

BILL ANALYSIS

Senate Research Center
76R5510 GGS-D

C.S.S.B. 59
By: Duncan
Jurisprudence
5/3/1999
Committee Report (Substituted)

DIGEST

Currently, Texas is one of the few states in which judges are elected, not appointed. Texas has come under criticism for this system, unchanged since Reconstruction, which forces judges to wage expensive political battles. This bill would reduce the partisan election of judges by requiring certain judicial offices to be filled only by gubernatorial appointment, and allowing voters to decide upon the retention of those judges at the completion of their appointment term, effectively eliminating a straight-party vote in connection with district judges.

PURPOSE

As proposed, C.S.S.B. 59 creates law regulating the retention election for nonpartisan judicial candidates, and prohibits straight-party voting for nonpartisan judicial candidates.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

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

SUBCHAPTER E. APPOINTMENT AND RETENTION OF JUSTICES AND JUDGES

Sec. 22.401. APPOINTMENT AND RETENTION CYCLE. Provides that in conjunction with the last general election for state and county officers before the end of an appointed or retained judge's term, the judge is subject to retention or rejection at the nonpartisan judicial retention election. Provides that if a judge does not seek retention, the vacancy must be filled in the manner prescribed by the Texas Constitution. Provides that if the judge seeking retention's name is omitted from the ballot, the vacancy must be filled in the manner prescribed by the Texas Constitution.

Sec. 22.402. EFFECT OF RETENTION VOTE. Entitles the judge to remain in office for six years beginning on the first day of the following January if a majority of the votes are for retention. Provides that if a judge fails a retention vote, the vacancy must be filled in the manner prescribed by the Texas Constitution. Provides that under certain conditions when a regular retention election cannot proceed, the vacancy must be filled in the manner prescribed by the Texas Constitution.

SECTION 2. Amends Section 41.002, Election Code, to include the nonpartisan judicial retention election in the general election.

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 deadlines for a judge seeking to continue serving in office to file a declaration of candidacy. Prohibits a declaration of candidacy to be filed earlier than the 30th day before the date of the filing deadline. Provides that a declaration filed by mail is considered filed at the time of its receipt by the

appropriate authority. Provides that the filling of a subsequent vacancy for an office lacking a declaration of candidacy is covered by Chapter 22, Government Code.

Sec. 291.002. WITHDRAWAL, DEATH, OR INELIGIBILITY. Establishes that with respect to withdrawal, death, or ineligibility of a nonpartisan judicial retention election candidate, this section supersedes Subchapter A, Chapter 145. Prohibits a candidate from withdrawing from the retention election after the 65th day before election day. Requires a withdrawal request with certain persons. Requires a candidate's name to be omitted from the retention election ballot under certain conditions. Requires a candidate's name to be placed on the retention election ballot under certain conditions. Provides that the filling of a subsequent vacancy for an 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. Sets forth provisions regarding the responsibilities of the secretary of state to administer certification of the retention election ballot.

Sec. 291.004. RETENTION ELECTION BALLOT. Sets forth the format of the retention election ballot.

Sec. 291.005. GENERAL PROCEDURE FOR CONDUCT OR RETENTION ELECTION. Requires the nonpartisan judicial retention election to be conducted in the manner applicable to partisan offices in the general election. Requires a certificate of election to be issued to a retained officer.

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

Sec. 291.007. POLITICAL CONTRIBUTIONS AND EXPENDITURES. Sets forth provisions requiring a judicial candidate's compliance with Title 15.

Sec. 291.008. APPLICABILITY OF OTHER PARTS OF CODE. Sets forth provisions and exceptions for application of other titles of this code to a nonpartisan judicial retention election.

Sec. 291.009. ADDITIONAL PROCEDURES. Authorizes the secretary of state to prescribe additional procedures necessary for the administration of elections.

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

SECTION 5. Amends Section 52.065, Election Code, by adding Subsection (f), to require partisan district court offices to appear on the ballot in the same format as other offices, after the listing of other offices.

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

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

Sec. 52.0661. SEPARATE LISTING OF UNOPPOSED PARTISAN DISTRICT COURT CANDIDATES. Requires unopposed candidates to be listed separately. Requires the party alignment of unopposed candidates for an office covered by this section to be indicated next to that candidate's name. Authorizes the secretary of state to prescribe procedures to implement this section.

SECTION 8. Amends Section 52.070(b), Election Code, to make conforming changes.

SECTION 9. Amends Section 52.071, Election Code, to prohibit a straight-party vote in connection with partisan district court offices. Makes conforming changes.

SECTION 10. Amends Section 52.092, Election Code, by amending Subsections (a), (c), (d), and (g)-(j), and by adding Subsections (k) and (l), to set forth provisions regarding the ballot format of the general election, including the nonpartisan judicial retention election. Creates a new list for partisan district court offices. Deletes judicial positions from certain lists. Makes conforming changes.

SECTION 11. Amends Sections 65.007(b) and (c), Election Code, to prohibit votes for nominees for partisan district court offices from being tallied in the same manner as a straight-party vote.

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

Sec. 124.003. New heading: SEPARATE LISTING OF UNOPPOSED CANDIDATES. Sets forth provisions regarding the method of voting for candidates in uncontested races in groups rather than blocs. Provides that candidates for partisan district court offices are not listed in the same manner as other unopposed candidates.

Sec. 124.0031. SEPARATE LISTING OF UNOPPOSED PARTISAN DISTRICT COURT CANDIDATES. Authorizes unopposed partisan district court candidates to be voted on as a group, only if an additional ballot would be necessary to accommodate all the candidates and propositions to be listed.

SECTION 13. Amends Section 124.061(b), Election Code, to require certain formatting of the election ballot.

SECTION 14. Amends Section 124.063(a), Election Code, to require certain instructions regarding the voting process to appear in conjunction with any partisan district court office on the ballot.

SECTION 15. Amends Section 145.003(b), Election Code, to provide that nonpartisan judicial retention candidates are included for certain ineligibility provisions. Makes conforming changes.

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

SECTION 17. Amends Section 172.021(e), Election Code, to require a candidate for office specified in Section 172.024(a)(8) or (10) a justice of the peace in a county with a population over one million, rather than 850,000, who chooses to pay the filing fee, to meet certain requirements. Makes conforming changes.

SECTION 18. Amends Section 172.024(a), Election Code, to delete the offices of judges of a court of appeals from the candidate filing fee list. Makes conforming changes.

SECTION 19. Amends 202.001, Election Code, to provide that this chapter does not apply to the office of justice or judge of an appellate court. Makes a conforming change.

SECTION 20. Provides that appellate court judges in office January 1, 2000 continue in office subject to this section. Provides that appellate court judges in office January 1, 2000 are subject to retention or rejection at the general election before the term for which they were elected or appointed expires.

SECTION 21. Effective date: January 1, 2000, only if the constitutional amendment providing for gubernatorial appointment for appellate justices and judges and their nonpartisan retention election vacancies, proposed by the 76th Legislature, Regular Session, 1999, is adopted.

SECTION 22. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends Section 22.401, Government Code, to subject an appointed or retained judge to a retention election, rather than an appointed judge. Deletes Subsection (d) relating to the vacancy that exists at the completion of a retained judge's term.

SECTION 3.

Amends the heading of Section 291.005, Election Code, to read “GENERAL PROCEDURE FOR CONDUCT OR RETENTION ELECTION.”

SECTION 17.

Amends Section 172.021(e), Election Code, to require a candidate for office specified in Section 172.024(a)(8) or (10) a justice of the peace in a county with a population over one million, rather than 850,000, who chooses to pay the filing fee, to meet certain requirements. Makes conforming changes.

SECTION 18.

Amends Section 172.024(a), Election Code, to delete the offices of judges of a court of appeals from a candidate filing fee list. Makes conforming changes. Replaces existing SECTION 18.

SECTION 19.

Redesignated from existing SECTION 17.

SECTION 20.

Redesignated from existing SECTION 18.

SECTION 21.

Deletes text relating to gubernatorial appointment to fill district judge vacancies.