

- SUBJECT:** Authorizing observation of voter assistance
- COMMITTEE:** Elections — committee substitute recommended
- VOTE:** 8 ayes — L. Taylor, Hernandez Luna, Berman, Branch, Burkett, Farias, P. King, Veasey
- 0 nays
- 1 absent — Isaac
- WITNESSES:** For — Carol Kitson; William Sargent, County Clerk Galveston County; Michael Vasquez, Texas Conference of Urban Counties; B.R. “Skipper” Wallace, Texas Republican County Chairman’s Association)
- Against — Rene Lara, Texas AFL-CIO; (*Registered, but did not testify*: Anthony Gutierrez, Texas Democratic Party; Sonia Santana, ACLU-Texas)
- On — Jessica Gomez, Disability Rights Texas; Ed Johnson, Harris County Clerk; Steve Raborn, Tarrant County Elections, Texas Association of Elections Administrators; (*Registered, but did not testify*: Elizabeth Hanshaw Winn, Texas Secretary of State)
- BACKGROUND:** Election Code, subch. D, ch. 32 regulates the powers and duties of election judges and clerks. Sec. 33 authorizes a “watcher” to observe the conduct of elections on behalf of a candidate, a political party, or the proponents or opponents of a measure. Sec. 43.007 describes the countywide polling place program.
- Election Code, sec. 127 governs processing results at central counting stations. Government Code, sec. 573.01 sets forth the exceptions to the nepotism prohibitions.
- DIGEST:** CSHB 2194 would allow the presiding election judge or alternate presiding judge to observe assistance being provided to a voter to ensure compliance with current law regarding the oath required to be taken before assisting a voter and regarding unlawful assistance to a voter if the judge had reason to believe that unlawful assistance was occurring.

A watcher would be authorized to request that two election officers observed the assistance provided to a voter to ensure that the person assisting the voter complied with current laws, if the watcher believed that the person assisting the voter was violating current law.

Two election officers affiliated or aligned with different political parties, or two election officers affiliated or aligned with the same party if there were not two or more election officers serving the polling place who were aligned with different parties, would be required to observe the assistance provided to a voter if:

- a watcher requested the observation under the provisions of the bill; and
- the election officers agreed that there was a reasonable basis for the poll watcher's belief.

An election officer would be prohibited from observing assistance being provided in a manner that violated the secrecy of the voter's ballot.

The bill would authorize each county that previously participated in a countywide polling place program to continue participating in the program if:

- the commissioner's court of the county approved participation in the program; and
- the secretary of state determined the county's participation in the program was successful.

The presiding judge of the central counting station, in cooperation with the county clerk, would be permitted to withhold the release of unofficial election results until the last voter had voted. Otherwise, unofficial election results would be required to be released as soon as they were available after the polls closed.

The bill would add an exception to nepotism prohibitions for public officials. An appointment of an election clerk who was not related in the first degree of consanguinity or affinity to an elected official of the authority that appointed the election judges for that election would be exempt from the nepotism provisions in Government Code, sec. 573.041.

The bill would take effect September 1, 2011.

**SUPPORTERS  
SAY:**

The provisions of CSHB 2194 would ensure that the will of the voter was being carried out without unlawful influence or assistance from the person providing assistance. The bill would address situations that raise concerns about unlawful assistance. Any person assisting a voter is required to take an oath that they only will help the voter cast their ballot. They are prohibited to suggest how the voter should vote.

Periodically, election officials may have reason to believe that a person assisting a voter may be providing unlawful assistance. Current law does not permit poll watchers to observe the help being provided by a nonelection official that the voter chooses. The bill's provisions would empower poll watchers to request observation if there was reason for concern but would allow the trained officials to make the final decision. The bill would reasonably require the poll watcher to have a basis of concern, and the election officers would have to agree that there was a basis for concern before observing the situation.

The bill would authorize the counties that are participating in the countywide polling program and doing a good job to continue in the pilot program if the commissioners court approved the continued participation. It would not be mandatory, and the county would have to demonstrate that it could conduct such an election. The secretary of state's office would also be required to make a determination to that effect.

For many years, election officials have developed teams that work together well in conducting elections. Many of the election workers include husbands and wives. Some have claimed that this practice violates nepotism prohibitions. As a result, some of the best election workers either quit or were not allowed to work. It is extremely difficult to find and keep election workers. They endure long hours for very little compensation. There should not be additional roadblocks that keep them from serving. Applying the nepotism prohibition is not appropriate for temporary election day workers.

**OPPONENTS  
SAY:**

The bill's provisions relating to observing voter assistance could pose a serious threat to a voter's privacy. The right to a private and independent ballot could be compromised because some voters might feel intimidated or insulted at the prospect of having two election officials observe how they cast their ballot.

NOTES:

The companion bill, SB 1128 by Jackson, was considered in a public hearing by the Senate State Affairs Committee on May 5 and left pending.

The author intends to offer a floor amendment to address concerns about observing voter assistance.