

SUBJECT: Offense for inappropriate actions by the early-voting ballot board

COMMITTEE: Elections — committee substitute recommended

VOTE: 4 ayes — Morrison, Klick, R. Miller, Simmons
3 nays — Miles, Johnson, Wu

WITNESSES: For — Wade Emmert, Dallas County Republican Party; George Hammerlein, Harris County Clerk’s Office; Cheryl Johnson, Galveston County Tax Office; Ed Johnson, Harris County Clerk’s Office;
(Registered, but did not testify: Eric Opiela; Sheryl Swift, Galveston County Tax Office; B R “Skipper” Wallace, Republican County Chairs Association)

Against — Glen Maxey, Texas Democratic Party; Jill Moffitt, Harris County Democratic Party; *(Registered, but did not testify:* Cornelius (Connie) English Jr., United Transportation Union; James Gaston, AFL-CIO)

On — Keith Ingram, Texas Secretary of State, Elections Division

DIGEST: Under CSHB 1428 it would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) for the presiding judge of the early-voting ballot board to knowingly:

- accept the ballot of an ineligible voter; or
- refuse to accept the ballot of a person whose acceptance for voting was required by the code.

The early-voting clerk would be required to report the commission of an offense to the county or district attorney having jurisdiction and to the secretary of state.

The bill would take effect September 1, 2013.

SUPPORTERS SAY: CSHB 1428 would provide a safeguard when an early voting ballot board acted in contradiction to Texas election law. Inappropriate acceptance and rejection of ballots during early voting is becoming more prevalent, but

currently there is no path to relief when this law is violated. The bill would seek to prevent any further illegal action and ensure that relief was available by creating an offense to penalize individuals who illegally accepted or rejected ballots and by requiring reporting when these offenses occurred.

The bill would solve a problem that exists throughout the state. There have been several examples of early-voting ballot board officials accepting and rejecting ballots inappropriately in various counties, and CSHB 1428 would help to solve this problem statewide. The fiscal note indicates that any financial impact of the bill would be insignificant.

The bill would create an offense only for acting in contradiction to the current law. Election Code, sec. 11.003 states that a person may vote only in the precinct in which the person resides, and election officials are under an obligation to follow this provision. The belief that a law should not exist or that a provision in the law should be different is not a valid basis for the failure to follow it, particularly when a civil right as important as voting is at stake. While some cite the results of a 6th circuit case in Ohio, that case does not apply to Texas.

**OPPONENTS
SAY:**

CSHB 1428 would create an unnecessary new statewide offense to deal with a minor, localized problem. The recent issue the bill is intended to address concerned only six ballots, none of which affected the results of an election. The fiscal note indicates that the bill would result in unspecified increased costs to counties associated with investigation and prosecution of more Class A misdemeanors. The bill would have statewide effects when a more appropriate reaction to a local dispute is a local solution.

The bill would encourage disenfranchisement of voters who vote for the right candidates on the right ballot in the wrong building. A person who is eligible to vote and casts an appropriate ballot should have that vote counted. The building in which a person was standing when the ballot was cast should not be a basis for denying the exercise of this most important civil right. In a recent case in Ohio, a federal court held that provisional ballots cast in the right polling location but in the wrong precinct had to be counted.