Senate Research Center   C.S.S.B. 409
By: Ellis
Jurisprudence
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Committee Report (Substituted)

DIGEST

Currently, justices and judges in Texas are elected to their positions as part of the general election. In recent years, the United State Justice Department has blocked the creation of several new courts in Texas because of the department's objection under the Voting Rights Act to the Texas judicial election system. In addition, judicial elections are on a partisan ballot, even though judges must be nonpartisan in office. Appellate court elections force judges to raise large amounts of money with which to conduct campaigns. This bill will change the election of justices and judges in Texas to make the election nonpartisan, provides for retention elections, and creates new judicial districts.

PURPOSE

As proposed, C.S.S.B. 409 provides regulations for the nonpartisan election of district judges, the retention or rejection of district and appellate judges, and creates new judicial districts.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the secretary of state in SECTION 5 (Sections 291.005 and 292.009, 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 AND RETENTION OF CERTAIN JUDICIAL OFFICERS

Sec. 22.401. SUBJECT TO RETENTION ELECTION. Provides that a justice or judge is subject to retention or rejection in accordance with Chapter 292, Election Code, at the last general election for state and county officers to be held before the date the justice's or judge's term expires. Requires the vacancy existing at the beginning of the succeeding term to be filled in the regular manner, if a justice or judge does not seek retention, or withdraws from the retention election, as provided by Chapter 292, Election Code. Requires the vacancy to be filled in the regular manner, if a vacancy occurs in the office of a justice or judge seeking retention and the justice's or judge's name is omitted from the retention election ballot under Chapter 292, Election Code.

Sec. 22.402. EFFECT OF RETENTION VOTE. Sets forth the effect of a retention vote under various circumstances.

SECTION 2. Amends Chapter 24A, Government Code, by adding Sections 24.0015-24.0017, as follows:

Sec. 24.0015. ELECTION FROM COMMISSIONERS COURT PRECINCT IN POPULOUS COUNTIES. Requires the judges of the judicial districts composed entirely of a county with a population of one million or more to be elected from commissioners court precincts. Requires the secretary of state to supervise the drawing of lots to determine the number of the commissioners court precinct from which each of the district judges is elected. Requires an equal number of district judges to be elected from each commissioners court

precinct in a county.

Sec. 24.0016. ELECTION AND RETENTION CYCLE. Provides that, except in the case of a vacancy filled by appointment and in the case of an incumbent judge seeking to be retained in office, the office of district judge is filled by election at the nonpartisan judicial election in accordance with Chapter 291, Election Code. Provides that at the end of a term of office to which a district judge is elected, and at the end of the immediately following continuous term in that office, the judge is subject to retention or rejection by the voters of the judicial district in accordance with Chapter 292, Election Code. Provides that at the end of a second continuous term in which a judge has been retained in office, the office is filled by election. Provides that for a judge seeking retention, including a judge elected from a commissioners court precinct, the qualified voters of the entire judicial district are entitled to vote on the issue of retention or rejection. Requires the succeeding term, if a judge subject to retention or rejection does not seek retention as provided by Chapter 292, Election Code, or the name of a judge seeking retention is omitted from the retention election ballot under that chapter, to be filled at the subsequent nonpartisan judicial election in accordance with Chapter 291, Election Code.

Sec. 24.0017. EFFECT OF RETENTION VOTE. Sets forth the effects of a retention vote under various circumstances.

SECTION 3. Amends Chapter 24C, Government Code, by adding Sections 24.540-24.547, to create the 395th through the 402nd Judicial Districts (Bexar County, Dallas County, Dallas County, Dallas County, Harris County, Tarrant County, Tarrant County, and Tarrant County, respectively).

SECTION 4. Amends Section 41.002, Election Code, to require the general election for state and county officers, including the general nonpartisan judicial election, to be held on the first Tuesday after the first Monday in November in even-numbered years. Requires any runoff nonpartisan judicial election to be held on the first Tuesday after the first Monday in December following the general election.

SECTION 5. Amends the Election Code, by adding Title 17, as follows:

TITLE 17. NONPARTISAN JUDICIAL ELECTIONS

CHAPTER 291. NONPARTISAN JUDICIAL ELECTION

SUBCHAPTER A. NONPARTISAN ELECTION OF JUDGES GENERALLY

Sec. 291.001. APPLICABILITY OF CHAPTER. Provides that this chapter applies only to a judicial office required to be elected at the nonpartisan judicial election.

Sec. 291.002. PARTY NOMINATION PROHIBITED. Provides that nomination for a nonpartisan judicial office by a political party is prohibited.

Sec. 291.003. VOTE REQUIRED FOR ELECTION. Requires a candidate to receive at least 30 percent of the total number of votes received by all candidates for the offices and more votes than any other candidate for the office in order to be elected to a nonpartisan judicial office. Provides that if no candidate for a particular office receives the vote required for election, a runoff for that office is required. Provides that except as otherwise provided by this chapter, Chapter 2B applies to a runoff election held under this chapter.

Sec. 291.004. APPLICABILITY OF OTHER PARTS OF CODE. Provides that the other titles of this code apply to a nonpartisan judicial election except provisions that are inconsistent with this title or that cannot feasibly be applied in a nonpartisan judicial election.

Sec. 291.005. ADDITIONAL PROCEDURES. Requires the secretary of state to prescribe any additional procedures necessary for the orderly and proper administration of elections held under this chapter.

SUBCHAPTER B. APPLICATION FOR PLACE ON BALLOT

Sec. 291.021. APPLICATION REQUIRED. Requires a candidate to make an application for a place on the ballot in order to be entitled to a place on the nonpartisan judicial election ballot. Sets forth procedures for filing an application.

Sec. 291.022. AUTHORITY WITH WHOM APPLICATION FILED. Requires an application for a place on the nonpartisan judicial election ballot to be filed with the secretary of state.

Sec. 291.023. REGULAR FILING DEADLINE. Requires an application for a place on the nonpartisan judicial election ballot to be filed not later than 5 p.m. of the 70th day before election day, except as provided by Sections 291.053 and 202.008. Prohibits an application from being filed earlier than the 30th day before the date of the regular filing deadline.

Sec. 291.024. FILING FEE. Sets forth the filing fee for a nonpartisan judicial candidate. Requires a filing fee received by the secretary of state to be deposited in the state treasury to the credit of the general revenue fund.

Sec. 291.025. NUMBER OF PETITION SIGNATURES REQUIRED. Provides that the minimum number of signatures that must appear on the petition authorized by Section 291.021 is the lesser of 500, or two percent of the total vote received in the district by all the candidates for governor in the most recent gubernatorial general election.

Sec. 291.026. STATEMENT ON PETITION. Sets forth a statement required to appear at the top of each page of a petition to be filed under Section 291.021.

Sec. 291.027. CERTIFICATION OF NAMES FOR PLACEMENT ON NONPARTISAN JUDICIAL ELECTION BALLOT. Sets forth procedures for certification by the secretary of state for placement on the nonpartisan judicial election ballot of the name of each candidate who files with the secretary of state an application that complies with Section 291.021(b).

SUBCHAPTER C. WITHDRAWAL, DEATH, AND INELIGIBILITY OF CANDIDATE

Sec. 291.051. WITHDRAWAL, DEATH, OR INELIGIBILITY GENERALLY. Provides that with respect to withdrawal, death, or ineligibility of a candidate in a nonpartisan judicial election, this subchapter supersedes Chapter 145A, to the extent of any conflict.

Sec. 291.052. WITHDRAWAL FROM NONPARTISAN JUDICIAL ELECTION. Prohibits a candidate from withdrawing from the nonpartisan judicial election after the 65th day before election day. Requires a withdrawal request to be filed with the authority with whom the withdrawing candidate's application for a place on the ballot is required to be filed.

Sec. 291.053. EXTENDED FILING DEADLINE. Sets forth procedures for extending the deadline for filing an application for a place on the nonpartisan judicial election ballot.

Sec. 291.054. WITHDRAWN, DECEASED, OR INELIGIBLE CANDIDATE'S NAME OMITTED FROM BALLOT. Requires a candidate's name to be omitted from the nonpartisan judicial election ballot if the candidate withdraws, dies, or is declared ineligible on or before the 65th day before election day.

Sec. 291.055. DECEASED OR INELIGIBLE CANDIDATE'S NAME TO APPEAR ON BALLOT. Requires the candidate's name to be placed on the ballot if a candidate who has made an application for a place on the nonpartisan judicial election ballot that complies with the applicable requirements dies or is declared ineligible after the 65th day before election.

Sec. 291.056. WITHDRAWAL FROM RUNOFF. Sets forth the procedure for withdrawing from a runoff nonpartisan judicial election.

Sec. 291.057. DECEASED OR INELIGIBLE CANDIDATE'S NAME TO APPEAR ON RUNOFF BALLOT. Requires a candidate's name to be placed on the ballot if the candidate in the runoff nonpartisan judicial election dies or is declared ineligible before runoff election day.

SUBCHAPTER D. CONDUCT OF ELECTION

Sec. 291.071. NONPARTISAN JUDICIAL ELECTION BALLOT. Requires the nonpartisan judicial offices and candidates to be listed as a separate ballot on the general election ballot following the partisan offices under the heading "Election for Nonpartisan Judicial Offices."

Sec. 291.072. GENERAL PROCEDURE FOR CONDUCT OF NONPARTISAN JUDICIAL ELECTION. Requires the nonpartisan judicial 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.

Sec. 291.073. CERTIFICATION OF CANDIDATES FOR PLACEMENT ON RUNOFF BALLOT. Requires the secretary of state to certify in writing for placement on the runoff nonpartisan judicial election ballot the name of each candidate in the runoff. Requires the secretary of state to deliver the certification to the authority responsible for having the official ballot prepared in each affected county as soon as practicable after the state canvass of the general nonpartisan judicial election is completed.

Sec. 291.074. GENERAL PROCEDURE FOR CONDUCT OF RUNOFF NONPARTISAN JUDICIAL ELECTION. Requires the runoff nonpartisan judicial election to be conducted and the results canvassed, tabulated, and reported in the same manner as the general nonpartisan judicial election.

CHAPTER 292. RETENTION ELECTION

Sec. 292.001. DECLARATION OF CANDIDACY. Requires a judge or justice, not later than 5 p.m. on June 1 preceding the nonpartisan judicial election at which the justice or judge is subject to retention or rejection, who seeks to continue to serve in that office, to file with the secretary of state a declaration of candidacy to succeed to the next term. Sets forth the procedures for filing a declaration.

Sec. 292.002. 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 procedures to be followed upon the withdrawal, death, or ineligibility of a candidate in a retention election.

Sec. 292.003. CERTIFICATION OF NAMES FOR PLACEMENT ON RETENTION ELECTION BALLOT. Sets forth the procedures for certification by the secretary of state for placement on the retention election ballot the name of each candidate who files with the secretary of state a declaration of candidacy that complies with Section 292.001.

Sec. 292.004. RETENTION ELECTION BALLOT. Sets forth the form of the retention election ballot.

Sec. 292.005. GENERAL PROCEDURE FOR CONDUCT OF RETENTION ELECTION. Sets forth procedures for the conduct of a retention election.

Sec. 292.006. WRITE-IN VOTING PROHIBITED. Provides that write-in voting is not permitted in a retention election.

Sec. 292.007. POLITICAL CONTRIBUTIONS AND EXPENDITURES. Provides that a candidate for retention of a judicial office is subject to Title 15. Requires a candidate for

retention of a judicial office to comply with Title 15 in the same manner as a candidate for election to the office.

Sec. 292.008. 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. 292.009. ADDITIONAL PROCEDURES. Requires the secretary of state to prescribe any additional procedures necessary for the orderly and proper administration of elections held under this chapter.

SECTION 6. Amends Section 1.005, Election Code, by amending Subdivision (9), and by adding Subdivisions (25) and (26), to redefine "independent candidate" and define "nonpartisan judicial election" and "nonpartisan judicial candidate."

SECTION 7. Amends Section 52.092, Election Code, to delete the office of state treasurer from the list of statewide offices required to appear on the ballot. Sets forth the order in which nonpartisan judicial offices are required to be listed on the ballot. Makes conforming and nonsubstantive changes.

SECTION 8. Amends Section 67.003, Election Code, to require the local canvassing for the nonpartisan judicial election to be conducted not later than the third day after election day.

SECTION 9. Amends Section 67.012(a), Election Code, to require the governor to conduct the state canvassing for the nonpartisan judicial election not later than the 14th day after election day.

SECTION 10. Amends Section 141.001(a), Election Code, to make a conforming change.

SECTION 11. Amends Section 145.003(b), Election Code, to make conforming changes.

SECTION 12. Amends Section 145.005(a), Election Code, to make a conforming change.

SECTION 13. Amends Section 146.021, Election Code, to make a conforming change.

SECTION 14. Amends Sections 172.021(c) and (e), Election Code, to provide that an application filed by mail is considered to be filed at the time of its receipt by the appropriate authority. Requires a candidate for an office specified by Section 172.024(a)(8), rather than 172.024(a)(8), (10), or (12), or for justice of the peace in a county with a population of more than one million, rather than 850,000, to file certain items with the application.

SECTION 15. Amends Section 172.024(a), Election Code, to make conforming and nonsubstantive changes.

SECTION 16. Amends Chapter 202, Election Code, by amending Section 202.002 and adding Section 202.008, as follows:

Sec. 202.002. VACANCY FILLED AT GENERAL ELECTION. Requires, if a vacancy occurs on or before the 65th day before the date of nonpartisan judicial election, the four-year term beginning on the next January 1 following the general election, to be filled at the next general election for state and county officers, as provided by this chapter. Prohibits an election for a new four-year term for a nonpartisan judicial office from being held at a general election if a vacancy occurs after the 65th day before the general election day.

Sec. 202.008. FILING DEADLINE FOR APPLICATION OF NONPARTISAN JUDICIAL CANDIDATE. Requires an application for election to the next four-year term to be filed by the regular filing deadline if a vacancy in a nonpartisan judicial office occurs on or before the 10th day before the date of the regular deadline for filing an application for a place on the nonpartisan judicial election ballot. Requires an application for election to the next four-year term to be filed not later than 5 p.m. of the 15th day after the date the vacancy occurs or 5 p.m. of the 60th day before election day, whichever is earlier, if the vacancy occurs after the

10th day before the date of the regular filing deadline.

SECTION 17.   (a) Provides that a district judge in office on the effective date of this Act, unless otherwise removed as provided by law, is entitled to continue in office for the term to which elected as provided by this section.

(b) Provides that terms of district judges elected to full terms in the general election in 1994 expire January 1, 1999. Provides that terms of district judges elected to full terms in the general election in 1996 expire January 1, 2001.

(c) Requires the first nonpartisan judicial election to be the election in November 1998. Provides that for the purpose of initiating the election and retention cycle required by Section 24.0016, Government Code, as added by this Act, district judges elected to office and holding office for the terms provided by Subsection (b) of this section stand for reelection or retention in accordance with this subsection. Provides that in the last year of the term provided by Subsection (b) of this section, and at each applicable subsequent nonpartisan judicial election, the judge is subject to retention or rejection unless at the end of that term the judge will have served 12 or more consecutive years in the office of district judge of that court. Provides that at the end of the term during which the judge has served 12 consecutive years in the office of district judge of a court, the office is filled by election from the judicial district or commissioners court precinct, as applicable. Provides that if the judge is reelected, the term is considered the first term to which the judge has been elected for purposes of Section 24.0016, Government Code, as added by this Act, and in accordance with that section at the end of that term and at the end of the immediately following continuous term, the judge is subject to retention or rejection.

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) Provides that each supreme court justice, court of criminal appeals judge, and court of appeals justice who is in office January 1, 1998, is subject to confirmation 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 appointment of appellate justices and judges by the governor and retention or rejection of those justices and judges, to the nonpartisan election and retention or rejection of district judges, to the election of district judges in certain counties from commissioners court precincts, and to the alteration of the terms of certain judicial offices is adopted. Provides that if the amendment is adopted, this Act takes effect January 1, 1998.

SECTION 20.   Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 5.

Amends SECTION 5, by deleting proposed Chapter 293, Election Code, regarding voter information pamphlets.