

## **BILL ANALYSIS**

Senate Research Center  
78R3459 DRH-D

S.B. 794  
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Jurisprudence  
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### **DIGEST AND PURPOSE**

Currently, more than two-thirds of all judges are unopposed, and 20 percent of sitting judges have never had an opponent. In the current system, there are only two ways to become well known to the electorate--raise and spend money, or speak out on specific issues. This may place greater pressure on elected judges to commit to policy positions during their campaigns. As proposed, S.B. 794 will create an appointment/retention system whereby every judge would face voters at the end of every term. This system will increase judicial independence and will give even more power to the voter. At the end of a judge's appointed term, the judge sits in a non-partisan retention election during the general election in which the voters elect whether to retain the judge. If the judge is retained, he/she sits for an additional term. If the judge is not retained, the process begins again with a new gubernatorial appointment.

### **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 Chapter 21, Government Code, by adding Section 21.010, as follows:

- Sec. 21.010. APPOINTMENT AND RETENTION OF JUSTICES AND JUDGES. (a) Provides that this section applies to each office of justice or judge for which the Texas Constitution requires a person appointed to fill a vacancy in the office to be subject to retention or rejection by the voters at the end of the appointed term and each successive term.
- (b) Provides that in conjunction with the last general election for state and county officers to be held before the end of a term of office to which a justice or judge is appointed or retained, the justice or judge is subject to retention or rejection at the nonpartisan judicial retention election in accordance with Chapter 291, Election Code.
- (c) Requires the vacancy existing at the beginning of the succeeding term to be filled in the manner prescribed by the Texas Constitution, if a justice or judge does not seek retention, or withdraws from the retention election, as provided by Chapter 291, Election Code.
- (d) Requires that 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 291, Election Code, the vacancy is to be filled in the manner prescribed by the Texas Constitution.
- (e) Provides that if a majority of the votes received on the question are for the retention of the justice or judge, the person is entitled to remain in office for a regular term beginning on the first day of the following January, unless the person becomes ineligible

or is removed as provided by law.

(f) Requires that if less than a majority of the votes received on the question are for retention, a vacancy in the office exists on the first day of the following January, and the vacancy is to be filled in the manner prescribed by the Texas Constitution.

(g) Requires that if the name of a justice or judge seeking retention appears on the retention election ballot under Chapter 291, Election Code, although a vacancy has occurred in the office, the retention election for that office has no effect, and the vacancy is to be filled in the manner prescribed by the Texas Constitution.

SECTION 2. Amends the Election Code by adding Title 17, as follows:

TITLE 17. NONPARTISAN JUDICIAL RETENTION ELECTIONS  
CHAPTER 291. RETENTION ELECTION

Sec. 291.001. DECLARATION OF CANDIDACY. (a) Requires a justice or judge 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, not later than 5 p.m. on June 1 preceding the nonpartisan judicial retention election at which the justice or judge is subject to retention or rejection.

(b) Prohibits a declaration from being filed earlier than the 30th day before the date of the filing deadline. Provides that a declaration filed by mail is considered to be filed at the time of its receipt by the appropriate authority.

(c) Provides that the filling of the subsequent vacancy for the office for which a declaration of candidacy is not filed is covered by Section 21.010, Government Code.

Sec. 291.002. WITHDRAWAL, DEATH, OR INELIGIBILITY. (a) Provides that with respect to withdrawal, death, or ineligibility of a candidate in a nonpartisan judicial retention election, this section supersedes Chapter 145A, to the extent of any conflict.

(b) Prohibits a candidate from withdrawing from the retention election after the 65th day before election day.

(c) Requires a withdrawal request to be filed with the authority with whom the withdrawing candidate's declaration of candidacy is required to be filed.

(d) Requires a candidate's name to be omitted from the retention election ballot if the candidate withdraws, dies, or is declared ineligible on or before the 65th day before election day.

(e) Requires a candidate's name to be placed on the retention election ballot, if a candidate who has made a declaration of candidacy that complies with the applicable requirements dies or is declared ineligible after the 65th day before election day.

(f) Provides that the filling of the subsequent vacancy for the office following implementation of Subsection (d) or (e) is covered by Section 21.010, Government Code.

Sec. 291.003. CERTIFICATION OF NAMES FOR PLACEMENT ON RETENTION ELECTION BALLOT. (a) Requires the secretary of state (SOS) to certify in writing for placement on the nonpartisan judicial retention election ballot the name of each candidate who

files with the SOS a declaration of candidacy that complies with Section 291.001, except as provided by Subsection (c).

(b) Requires the SOS, not later than the 55th day before election day, to deliver the certification to the authority responsible for having the official ballot prepared in each county in which the candidate's name is to appear on the ballot.

(c) Prohibits a candidate's name from being certified if, before delivering the certification, the SOS learns that the name is to be omitted from the ballot under Section 291.002.

Sec. 291.004. RETENTION ELECTION BALLOT. Requires the name of the person subject to retention or rejection to be submitted to the voters on the nonpartisan judicial retention election ballot following the offices subject to election under the heading "Retention of Nonpartisan Judicial Offices," in substantially the following form:

"Shall (Justice or Judge)\_\_\_\_\_

\_\_\_\_\_ be retained in office as (justice or judge) of the (name of court)\_\_\_\_\_?"

\_\_\_\_\_"Yes"

\_\_\_\_\_"No"

Sec. 291.005. GENERAL PROCEDURE FOR CONDUCT OF RETENTION ELECTION. (a) Requires the nonpartisan judicial retention 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, except as otherwise provided by this code.

(b) Requires a certificate of election to be issued to a retained officer in the same manner as provided for a candidate elected to an office.

Sec. 291.006. WRITE-IN VOTING PROHIBITED. Prohibits write-in voting in a nonpartisan judicial retention election.

Sec. 291.007. POLITICAL CONTRIBUTIONS AND EXPENDITURES. Requires a candidate for retention of a judicial office that is subject to Title 15 to comply with that title in the same manner as a candidate for election to the office.

Sec. 291.008. APPLICABILITY OF OTHER PARTS OF CODE. Provides that the other titles of this code apply to a nonpartisan judicial retention election except provisions that are inconsistent with this title or that cannot feasibly be applied in a retention election.

Sec. 291.009. ADDITIONAL PROCEDURES. Requires the SOS to prescribe any additional procedures necessary for the orderly and proper administration of elections held under this chapter.

SECTION 3. Amends Section 1.005, Election Code, by amending Subdivision (9) and adding Subdivisions (25) and (26) as follows:

(9) Provides that "independent candidate" does not include a nonpartisan judicial candidate.

(25) Defines "nonpartisan judicial candidate."

(26) Defines "nonpartisan judicial retention election."

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

SECTION 5. Amends Section 52.092, Election Code, by amending Subsections (a), (c), (d), and (h) and adding Subsection (f-1), as follows:

(a) Makes a conforming change.

(c) Deletes certain statewide judicial offices of the state government that are listed on the ballot for the general election for state and county officers.

(d) Deletes certain district judicial offices of the state government that are listed on the ballot for the general election for state and county officers.

(f-1) Requires nonpartisan judicial retention election offices to be listed in the following order:

- (1) chief justice, supreme court;
- (2) justice, supreme court;
- (3) presiding judge, court of criminal appeals;
- (4) judge, court of criminal appeals;
- (5) chief justice, court of appeals;
- (6) justice, court of appeals;
- (7) district judge;
- (8) criminal district judge;
- (9) family district judge.

(h) Requires the SOS to assign a place number to each position to be voted on at the nonpartisan judicial retention election for certain offices.

SECTION 6. Amends Section 145.003(b), Election Code, to make conforming changes.

SECTION 7. Section 145.005(a), Election Code, is amended to delete the phrase "under this chapter."

SECTION 8. Amends Section 172.021(e), Election Code, to delete Section 172.024 (a) (10) and (12) in reference to a specified candidate for an office.

SECTION 9. Amends Section 172.024(a), Election Code, to delete references to the filing fee for certain candidates for nomination in the general primary election. Redesignates Subdivisions (12)-(17) as (8)-(13).

SECTION 10. Amends Section 202.001, Election Code, to provide that this chapter applies to elective offices of the state and county governments except the offices of state senator and state representative, justice or judge of an appellate court and judge of a district court.

SECTION 11. (a) Provides that each appellate justice or judge or district judge in office January 1, 2004, unless otherwise removed as provided by law, continues in office subject to this section.

(b) Provides that each justice or judge listed in Subsection (a) of this section who is in office January 1, 2004, is subject to retention or rejection, in the manner provided by law for a justice or judge appointed to the office after the effective date of this Act, at the last general election preceding the expiration of the regular or unexpired term for which each was elected or appointed.

SECTION 12. Effective date: January 1, 2004, if the constitutional amendment proposed by the 78th Legislature is approved by the voters. If that amendment is not approved by the voters, this Act has no effect.