

BILL ANALYSIS

C.S.H.B. 1117
By: Hochberg
Elections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Ballot design, ballot instructions, and voting systems frequently cause voter confusion or voter error. At the end of each election cycle candidates and the courts often battle over how to deduce voter intent in a close election. For all the debate about the voter's intention of selecting, de-selecting, or emphasizing a certain candidate, it is impossible to know what a voter meant to do after the fact.

C.S.H.B. 1117 reduces the need for post-election debate about voter intent and ensures the integrity of election results by requiring ballot instructions to clearly inform the voter why a vote may not count or may count differently than the voter expects or intends. The bill requires electronic voting systems, if possible, to provide a voter with a clear warning if the voter tries to vote in a way that may have a different result than the voter intended.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the secretary of state in SECTIONS 1, 2, and 3 of this bill.

ANALYSIS

C.S.H.B. 1117 amends the Election Code to require an election ballot to contain, in addition to any other required ballot instructions, an instruction that clearly and unambiguously describes the reasons that a vote may not be counted or may be counted in a different manner than the voter expects or intends. The bill requires, if a paper ballot is used, that the instruction describe the effect of not properly marking a paper ballot. The bill requires the secretary of state by rule to prescribe the specific instruction to be included on a ballot.

C.S.H.B. 1117 requires an instruction required on a ballot that provides for a straight-party vote to also describe the effect of a straight-party vote if the vote would not apply to all elections on the ballot and any circumstances under which casting a vote for an individual candidate will negate a straight-party vote or otherwise cause a vote for a nominee of the same party to not be recorded or counted. The bill requires the secretary of state by rule to prescribe the specific instructions to be included on such a ballot.

C.S.H.B. 1117 requires electronic voting systems, where practicable, to provide for a clearly worded warning to appear if a voter attempts to cast a vote, make a selection, or take another related action that could lead to an unexpected result. The bill requires the secretary of state by rule to prescribe warning language for each voting system approved for use in Texas.

C.S.H.B. 1117 specifies that failure to comply with its requirements is not grounds for a civil action or an action or contest challenging the validity or result of an election in which the required ballot instruction or warning, as applicable, was not given to one or more voters. The bill makes its provisions applicable to an election held on or after January 1, 2010.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1117 requires the secretary of state by rule to prescribe the specific instruction to be included on a general ballot and on a ballot that provides for a straight-party vote, whereas the original requires the secretary by rule to prescribe the specific instructions for each voting system approved for use in Texas.

C.S.H.B. 1117 adds provisions not in the original specifying that failure to comply with its requirements is not grounds for a civil action or an action or contest challenging the validity or result of an election in which the required ballot instruction or warning, as applicable, was not given to one or more voters.

C.S.H.B. 1117 adds a saving provision not in the original.

C.S.H.B. 1117 differs from the original in nonsubstantive ways by using language reflective of certain bill drafting conventions.