

SUBJECT: Electioneering on the premises of certain privately owned polling places

COMMITTEE: Elections — favorable, without amendment

VOTE: 6 ayes — Morrison, Miles, Johnson, Miller, Simmons, Wu
0 nays
1 absent — Klick

WITNESSES: For — Oscar Villarreal; (*Registered, but did not testify:* Dana DeBeauvoir)
Against — None
On — (*Registered, but did not testify:* Keith Ingram, Texas Secretary of State, Elections Division)

BACKGROUND: Election Code, sec. 43.031 requires that polling locations be public buildings if practicable, and outlines regulations for non-public buildings used as polling locations. Under sec. 43.031(d), a polling place may not be located in a building unless electioneering is permitted on the building's premises outside prescribed limits. A building at which electioneering is prohibited may be used as polling location only if it is the only building available for use as a polling place in that election precinct.

Election Code, sec. 61.003 prohibits loitering or electioneering during the regular voting period within 100 feet of an outside door through which a voter may enter the building with a polling place. An offense is a class C misdemeanor class C misdemeanor (maximum fine of \$500).

Sec. 85.036 prohibits electioneering for or against any candidate, measure, or political party during the early voting period within 100 feet of any outside door through which a voter may enter a building in which a polling place is located. An offense is a class C misdemeanor class C misdemeanor (maximum fine of \$500).

DIGEST: HB 127 would allow a private business that owned a building in which a polling place was located to prohibit electioneering on the privately owned premises of the building outside of the limits prescribed by Election Code

sec. 61.003.

The business or owner of the business would have to notify the authority holding the election – or the early voting clerk if prohibiting electioneering during early voting – of the prohibition. If a business had provided notice under this provision, it would be a class C misdemeanor (maximum fine of \$500) under the bill to loiter or electioneer on the premises of the building during the voting period or to electioneer during the early voting period.

The bill would apply only to a county located on an international border that had a population of less than 300,000 in which a city with a population of more than 200,000 was located (Webb County).

This bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

HB 127 would ensure that elections run more efficiently and voter participation remains high in Webb County. Webb County uses many buildings owned by private businesses as polling locations, such as shopping malls and grocery stores, to increase voter participation and provide accessibility. However, the number of private businesses willing to host polling locations has diminished as a result of more aggressive electioneering practices that disrupt business and damage private property. To maintain good relations with these businesses and continue to attract higher voter participation, HB 127 would allow these businesses to prohibit electioneering on their premises as long as they provided notice to the election officials.

Concerns about First Amendment rights could be solved with an amendment clarifying that, rather than prohibiting electioneering, the businesses could place reasonable regulations on the time, place, and manner of electioneering. This amendment would comply with constitutional standards, while ensuring private businesses could preserve regular business and protect patrons.

**OPPONENTS
SAY:**

HB 127 would violate the First Amendment by prohibiting political speech. By allowing businesses to prohibit electioneering at a polling location, the bill would unconstitutionally stifle speech when it is needed the most. Political speech is the most important constitutionally protected speech, and the ability to exercise this right is especially important to protect during an election. Reasonable restrictions may be placed on the time, place, and manner of political speech, but it may not be prohibited

altogether.

NOTES:

The author intends to introduce an amendment on the floor that would strike language to prohibit electioneering and insert language to allow reasonable restrictions concerning time, place, and manner of electioneering.