

## **BILL ANALYSIS**

Senate Research Center  
78R3458 DRH-D

S.J.R. 33  
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Jurisprudence  
3/13/2003  
As Filed

### **DIGEST AND PURPOSE**

Currently, judges on the supreme court, court of criminal appeals, courts of appeal, district, family and probate courts are elected officials. Many, however, believe that this system is flawed because it creates biased “politicians” rather than impartial “jurists.” As proposed, S.J.R. 33 would create a appointment/retention system that:

- Applies to the supreme court, court of criminal appeals, courts of appeal, district, family and probate courts;
- Calls for gubernatorial appointment to all such courts for the currently prescribed terms of six years for appellate courts and four years for all others;
- Requires confirmation of all appointments by the Texas Senate by a super majority; and
- Requires, at the end of each judge’s appointed term, a non-partisan retention election in which the voters elect whether to retain the judge. If the judge is retained, the judge sits for an additional term. If the judge is not retained, the process begins again with a new gubernatorial appointment.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Senate in SECTION 5 (Section 28(a), Article V, Texas Constitution), of this bill.

### **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) Provides that no person shall be eligible to serve in the office of chief justice or justice of the 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) Provides that on appointment to a vacancy, a chief justice or justice serves an initial term that ends January 1 of the third odd-numbered year that occurs after the chief justice or justice takes the oath of office. Requires the chief justice or justice, at the end of the appointed term and of each successive term, to be subject, in the manner provided by law, to retention or rejection on a nonpartisan ballot by the qualified voters of the state at a general election and if retained to hold office for a term of six years.

(d) Requires the chief justice and justices to each receive the compensation provided by law.

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

(a) Provides that on appointment to a vacancy, a presiding judge or judge serves an initial term that ends January 1 of the third odd-numbered year that occurs after the presiding judge or judge takes the oath of office. Requires the presiding judge or judge, at the end of the appointed term and of each successive term, to be subject, in the manner provided by law, to retention or rejection on a nonpartisan ballot by the qualified voters of the state at a general election and if retained to hold office for a term of six years.

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

(b) Provides that on appointment to a vacancy, a chief justice or justice serves an initial term that ends January 1 of the third odd-numbered year that occurs after the chief justice or justice takes the oath of office. Requires, at the end of the appointed term and of each successive term, the chief justice or justice to be subject, in a manner provided by law, to retention or rejection on a nonpartisan ballot and if retained to hold office for a term of six years. Requires the chief justice and justices to receive for their services the compensation provided by law.

SECTION 4. Amends Section 7, Article V, Texas Constitution, is amended to read as follows:

Sec. 7. (a) Creates this subsection from existing text.

(b) Provides that on appointment to a vacancy, a district judge serves an initial term that ends January 1 of the second odd-numbered year that occurs after the district judge takes the oath of office. Requires the district judge, at the end of the appointed term and of each successive term, to be subject, in the manner provided by law, to retention or rejection on a nonpartisan ballot by the qualified voters at a general election and if retained 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 his services an annual salary to be fixed by the legislature.

(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 appointment, and who has resided in the district to which the person was appointed for two years next preceding the person's appointment.

(d-e) Creates new subsections from existing text.

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

(a) Requires 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 to be filled by the governor, rather than by the governor until the next succeeding general election. 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 until the appointee is confirmed or rejected by an affirmative vote of two-thirds of the members of the committee, the appointee's eligibility to continue in office is not affected and Section 12, Article IV, applies to the appointee when the senate next convenes.

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 78th Legislature, Regular Session, 2003, providing for appointment to fill vacancies in certain judicial offices and for nonpartisan retention elections for

those offices.

(b) Provides that the constitutional amendment takes effect January 1, 2004.

(c) Provides that this temporary provision expires January 2, 2004.

SECTION 7. Requires this proposed constitutional amendment to be submitted to the voters at an election to be held November 4, 2003. Requires the ballot to be printed to provide for voting for or against the proposition: "The constitutional amendment providing for appointment to fill vacancies in the offices of the justices and judges of the appellate and district courts and for nonpartisan retention elections for those offices."