practicable. The entity that owns or controls a public building shall make the building available for use as a polling place in any election that covers territory in which the building is located, and shall not prohibit electioneering, including but not limited to posting political signs, on the building's premises outside the prescribed limits within which electioneering is prohibited during the voting period. If more than one authority requests the use of the building for the same day and simultaneous use is impracticable, the entity that owns or controls the building shall determine which authority may use the building.

(d) If a suitable public building is unavailable, the polling place may be located in some other building, including a building on a federal military base or facility with the permission of the post or base commander, and any charge for its use is an election expense. A polling place may not be located in a building under this subsection unless electioneering is permitted on the building's premises outside the prescribed limits within which electioneering is prohibited, except that a polling place may be located in a building at which electioneering is not permitted if it is the only building available for use as a polling place in the election precinct.

(e) A polling place may not be located at the residence of a person who is:

- (1) a candidate for an elective office, including an office of a political party; or
- (2) related within the third degree by consanguinity or the second degree by affinity, as determined under Chapter 573, Government Code, to a candidate described by Subdivision (1).

(f) The entity that owns or controls a public building cannot restrict electioneering, including but not limited to posting political signs, outside the prescribed limits within which electioneering is prohibited at any time during the voting period. In this section, the "voting period" begins with the commencement of early voting by personal appearance defined under Sec.

85.001 and ends after the polls close on the last day for early voting by personal appearance for an early voting polling place, and begins when the polls open on election day and ends when the polls close on election day for an election day polling place.

SECTION 2. Sec. 85.002, Election Code, is amended as follows:

MAIN EARLY VOTING POLLING PLACE. (a) Early voting by personal appearance for each election shall be conducted at the main early voting polling place.

(b) In an election in which a county clerk or city secretary is the early voting clerk under Section 83.002 or 83.005, the main early voting polling place shall be located in any room selected by the early voting clerk in the building that houses the main business office of the county clerk or city secretary, as applicable. However, if the commissioners court or city governing body determines that locating the polling place in that building is impracticable, the commissioners court or city governing body may designate a different location in the city in which the business office is located that is as near as practicable to the business office. The polling place must meet the requirements prescribed in Section 43.031.

(c) In an election in which a county clerk is the early voting clerk under Section 83.003 or 83.004, the authority authorized to appoint the clerk shall designate the location of the main early voting polling place. The location must be in the territory covered by the election or in any room selected by the clerk in the building that houses the county clerk's main business office, whether or not the office is located in the territory covered by the election. However, if the commissioners court determines that locating the polling place in that building is impracticable, the commissioners court may designate a different location in the city in which the business office is located that is as near as practicable to the business office. The polling place must meet the requirements prescribed in Section 43.031.

(d) In an election in which a person other

No equivalent provision.

than a county clerk or city secretary is early voting clerk, the authority appointing the clerk shall designate the location of the main early voting polling place. The location must be in the territory covered by the election. The polling place must meet the requirements prescribed in Section 43.031.

SECTION 3. Sec. 85.062, Election Code is amended as follows:

TEMPORARY BRANCH POLLING PLACE. (a) Except as provided by Subsection (d) or (e), one or more early voting polling places other than the main early voting polling place may be established by:

- (1) the commissioners court, for an election in which the county clerk is the early voting clerk; or
- (2) the governing body of the political subdivision served by the authority ordering the election, for an election in which a person other than the county clerk is the early voting clerk.

(b) A polling place established under this section may be located, subject to Subsection (d), at any place in the territory served by the early voting clerk and may be located in any stationary structure as directed by the authority establishing the branch office. The polling place may be located in a movable structure in the general election for state and county officers, general primary election, or runoff primary election. Ropes or other suitable objects may be used at the polling place to ensure compliance with Section 62.004. Persons who are not expressly permitted by law to be in a polling place shall be excluded from the polling place to the extent practicable. The polling place must meet the requirements relating to electioneering prescribed in Section 43.031.

(c) In any election, the location of a polling place established under this section shall be fixed at one place for the duration of the period that voting is required to be conducted at the polling place.

No equivalent provision.

No equivalent provision.

SECTION 1. The heading to Section 61.003, Election Code, is amended to read as follows:

Sec. 61.003. ELECTIONEERING AND LOITERING NEAR POLLING PLACE [PROHIBITED].

No equivalent provision.

SECTION 2. Section 61.003, Election Code, is amended by adding Subsection (a-1) and amending Subsection (b) to read as follows:

(a-1) The entity that owns or controls a public building being used as a polling place may not, at any time during the voting period, prohibit electioneering on the building's premises outside of the area described in Subsection (a), but may enact reasonable regulations concerning the time, place, and manner of electioneering.

(b) In this section:

(1) "Electioneering" includes the posting, use, or distribution of political signs or literature.

(2) "Voting [~~,"~~ "voting]" period" means the period beginning when the polls open for voting and ending when the polls close or the last voter has voted, whichever is later.

No equivalent provision.

SECTION 3. The heading to Section 85.036, Election Code, is amended to read as follows:

Sec. 85.036. ELECTIONEERING [PROHIBITED].

No equivalent provision.

SECTION 4. Section 85.036, Election Code, is amended by adding Subsections (b) and (f) to read as follows:

(b) The entity that owns or controls a public building being used as an early voting polling place may not, at any time during the early voting period, prohibit electioneering on the building's premises outside of the area described in Subsection (a), but may enact reasonable regulations concerning the time, place, and manner of electioneering.

(f) In this section:

(1) "Early voting period" means the period prescribed by Section 85.001.

(2) "Electioneering" includes the posting, use, or distribution of political signs or literature.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

SECTION 5. Substantially the same as introduced version.