

BILL ANALYSIS

Senate Research Center
82R13933 JRH-D

S.J.R. 45
By: Duncan
State Affairs
4/1/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The objective of the legislative package of S.B. 1718 and S.J.R. 45 is to promote independence and stability in the judiciary and to reduce the influence of fundraising in judicial campaigns. This package would add nonpartisan retention elections to the current electoral process for all courts.

Under current law, when a vacancy occurs the governor appoints a judge for the remainder of the vacated term. Upon appointment, the judge or justice faces a partisan election at the next succeeding general election, which does not necessarily coincide with the end of the vacated term.

This system would continue under this bill, except that upon successful partisan election the judge or justice would face a nonpartisan retention election at the end of the term and at each succeeding election. The bill would provide that all currently elected judges and justices would face a nonpartisan retention election at their next regularly scheduled election. This bill would also permit the senate to adopt a rule to address interim confirmations.

As proposed, S.J.R. 45 proposes a constitutional amendment for filling vacancies in appellate judicial offices by appointment, for partisan elections for all judicial offices, and for subsequent nonpartisan retention elections for all judicial offices.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2, Article V, Texas Constitution, by amending Subsections (b) and (c) and adding Subsection (d), as follows:

(b) Requires that no person be eligible to serve in the office of chief justice or justice of the Supreme Court of Texas (supreme court) unless the person is licensed to practice law in this state and is, at the time of election or appointment, a citizen of the United States and of this state, and has attained the age of thirty-five years, and has been a practicing lawyer, or a lawyer and judge of a court of record together at least ten years.

(c) Requires a chief justice or justice to be subject, in the manner provided by law, to election on a partisan ballot followed by retention or rejection on a nonpartisan ballot by the qualified voters of the state at a general election, and on election and on each successive retention by the voters is required to hold office for a term of six years, rather than requiring said justices to be elected (three of them each two years) by the qualified voters of the state a general election and to hold their offices six years. Requires that the terms of the members of the court be staggered so that three members of the court are elected or retained for a full term every two years. Provides that on appointment to a vacancy, a chief justice or justice serves until the next succeeding general election for state officers, and at that election the voters are required to fill the vacancy for the unexpired term on a partisan ballot. Requires a chief justice or justice elected to fill an

unexpired term to be subject to retention in the same manner as a chief justice or justice elected on a partisan ballot to a full term.

(d) Creates this subsection from existing text. Requires the chief justice and justices to each receive compensation provided by law. Makes nonsubstantive changes.

SECTION 2. Amends Section 4(a), Article V, Texas Constitution, as follows:

(a) Requires a presiding judge or judge to be subject, in the manner provided by law, to election on a partisan ballot followed by retention or rejection on a nonpartisan ballot by the qualified voters of the state at a general election, and on election and on each successive retention by the voters to hold office for a term of six years, rather than requiring the presiding judge and the judges to be elected by the qualified voters of the state at a general election and hold office their offices for a term of six years. Provides that on appointment to a vacancy, a presiding judge or judge serves until the next succeeding general election for state officers, and at that election, the voters are required to fill the vacancy for the unexpired term on a partisan ballot. Requires a presiding judge or judge elected to fill an unexpired term to be subject to retention in the same manner as a presiding judge or judge elected on a partisan ballot to a full term.

SECTION 3. Amends Section 6(b), Article V, Texas Constitution, as follows:

(b) Requires the chief justice or justice, to be subject, in the manner provided by law, to election on a partisan ballot followed by retention or rejection on a nonpartisan ballot, by the qualified voters of their respective districts at a general election, and on election and on each successive retention by the voters to hold office for a term of six years, rather than requiring said justices to be elected by the qualified voters of their respective districts at a general election for a term of six years. Requires the chief justice and justices to receive for their services the compensation, rather than the sum, provided by law. Provides that on appointment to a vacancy, a chief justice or justice services until the next succeeding general election for state officers, and at that election the voters are required to fill the vacancy for the unexpired term on a partisan ballot. Requires a chief justice elected to fill an unexpired term to be subject to retention in the same manner as a chief justice or justice elected on a partisan ballot to a full term.

SECTION 4. Amends Section 7, Article V, Texas Constitution, as follows:

Sec. 7. (a) Creates this subsection from existing text and makes no further changes.

(b) Creates this subsection from existing text. Requires each district judge to be subject, in the manner provided by law, to election, rather than requiring each district to judge to elected, by the qualified voters at a general election. Requires the judge, at the end of the district judge's initial term to which the judge was elected and of each successive term, to be subject, in the manner provided by law, to retention or rejection on a nonpartisan ballot. Requires a district judge, on election and on each successive retention by the voters, to hold office for a term of four years. Requires a district judge to reside in the district the judge serves during the judge's term of office and to receive for the judge's services an annual salary to be fixed by the Legislature. Deletes existing text requiring a district judge to be a citizen of the United States and of this state, who is licensed to practice law in this State and has been a practicing lawyer or judge of a court in this state, or both combined, for four (4) years next preceding his election, who has resided in the district in which he was elected for two (2) years next preceding his election, and who is required to reside in his district during his term of office and hold his office for the period of four (4) years. Makes nonsubstantive changes.

(c) Provides that a person is not eligible to serve as a district judge unless the person is a citizen of the United States and of this state, who is licensed to practice law in this state and has been a practicing lawyer or a judge of a court in

this state, or both combined, for four years next preceding the person's election or appointment, and who has resided in the district to which the person was elected or appointed for two years next preceding the person's election or appointment.

(d) Requires a district judge to hold the regular terms of the judge's court at the county seat of each county in the judge's district in such manner as may be prescribed by law. Makes nonsubstantive changes.

(e) Creates this subsection from existing text. Make no further changes to this subsection.

SECTION 5. Amends Section 28, Article V, Texas Constitution, as follows:

Sec. 28. (a) Requires that a vacancy in the office of chief justice, justice, or judge of the supreme court, the court of criminal appeals, or the court of appeals, rather than requiring that a vacancy in the office of chief justice, justice, or judge of the supreme court, the court of criminal appeals, the court of appeals, or the district courts, be filled by the governor. Authorizes the senate by rule, in exercising its duty to provide advice and consent on an appointment made by the governor under Section 12, Article IV, of this constitution, to provide for the confirmation or rejection of a person appointed to fill a vacancy described by this subsection during a recess of the senate by a two-thirds vote of the membership of a committee of the senate designated for that purpose. Provides that notwithstanding a temporary confirmation as provided by this section, Section 12, Article IV, of this constitution applies to the appointee when the senate next convenes.

(b) Requires that a vacancy in the district courts be filled by the governor until the next succeeding general election for state officers, and at that election the voters are required to fill the vacancy for the unexpired term on a partisan ballot. Requires a district judge elected to fill an unexpired term to be subject to retention in the same manner as a district judge elected on a partisan ballot to a full term.

(c) Redesignates existing Subsection (b) as Subsection (c). Makes no further changes.

SECTION 6. Provides that the following temporary provision is added to the Texas Constitution:

TEMPORARY PROVISION. (a) Provides that this temporary provision applies to the constitutional amendment proposed by the 82nd Legislature, Regular Session, 2011, providing for appointment to fill vacancies in appellate judicial offices, for partisan elections for all judicial offices, and for subsequent nonpartisan retention elections for all judicial offices.

(b) Provides that the constitutional amendment takes effect January 1, 2012.

(c) Provides that this temporary provision expires January 2, 2012.

SECTION. Requires that this proposed constitutional amendment be submitted to the voters at an election to be held November 8, 2011. Sets forth the required language of the ballot.