

BILL ANALYSIS

Senate Research Center
81R15863 JRH-D

S.J.R. 44
By: Duncan
State Affairs
4/8/2009
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, judges in Texas are subject to partisan elections. This method of selection has encouraged judges to spend a significant amount of time and money running for office as opposed to concentrating on their judicial responsibilities. Judges often raise money from the lawyers who practice in their courts, creating a perception of improper influence. In addition, judges are just as susceptible to partisan sweeps as any other candidate. Qualifications and integrity barely influence whether a judge remains in office.

As proposed, S.J.R. 44 provides that a partisan election for judicial selection at the appellate level be held at the next election cycle, followed thereafter by nonpartisan retention elections. The bill requires that a vacancy trigger gubernatorial appointment, and that the legislation add senate confirmation to the process. The bill requires, for district court offices, a partisan election at the next election cycle, followed by nonpartisan retention elections.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Senate in SECTION 5 (Section 28, 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) Requires a Chief Justice or Justice to be subject, in the manner provided by law, to election on a partisan ballot followed by retention or rejection on a nonpartisan ballot, rather than requiring said justices to be elected (three of them each two years), by the qualified voters of the state at a general election, and on election and on each successive retention by the voters to hold office, rather than their offices, for a term of six years. 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.

(d) Creates this subsection from existing text. Requires the Chief Justice and Justices to each receive the compensation provided by law. Makes nonsubstantive changes.

SECTION 2. Amends Subsection (a), Section 4, Article V, Texas Constitution, to require a Presiding Judge or Judge, rather than the Presiding Judge and the Judges, to be subject, in the manner provided by law, to election on a partisan ballot followed by retention or rejection on a nonpartisan ballot, rather than to be elected, by the qualified voters of the state at a general election, and on election and on each successive retention by the voters to hold office, rather than their offices, for a term of six years. 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.

SECTION 3. Amends Subsection (b), Section 6, Article V, Texas Constitution, to require each Chief Justice or Justice to be subject, in the manner provided by law, to election on a partisan ballot followed by retention or rejection on a nonpartisan ballot, rather than to be elected, by the qualified voters of their respective districts at a general election, and on election and on each successive retention by the voters to hold office, rather than their offices, for a term of six years. Requires that the Chief Justice and Justices receive for their services the compensation, rather than sum, provided by law. 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. Makes nonsubstantive changes.

SECTION 4. Amends Section 7, Article V, Texas Constitution, as follows:

Sec. 7. (a) Creates this subsection from existing text. Makes no changes to this subsection.

(b) Creates this subsection from existing text. Requires each district judge to be subject, in the manner provided by law, to election by the qualified voters at a General Election. Requires the judge, at the end of the district judge's initial full term to which the judge was elected and of each successive term, to be subject, in the manner provided by law, to retention or rejection on a nonpartisan ballot. Requires a district judge, on election and on each successive retention by the voters, 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 receive for the judge's services an annual salary to be fixed by the legislature. Deletes existing text requiring a district judge to be 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 (4) years next preceding his election, who has resided in the district in which he was elected for two (2) years next preceding his election, and who is required to reside in his district during his term of office. Makes conforming and nonsubstantive changes

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

(d) Creates this subsection from existing text. Makes nonsubstantive changes.

(e) Creates this subsection from existing text. Makes no changes to this subsection.

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

Sec. 28. (a) Requires the Governor, to fill a vacancy in the office of Chief Justice, Justice or Judge of the Supreme Court, the Court of Criminal Appeals, or the Court of Appeals. Deletes existing text requiring the Governor to fill a vacancy in the District Courts. 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, Texas 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, notwithstanding a temporary confirmation as provided by this section, Section 12, Article IV, Texas Constitution, applies to the appointee when the senate next convenes.

(b) Creates this subsection from existing text. Requires the Governor to fill a vacancy in the District Courts until the next succeeding General Election for state officers, and requires voters, at that election, to fill the vacancy for the unexpired term.

(c) Creates this subsection from existing text. Makes a nonsubstantive change.

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 81st Legislature, Regular Session, 2009, providing for the appointment to fill vacancies in appellate judicial offices, for partisan elections for all judicial offices, and for subsequent nonpartisan retention elections for all judicial offices.

(b) Effective date, constitutional amendment: January 1, 2010.

(c) Provides that this temporary provision expires January 2, 2010.

SECTION 7. Requires the proposed constitutional amendment to be submitted to the voters at an election to be held November 3, 2009. Sets forth the required language of the ballot.