

BILL ANALYSIS

Senate Research Center
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S.B. 493
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Election Code authorizes the creation of a position of county elections administrator in order to consolidate the duties of voter registrar and the election duties of the county clerk. Current law does not authorize the extension of the administrator's duties beyond one county, however.

As proposed, S.B. 493 authorizes counties and political subdivisions to establish a joint elections commission and to appoint a joint elections administrator to administer all election duties for the member counties and political subdivisions and provides for the eligibility for and appointment to the position, salary, transfer of duties to, and other general duties of the administrator. It also provides for the entry into and exit from the use of the administrator position, and the abolishment of the position by the participating entities. The bill provides no limit on the number of counties and political subdivisions that are authorized to join together and use the administrator position, but it requires at least one participant to be a county and all participating counties to be adjoining counties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the secretary of state in SECTION 1 (Section 31.166, Election Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 31, Election Code, by adding Subchapter F, as follows:

SUBCHAPTER F. JOINT ELECTIONS ADMINISTRATOR

Sec. 31.151. DEFINITION. Defines "participating entity."

Sec. 31.152. CREATION OF POSITION. (a) Sets forth the entities to which a political subdivision (subdivision) seeking to create the position of joint elections administrator (administrator) is required to send notice requesting the creation of that position.

(b) Authorizes a notice sent under Subsection (a)(2) (by a subdivision that is not a county) to be sent to any other subdivision wholly or partly located in the county in which the position is to be created.

(c) Authorizes a county receiving notice under Subsection (a)(1)(B) (from an adjacent county) to provide a copy of the notice to any other subdivision wholly or partly located in that county.

(d) Provides that the position of administrator is created for a single county if the commissioners court of the county and the governing body of one or more subdivisions in the county separately adopt a written order creating the position, in a certain manner.

(e) Provides that the position is created for multiple counties if the commissioners courts of two or more adjacent counties, and, if applicable, the governing body of one or more subdivisions in either county separately adopt a written order creating the position. Prohibits a subdivision from adopting a

written order creating the position unless a county in which the division is partially or wholly located adopts the same order.

(f) Requires an order adopted under Subsection (d) or (e) to state the effective date of the creation of the position. Requires the date to be within 12 months after the required orders' adoption.

(g) Authorizes the order to authorize the employment of the administrator-designate no earlier than 90 days before the effective date of the creation of the position to facilitate the orderly transfer of duties on that date. Requires the designee's salary not to exceed that of the county clerk of the most populous county sharing the position.

(h) Sets forth the entities to which the chair of the joint elections commission (commission), within three days of the date of the adoption of the order, is required to send a certified copy of the letter.

(i) Prohibits a subdivision located in more than one county from creating an administrator with more than one county if the counties do not share an administrator.

Sec. 31.153. JOINT ELECTIONS COMMISSION. Sets forth the composition of the commission and the designation of commission officers.

Sec. 31.154. APPOINTMENT OF JOINT ELECTIONS ADMINISTRATOR. (a) Provides that the position is filled by appointment of the commission.

(b) Requires an administrator to receive the affirmative vote of the majority of the commission members and requires each affirmative-voting member to sign the resolution or order appointing the administrator.

(c) Requires the officer who presided at the meeting to file a signed copy of the resolution or order with the secretary of the commission within three days of the date of appointment by the administrator. Requires the secretary to deliver a certified copy of the resolution or order to the secretary of state within three days of the date the signed copy is filed.

(d) Authorizes the initial appointment to be made at any time after the adoption of the order creating the position.

Sec. 31.155. COMMISSION MEETINGS. (a) Requires the commission to meet at the call of the chair. Authorizes the vice chair or any three commission members to call a meeting if the calling authority considers it necessary or desirable and the chair fails to call it after being requested to do so.

(b) Requires the authority calling the meeting to set the date, hour, and place for the meeting and to deliver notice of such to the other commission members no later than the fourth day before the meeting date.

(c) Entitles all present members at a meeting to a vote on any matter put to a vote.

Sec. 31.156. ELIGIBILITY. Provides that to be eligible for appointment as an administrator, a person must be a qualified voter of this state.

Sec. 31.157. RESIGNATION. Provides that the commission is the proper body to receive and act on a resignation from the administrator position.

Sec. 31.158. TERMINATION OF EMPLOYMENT. Authorizes the termination of the employment of the administrator at any time for good and sufficient cause on the vote of

not less than four-fifths of the commission and the approval of that action by a majority vote of the governing bodies of a majority of the participating entities.

Sec. 31.159. FILLING VACANCY. Provides that a commission appointment fills a vacancy in the position. Authorizes the commission to make an appointment to fill an anticipated vacancy arising from a resignation to take effect at a future date any time after acceptance of the resignation.

Sec. 31.160. SALARY; STAFF; OPERATING EXPENSES. (a) Requires the commission to set the number of deputies and other persons that the administrator may employ.

(b) Authorizes the commission to provide automobile expenses considered necessary to the administrator and to any of the administrator's employees while performing their official duties.

(c) Requires the commission to provide the administrator with suitable office space and the necessary equipment and operating expenses for the proper conduct of the office.

(d) Requires the participating entities to share the operating expenses of the administrator's office as determined by the entities. Prohibits the total amount initially appropriated by the governing bodies of the participating entities from being less than the total amount last appropriated to the least populous participating county's clerk and tax assessor-collector for the functions assigned to the administrator.

(e) Subjects an administrator and any persons employed under the administrator in a county with a population of one million or more that has a county elections administrator to Section 31.035 (which restricts the political activities of the county elections administrator) in the same manner as the county elections administrator.

Sec. 31.161. BOND. Requires the appointee to the position to give a bond set by the commission, not to exceed \$20,000, payable to the commission chair, approved by the commission, and conditioned on the faithful duties of the position. Authorizes the commission or the administrator to require any or all of the administrator's deputies, excepting unpaid volunteer deputy registrars, to give a similar bond in an amount not exceeding the amount of the administrator's bond.

Sec. 31.162. SEAL. Requires the administrator to have an official seal for use in certifying documents required to be impressed by a certifying officer's seal. Sets forth the required design and text of the seal.

Sec. 31.163. TRANSFER OF RECORDS. Requires the officer formerly serving as the voter registrar to transfer to the administrator all voter registration records, and the officers of the participating entities formerly required to conduct elections (officers) to transfer to the administrator all voting equipment and supplies that they have custody of and any records that pertain to uncompleted elections. Requires the commission to determine which records are to be transferred to the administrator and which are to remain with the officer.

Sec. 31.164. DUTIES OF AN ADMINISTRATOR GENERALLY. Sets forth the required duties of the administrator. Authorizes the administrator to serve as the voter registrar only in the county or counties that created the administrator's position. Provides that, for territory of a participating entity in another county, the officer designated under Section 12.001 as the voter registrar for that county retains the voter registrar's duties.

Sec. 31.165. DIVISION OF CERTAIN DUTIES BETWEEN OFFICER AND ADMINISTRATOR. (a) Requires the officer, with respect to the meetings of a governing body of a participating entity which pertain only to elections, to perform the

officer's regularly prescribed duties in giving notice of and preparing the agenda for the meetings, attending the meetings and making a record of the proceedings, preparing and maintaining the governing body's minutes, and filing and preserving copies of the governing body's orders, except as provided by Subsection (b). Requires the administrator to cooperate with the officer in supplying information on election matters brought before the governing body and to attend or be represented at the meeting in which election matters are considered. Requires the officer to furnish to the administrator a copy of each order of the governing body that pertains to or affects an election, and the administrator to maintain copies on file.

(b) Provides that the administrator is responsible for providing the clerical assistance needed by the governing body in canvassing precinct election returns. Requires the administrator to maintain the official file of the governing body's tabulation of the election results, and provides that the officer is not required to maintain such records.

(c) Requires an officer who is statutorily required to record an order of the governing body in its minutes declaring whether the measure carried or failed, if the body is the final canvassing authority, to perform that duty. Requires a copy of that order to be filed with the administrator. Requires the officer to certify the election result to all other authorities as the officer is statutorily required to do.

(d) Requires the administrator to perform the duties statutorily placed on a participating entity's officer in connection with filing a petition to order an election by an authority, determining the petition's validity, and any other matters preceding the ordering of the election.

(e) Requires an administrator to perform the duties statutorily placed on an officer of a participating entity in connection with matters preceding the entry of the order on whether the election will be ordered if the statute prescribing the procedure for creating a political subdivision provides for the ordering of an election by an entity as a step in the creation process. Sets forth the required duties of the administrator in this case. Requires the entity's officer to perform the duties placed on the officer in connection with the creation of a political subdivision if the holding of an election ordered by a participating entity is not one of the steps in the creation process.

(f) Requires the return of an election notice for an election ordered by a participating entity to be filed in the office of the administrator if it is statutorily required to be recorded in the minutes of the governing body of the entity.

(g) Provides that the county clerk is the proper officer to receive and post copies of proposed constitutional amendments under Section 1, Article XVII, Texas Constitution, and that the secretary of state is required to send a copy of each proposed amendment to the administrator for the administrator's information.

Sec. 31.166. CLASSIFICATION OF DUTIES BY SECRETARY OF STATE. (a) Requires the secretary of state to adopt rules consistent with Sections 31.164 and 31.165 classifying the duties and functions placed on the officers of the participating entities by statutes outside this code according to whether they are to be performed by the administrator or the officer.

(b) Requires the administrator or officer to request the secretary to classify such duties or functions, and the secretary to comply with the request as soon as practicable, if the administrator or officer of a participating entity is uncertain as to whom should perform a duty or function that the secretary has not classified.

(c) Requires the secretary to deliver a copy of each rule proposed under this section to the administrator and officer of each participating entity in this state not later than five days after the date notice of the proposal is published in the Texas Register and to deliver a copy of each adopted rule to those persons not later than

five days after the date the certified copy of the rule is filed in the secretary's office. Provides that the failure of compliance with this subsection does not affect a rule's validity.

(d) Requires the secretary to deliver to the county clerk a current set of the rules adopted under this section on receipt of notice of the creation of the position for a county. Requires the secretary to deliver a set of the rules to the administrator on receipt of notice of the administrator's initial appointment.

(e) Authorizes the secretary to adopt a rule, on 30 days' notice, classifying a duty or function if the rule is needed in a shorter time than provided by the regular rulemaking process. Provides that this rule is considered an emergency rule for purposes of Chapter 2001, Government Code. Provides that the secretary is not required to give notice of the proposed rule under Subsection (c), but required to give notice of the rule's adoption under that subsection.

Sec. 31.167. MISDIRECTION OF DOCUMENT. (a) Requires a person receiving a document that should have been filed with or submitted to the administrator that was mailed to an officer of a participating entity, or vice versa, to note on the document or the envelope in which it is received the time of its receipt and to promptly deliver it to the proper person. Provides that the timeliness of such a document, if not statutorily specified whether the document is to be filed or submitted to the elections administrator of a political subdivision having that position, is determined, as appropriate, by the time of mailing or by the time of receipt by the person to whom the document is addressed.

(b) Requires the person to whom the delivery of a document is made that should have been filed with or submitted to the administrator to direct the person making the delivery to the proper office, if delivered in person to an officer of a participating entity or vice versa.

(c) Provides that a filing or submission to an officer of a document that was to be filed with an administrator has the same legal effect as if made with the administrator if the officer accepts and files the document, if it is statutorily specified that the document was to be filed with or submitted to the officer without specifying that the filing or submission was to be made with the administrator of a political subdivision having that position, and the office accepting the filing or submission of such a document has changed to the administrator's office under this subchapter.

Sec. 31.168. ACTION BY WRONG OFFICER. Provides that an action taken by an officer without objection from the administrator has the same legal effect as if taken by the administrator if it is statutorily specified that an action is to be taken by an officer without specifying whether it is to be taken by the elections administrator of a political subdivision having that position.

Sec. 31.169. ADDITION OR WITHDRAWAL OF POLITICAL SUBDIVISION. (a) Provides that a subdivision that has not created a position and is a county adjacent to or has territory in a county using an administrator may use the administrator to conduct elections as provided by this subchapter if approved by the governing body of the subdivision and the commission. Entitles the subdivision to representation on the commission as provided by Section 31.153(5) following approval by both entities under this subsection.

(b) Authorizes a subdivision, other than a county that sent notice seeking creation under Section 31.152(a)(1) or to which notice was sent under Section 31.152(a)(2), to cease usage of the administrator to conduct elections under this subchapter if approved by the governing body of the subdivision. Prohibits entitlement of the subdivision to representation on the joint elections commission following approval by the governing body under this subsection.

Sec. 31.170. ABOLISHING POSITION. (a) Authorizes the commission or the commissioners court of each participating county, by written order, to abolish the position at any time.

(b) Provides that the county tax assessor-collector becomes the voter registrar of the county and the duties and functions of the officer of a participating entity that were performed by the administrator revert back to the officer after the effective date of an order abolishing the position of administrator, unless a transfer of duties and functions occurs under Section 12.031 or 31.071.

(c) Requires the county clerk of the most populous participating county to deliver a certified copy of the order to the secretary of state and comptroller of public accounts within three days of the date an order abolishing the position of administrator is adopted.

Sec. 31.171. CRIMINAL PENALTIES. Provides that a statutory criminal penalty against an officer of a participating entity or the officer's deputies or other employees for conduct relating to duties or functions transferred to the administrator applies to the administrator or to the administrator's deputies or employees as appropriate.

SECTION 2. Effective date: September 1, 2007.