BILL ANALYSIS

Senate Research Center

C.S.H.B. 1175
By: Thompson (Ellis)
Jurisprudence
5-18-97
Committee Report (Substituted)

DIGEST

The method by which judges are selected in Texas is greatly contested and there is concern as to whether there is need for reform. This bill would establish a system of nonpartisan judicial elections.

PURPOSE

As proposed, C.S.H.B. 1175 establishes a system of nonpartisan judicial elections.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the secretary of state under SECTION 3 (Section 291.009, Election Code) and SECTION 7 (Section 52.0661, Election Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1.   Amends Chapter 22, Government Code, by adding Subchapter E, as follows:

SUBCHAPTER E. APPOINTMENT, ELECTION, AND RETENTION OF JUSTICES AND JUDGES

Sec. 22.401. ELECTION AND RETENTION CYCLE. Provides that an appellate justice or judge is subject to partisan election in accordance with certain provisions. Sets forth provisions regarding election, retention, withdrawal from the retention election, and vacancy.

Sec. 22.402. EFFECT OF RETENTION VOTE. Sets forth provisions applicable if a majority of the votes received on the question are for the retention of the justice or judge. Sets forth provisions applicable if less than a majority of votes received on the question are for retention. Sets forth provisions applicable if the name of a justice or judge seeking retention appears on the retention election ballot under Chapter 291, Election Code, although a vacancy has occurred in the office.

SECTION 2.   Amends Section 41.002, Election Code, to require the nonpartisan judicial retention election to be held on the first Tuesday after the first Monday in November in even-numbered years.

SECTION 3.   Amends the Election Code, by adding Title 17, as follows:

TITLE 17. NONPARTISAN JUDICIAL RETENTION ELECTIONS

CHAPTER 291. RETENTION ELECTION

Sec. 291.001. DECLARATION OF CANDIDACY. Sets forth provisions regarding the filing of a declaration of candidacy to succeed to the next term with the secretary of state by a justice or judge who seeks to continue to serve in that office. Sets forth additional provisions regarding a declaration of candidacy.

Sec. 291.002. WITHDRAWAL, DEATH, OR INELIGIBILITY. Provides that with respect to withdrawal, death, or ineligibility of a candidate in a retention election, this section

supersedes Chapter 145A, to the extent of any conflict. Sets forth provisions regarding withdrawal, death, and ineligibility. Provides that the filling of the office following implementation of Subsection (d) or (e) is covered by Chapter 22, Government Code.

Sec. 291.003. CERTIFICATION OF NAMES FOR PLACEMENT ON RETENTION ELECTION BALLOT. Requires the secretary of state, except as provided by Subsection (c), to certify in writing for placement on the retention election ballot the name of each candidate who files with the secretary a declaration of candidacy that complies with Section 291.001. Sets forth requirements for the secretary of state regarding delivery of the certification to the authority responsible for having the official ballot prepared in each county. Prohibits a candidate's name from being certified under certain conditions.

Sec. 291.004. RETENTION ELECTION BALLOT. Requires the name of the person subject to retention or rejection to be submitted to the voters on the nonpartisan judicial retention election ballot following the offices subject to election under the heading "Retention of Nonpartisan Judicial Offices" in a certain form.

Sec. 291.005. GENERAL PROCEDURE FOR CONDUCT OF RETENTION ELECTION. Requires the retention election, except as otherwise provided by this code, to be conducted and the results canvassed, tabulated, and reported in the manner applicable to partisan offices in the general election for state and county officers. Requires a certificate to be issued to a retained officer in the same manner as provided for a candidate elected in the office.

Sec. 291.006. WRITE-IN VOTING PROHIBITED. Prohibits write-in voting in a retention election.

Sec. 291.007. POLITICAL CONTRIBUTIONS AND EXPENDITURES. Provides that a candidate for retention of a judicial office is subject to Title 15 and shall comply with the title in the same manner as a candidate for election to the office.

Sec. 291.008. APPLICABILITY OF OTHER PARTS OF CODE. Provides that the other titles of this code apply to a retention election under this chapter except provisions that are inconsistent with this title or that cannot feasibly be applied in a retention election.

Sec. 291.009. ADDITIONAL PROCEDURES. Requires the secretary of state to prescribe any additional procedures necessary for the orderly and proper administration of retention elections held under this chapter.

SECTION 4. Amends Section 1.005, Election Code, by amending Subdivisions (9) and (20) and adding Subdivisions (25), (26), and (27), to redefine "independent candidate," and "straight-party vote," and to define "nonpartisan judicial retention election," "nonpartisan judicial candidate," and "partisan appellate or district court office."

SECTION 5. Amends Section 52.065, Election Code, by adding Subsection (f), to set forth provisions regarding the appearance of partisan appellate and district court offices on the ballot.

SECTION 6. Amends Section 52.066, Election Code, by adding Subsection (e), to make a conforming change.

SECTION 7. Amends Chapter 52C, Election Code, by adding Section 52.0661, as follows:

Sec. 52.0661. SEPARATE LISTING OF UNOPPOSED PARTISAN APPELLATE AND DISTRICT COURT CANDIDATES. Sets forth provisions regarding unopposed candidates for appellate or district court offices.

SECTION 8. Amends Section 52.070(b), Election Code, to set forth provisions regarding the official ballot for election for partisan appellate and district court offices.

SECTION 9. Amends Section 52.071, Election Code, to require on a ballot on which a party

column appears in connection with offices other than partisan appellate or district court offices, a square larger than the square prescribed by Section 52.070(a), to be printed to the left of each political party's name. Sets forth language to appear in the ballot. Makes conforming changes.

SECTION 10.   Amends Section 52.092, Election Code, by amending Subsections (a), (c), (d), and (g) through (j) and adding Subsections (k) and (l), to require the offices, for an election at which offices regularly filled at the general election for state and county officers, including the nonpartisan judicial retention election, to appear and be listed in a particular order. Sets forth the list and the order of offices. Requires the secretary of state to assign a place number to each position to be filled at the general election for state and county officers, or to each position for which a retention election is to be held, in certain offices. Makes conforming changes.

SECTION 11.   Amends Sections 65.007(b) and (c), Election Code, to set forth an exception. Makes a conforming change.

SECTION 12.   Amends Chapter 124A, Election Code, by amending Section 124.003 and adding Section 124.0031, as follows:

> Sec. 124.003. New heading: SEPARATE LISTING OF UNOPPOSED CANDIDATES. Authorizes candidates listed under the uncontested races heading to be arranged in a manner requiring voting on them as one or more groups, rather than blocs, but only under certain conditions. Makes a conforming change.

> Sec. 124.0031. SEPARATE LISTING OF UNOPPOSED PARTISAN APPELLATE AND DISTRICT COURT CANDIDATES. Authorizes candidates listed under the uncontested partisan appellate and district court races heading to be arranged in a manner requiring voting on them as one or more groups, but only under certain conditions.

SECTION 13.   Amends Chapter 124.061(b), Election Code, to set forth provisions regarding a punch-card ballot.

SECTION 14.   Amends Section 124.063(a), Election Code, to require the ballot to contain the same instruction in conjunction with any partisan appellate or district court offices appearing on the ballot.

SECTION 15.   Amends Section 145.003(b), Election Code, to authorize a candidate in the general election for state and county officers, including the nonpartisan judicial retention election, to be declared ineligible before the 30th day preceding election day by certain means.

SECTION 16.   Amends Section 145.005(a), Election Code, to make a conforming change.

SECTION 17.   Amends 202.001, Election Code, to provide that this chapter does not apply to the office of justice or judge of an appellate court.

SECTION 18.   (a) Provides that each supreme court justice, court of criminal appeals judge, and court of appeals justice in office January 1, 1998, unless otherwise removed as provided by law, continues in office for the term to which elected.

> (b) Requires each supreme court justice, court of criminal appeals judge, and court of appeals justice who is in office January 1, 1998, is subject to retention or rejection, in the manner provided by law, at the general election preceding the expiration of the regular or unexpired term for which each was elected or appointed. Provides that a vacancy does not exist in those offices until the expiration of the term of the person who held the office January 1, 1998, or until that person does not hold the office, whichever occurs first.

SECTION 19.   Provides that this Act takes effect only if the constitutional amendment proposed by the 75th Legislature, Regular Session, 1997, relating to the filing by gubernatorial appointment of vacancies in the offices of appellate justices and judges, to the election and retention of those justices and judges, and to the appointment of district judges in accordance with certain standards is adopted. Provides that this Act takes effect January 1, 1998, if the amendment is

adopted.

SECTION 20.   Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTIONS 1-16.

      Deletes proposed SECTIONS to set forth new SECTIONS.