

Date of Hearing: May 1, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 1707 (Berman) – As Amended March 19, 2019

SUBJECT: Polling places: handheld devices.

SUMMARY: Clarifies that a voter may use an electronic device at a polling place, as specified. Specifically, **this bill** provides that a voter or any other person may not be prohibited from using an electronic device, including a smartphone, tablet, or other handheld device, at a polling place provided that the use of the device does not result in a violation of existing law.

EXISTING LAW:

- 1) Requires voting to be secret.
- 2) Prohibits a voter, after the ballot is marked, from showing the ballot to any person in a manner that reveals its contents. Permits a voter to voluntarily disclose how they voted if that voluntary act does not violate existing law.
- 3) Permits voters engaged in receiving, preparing, or depositing their ballots, and persons authorized by the precinct board to keep order and enforce the law, to be to be within the voting booth area before the closing of the polls.
- 4) Makes it a misdemeanor for any person, on election day, or at any time that a voter may be casting a ballot, to do any of the following within 100 feet of a polling place, a vote center, a satellite location, or an elections official's office:
 - a) Circulate an initiative, referendum, recall, or nomination petition or any other petition.
 - b) Solicit a vote or speak to a voter on the subject of marking their ballot.
 - c) Place a sign relating to voters' qualifications or speak to a voter on the subject of their qualifications except pursuant to existing law.
 - d) Do any electioneering as defined pursuant to existing law.
- 5) Provides that any person who makes use of or threatens to make use of any force, violence, or tactic of coercion or intimidation, to induce or compel any other person to vote or refrain from voting at any election or to vote or refrain from voting for any particular person or measure at any election is guilty of a felony punishable by imprisonment for 16 months or two or three years, as specified.
- 6) Provides that any person who hires or arranges for any other person to make use of or threaten to make use of any force, violence, or tactic of coercion or intimidation, to induce or compel any other person to vote or refrain from voting at any election or to vote or refrain from voting for any particular person or measure at any election is guilty of a felony punishable by imprisonment for 16 months or two or three years, as specified.

- 7) Prohibits any person, with the intent of dissuading another person from voting, within 100 feet of a polling place, from doing any of the following:
 - a) Soliciting a vote or speaking to a voter on the subject of marking their ballot.
 - b) Placing a sign relating to voters' qualifications or speaking to a voter on the subject of their qualifications except as provided pursuant to existing law.
 - c) Photographing, video recording, or otherwise recording a voter entering or exiting a polling place.
- 8) Requires the Secretary of State (SOS) to establish processes to enable a voter to do both of the following:
 - a) Opt out of receiving by mail the state voter information guide prepared pursuant existing law.
 - b) When the state voter information guide is available, receive either the state voter information guide in an electronic format or an electronic notification making the guide available by means of online access. Requires the electronic version of the state voter information guide to include an active hyperlink for each cited Uniform Resource Locator.
- 9) Requires the SOS to develop a program to utilize electronic communications and enhance the availability and accessibility of information on statewide candidates and ballot initiatives. Provides that this includes making information available online as well as through other information processing technology.
- 10) Permits the SOS to electronically send all of the following election information to a voter by electronic mail or text message, as specified:
 - a) The date of the election.
 - b) The voter registration deadline.
 - c) Other information that assists the voter in registering to vote or casting a ballot.
 - d) Information contained within the state voter information guide pursuant to existing law.

FISCAL EFFECT: None. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

- 1) **Purpose of the Bill:** According to the author:

Existing and emerging technology has the potential to put additional information at the fingertips for voters, make voting easier, and enhance voter engagement. However, our election laws do not necessarily contemplate the use of devices such as smartphones or tablets in the context of elections. Recognizing the

additional beneficial uses of technology for elections, AB 1707 would provide that a person may not be prohibited from using an electronic device, including a smartphone, tablet, or other handheld device, at a polling place provided that the use of the device does not violate other provisions of existing law.

- 2) **Secretary of State County Advisory and Previous Legislation:** At several elections (including, most recently, the November 2018 statewide general election), the SOS has sent a memo to county elections officials outlining the office's position on the use of cameras or video equipment at polling places.

Historically, the SOS has taken the position that the use of cameras or video equipment at polling places is prohibited. However, in 2016, the Legislature passed and the Governor signed AB 1494 (Levine), Chapter 813, Statutes of 2016, which allows a voter to voluntarily disclose how they voted if that voluntary act does not violate any other law. Accordingly, the SOS's memo states that a voter may take a photograph of their ballot (also known as a "ballot selfie") and share it on social media. However, the memo points out that while "ballot selfies" are allowed under California law, elections officials and poll workers will still need to exercise their discretion as to whether "ballot selfies" cause disruptions requiring a response.

According to the SOS memo, the use of cameras in and outside of the polling place should remain limited, and certain uses of cameras in the polling place should continue to require the consent of the elections official, such as the use of cameras at the polls by a credentialed media organization wants to photograph or film a candidate voting at a polling place. The memo also states that this is something that an elections official may permit, provided that such an activity does not interfere with voting, is not intimidating to any voters or election workers, and that the privacy of voters is not compromised.

In conclusion, the memo states that voters must be mindful that their ability to take "ballot selfies" is not without limits and that the limits on the use of "ballot selfies" include, prohibitions regarding the unauthorized sharing of and use of information relating to how a person voted, prohibitions on soliciting or receiving consideration for voting, or refraining from voting, for any particular candidate or measure, prohibitions on interference with the conduct of elections and with the duties of election workers, prohibitions regarding the intimidation of voters, and prohibitions on compromising the privacy of other voters casting a ballot.

In light of this guidance, some elections officials and poll workers have questioned the permissibility of voters and other individuals using their smartphones and similar electronic devices that have cameras at polling places. This bill will clarify that a voter or any other person may use an electronic device at a polling place provided that the use of the device does not result in a violation of existing law, as specified.

- 3) **Voting Solutions for All People Project (VSAP):** Due to Los Angeles County's size, diversity, complexity, and the limited voting systems market, it is extremely challenging for Los Angeles to reasonably consider a commercial off-the-shelf voting system. Consequently, in 2009, in partnership with the Voting Technology Project, and with the financial support of the James Irvine Foundation, the County of Los Angeles Registrar-Recorder/County Clerk launched the VSAP with the goal of implementing a new and

enhanced voting system that meets the growing voting system needs and challenges faced by Los Angeles County.

According to VSAP background documents, the vision of the VSAP is to identify and implement a new voting system in a transparent and participatory manner that takes into account the needs and expectations of current and future Los Angeles County voters. The VSAP aims at achieving three goals in the process: 1) give current and future Los Angeles County voters an unprecedented opportunity to participate in the assessment and development process; 2) increase voter confidence in the electoral process through the participatory structure of the project; and 3) synthesize public input and research to acquire or develop a new voting system for the County.

According to background information, the new voting system concept features touch-screen technology with a simple user interface, both audio and visual output and a built-in scanner, printer and ballot box. The new voting system will provide voters with options to scan in quick response (QR) coded ballots from their phone, enter their ballot choices in-person at the polling location, or vote by mail with printed ballots.

- 4) **Previous Legislation:** AB 606 (Berman), Chapter 656, Statutes of 2017, requires the SOS to send a link to an electronic version of the state voter information guide, as specified, to each voter who has opted out of receiving the state voter information guide by mail.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

Analysis Prepared by: Nichole Becker / E. & R. / (916) 319-2094