

**SUBJECT:** Amending elector requirements for presidential elections

**COMMITTEE:** Elections — committee substitute recommended

**VOTE:** 9 ayes — Smith, Bucy, Burrows, Capriglione, DeAyala, Manuel, E. Morales, Swanson, Vo

0 nays

**WITNESSES:** For — (*Registered, but did not testify*: Alan Vera, Harris County Republican Party Ballot Security Committee; Andrew Eller, State Republican Executive Committee SD24, Republican Party of Texas; Robert L. Green, TCRP Election Integrity Committee; Russell Hayter; Dash Kostka;)

Against — Susana Carranza (*Registered, but did not testify*: Valerie DeBill, League of Women Voters of Texas; Eric Englert; Gentry McLean; Susan Stewart)

On — Cindi Castilla, Texas Eagle Forum; Christina Adkins, Texas Secretary of State

**BACKGROUND:** Concerns have been raised that Texas does not have sufficient laws to protect from "faithless electors" who vote inconsistently with their parties, nor provisions to address a scenario in which a candidate passed shortly before election day.

**DIGEST:** No later than the seventh day before the meeting of electors, CSHB 87 would require each elector nominee and alternate elector nominee of a political party to execute the following oath: "If selected for the position of elector, I swear to serve and to mark my ballots for president and vice president for the nominees for those offices of the party that nominated me."

Not later than the sixth day before the meeting of electors, each elector nominee and alternate elector nominee of an independent presidential

candidate would be required to execute the following oath: "If selected for the position of elector as a nominee of an independent presidential candidate, I swear to serve and to mark my ballots for that candidate and for that candidate's vice-presidential running mate."

After an elector submitted their votes for president and vice-president, the secretary of state would accept as cast all ballots of electors whose votes were consistent with their oaths. The secretary of state could not accept nor count an elector's ballot if the elector had not marked both ballots or had marked a ballot in violation of the elector's oath.

The position of an elector would be considered vacant if the elector failed to execute the oath or refused to present a ballot, present an unmarked ballot, or presented a ballot in violation of the oath. The secretary of state would be required to fill a vacancy with a substitute elector.

The secretary of state would distribute ballots to and collect ballots from each elector and repeat the process of examining ballots, publicly reading the votes, declaring and filling vacancies, and recording appropriately completed ballots from substituted electors until all of the state's electoral votes were cast and recorded.

CSHB 87 would remove provisions allowing political parties to nominate elector replacements and allowing electors to elect a chair from among themselves, leaving the secretary of state to arrange meetings. The bill also would make conforming changes by removing certain sections of code that provide these authorities to electors.

An elector would be required to consider a replacement candidate certified to be the presidential or vice-presidential candidate for whom the elector was the corresponding presidential elector candidate.

The bill would require the secretary of state to certify the name of a political party's replacement nominee for president or vice-president to the nominating party's presidential elector candidates for an original nominee who was unable to run if the party's state chair delivered certification of

the replacement nominee's name to the secretary of state not later than 2 p.m. on the Monday after the second Wednesday in December of a presidential election year.

The bill would require the secretary of state to certify the name of a replacement vice-presidential running mate for an independent presidential candidate to the presidential candidate's corresponding presidential elector candidates for an original running mate who was unable to run if the independent presidential candidate delivered certification of the replacement running mate's name to the secretary of state not later than 2 p.m. on the Monday after the second Wednesday in December of a presidential election year.

The secretary of state would be required to certify that a presidential or vice-presidential candidate who received the most votes in the general presidential election was willing and able to serve in the position for which the candidate was elected, unless the secretary of state had received a written certification that the candidate was unable or unwilling to serve from:

- the candidate;
- the executive director of the candidate's campaign; or
- the candidate's spouse or, if the candidate did not have a surviving spouse, the person to whom the candidate's estate would descend.

Upon receipt of a certification as described, the secretary of state would be required to notify the party of the candidate who submitted the certification and post the certification on the secretary of state's website. The secretary of state could create a form for a certification of inability to serve.

If the secretary of state received a certification of inability to serve before the meeting of electors, the electors first would be required to vote on the issue of whether the candidate was willing and able to serve in the position for which the candidate was elected. If a majority of electors voted that the candidate was not willing or able to serve, certain

requirements would not apply to the electors meeting.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2023.