

## **BILL ANALYSIS**

Senate Research Center

S.B. 628  
By: Gallegos  
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As Filed

### **DIGEST**

Currently, justices and judges in Texas are elected to their positions as part of the general election. This forces judges to spend a significant amount of time and energy running for office as opposed to concentrating on their judicial responsibilities. Moreover, judges often raise money from the lawyers who practice in their courts, creating a perception of improper influence. In addition, judges are as susceptible to partisan sweeps as any other candidate; qualifications, integrity, and ability often have very little to do with whether a judge remains in office. This bill will change the election of justices and judges in Texas to make the election nonpartisan, provide for retention elections, and create new judicial districts.

### **PURPOSE**

As proposed, S.B. 628 changes the election of justices and judges in Texas to make the election nonpartisan, provides for retention elections, and creates new judicial districts.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the secretary of state in SECTION 5 (Sections 291.004, 292.009, and 293.007, 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 effects of the retention election in various circumstances.

SECTION 2. Amends Chapter 24A, Government Code, by adding Sections 24.0015, 24.0016, and 24.0017, as follows:

Sec. 24.0015. ELECTION FROM STATE REPRESENTATIVE DISTRICTS OR COMMISSIONERS COURT PRECINCTS IN CERTAIN POPULOUS COUNTIES. Requires the judges of certain judicial districts to be elected from state representative districts. Requires the judges of certain judicial districts to be elected from commissioners courts precincts. Requires the secretary of state to supervise the drawing of lots to determine the

number of the state representative district or commissioners court precinct, as applicable, from which each of the district judges is elected. Requires an equal number of district judges to be elected from each state representative district or commissioners court precinct, as applicable, in a county.

Sec. 24.0016. ELECTION AND RETENTION CYCLE. Sets forth requirements for determining if a judge is subject to retention or election.

Sec. 24.0017. EFFECT OF RETENTION VOTE. Sets forth the effects of retention election in 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 nonpartisan judicial election to be held on the first Tuesday after the first Monday in November in even-numbered years.

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. Prohibits nomination for a nonpartisan judicial office by a political party.

Sec. 291.003. 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. 291.004. 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. Sets forth the items that are required to be filed for placement on the nonpartisan judicial election ballot.

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 REQUIRE. Sets forth the

minimum number of signatures required on the petition authorized by Section 291.021.

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 a candidate's name to be placed on the ballot if the 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 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, except as otherwise provided by this code, the nonpartisan judicial election 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.

#### CHAPTER 292. RETENTION ELECTION

Sec. 291.001. DECLARATION OF CANDIDACY. Sets forth procedures a justice or judge must follow to declare the justice's or judge's candidacy to succeed to the next term.

Sec. 291.002. 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 the procedures to be followed upon the withdrawal, death, or ineligibility of a candidate in a retention election.

Sec. 291.003. CERTIFICATION OF NAMES FOR PLACEMENT ON RETENTION ELECTION BALLOT. Sets forth 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 291.001.

Sec. 292.004. RETENTION ELECTION BALLOT. Sets forth the form and language 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 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.

#### SUBCHAPTER 293. VOTER INFORMATION PAMPHLET

Sec. 293.001. APPLICABILITY OF CHAPTER. Provides that this chapter applies to each candidate whose name is to appear on the ballot or a list of declared write-in candidates in the nonpartisan judicial election.

Sec. 293.002. STATEMENT FILED BY CANDIDATE. Authorizes a candidate, not later than the 70th day before the date of the nonpartisan judicial election, to file with the secretary of state an informational statement, on a form prescribed by the secretary, to be included in the voter information pamphlet for that election.

Sec. 293.003. STATEMENT REQUIREMENTS. Sets forth the requirements for a candidate's statement.

Sec. 293.004. REVIEW BY SECRETARY OF STATE. Sets forth procedures for review by the secretary of state of a candidate's statement.

Sec. 293.005. PREPARATION OF PAMPHLET. Sets forth procedures for the preparation and printing of the voter information pamphlet.

Sec. 293.006. DISTRIBUTION OF PAMPHLET. Requires the secretary of state, not later than the 45th day before the date of each nonpartisan judicial election, to mail the appropriate voter information pamphlet to each household in this state in which a registered voter resides.

Sec. 293.007. ADDITIONAL PROCEDURES. Requires the secretary of state to prescribe any additional procedures necessary to implement 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 to define "nonpartisan judicial election" and "nonpartisan judicial candidate."

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

SECTION 8. Amends Section 141.001(a), Election Code, to make conforming changes.

SECTION 9. Amends Section 145.003(b), Election Code, to make conforming changes.

SECTION 10. Amends Section 145.005(a), Election Code, to require the votes cast for the candidate, if the name of a deceased or ineligible candidate appears on the ballot, to be counted and entered on the official election returns in the same manner as for the other candidates.

SECTION 11. Amends Section 146.021, Election Code, to make a conforming change.

SECTION 12. 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 peace in a county with a population of more than one million, rather than 850,000, to file certain items with the application.

SECTION 13. Amends Section 172.024(a), Election Code, to make conforming and nonsubstantive changes.

SECTION 14. Amends Chapter 202, Election Code, by amending Section 202.002 and by adding Section 202.008, as follows:

Sec. 202.002. VACANCY FILLED AT GENERAL ELECTION. Makes conforming changes.

Sec. 202.008. FILING DEADLINE FOR APPLICATION OF NONPARTISAN JUDICIAL CANDIDATE. Sets forth filing deadlines for an application for a four-year term if there is a vacancy in a nonpartisan judicial office.

SECTION 15. (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 a court, the office is filled by election from the judicial district, state representative 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 16. (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 retention 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 17. 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 state representative districts or commissioners court precinct, 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 18. Emergency clause.