

## **BILL ANALYSIS**

Senate Research Center  
88R21118 JON-D

H.B. 87  
By: Murr et al. (Hughes)  
State Affairs  
5/5/2023  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

It has been noted that Texas does not have any laws pertaining to faithless electors who cast presidential and vice-presidential votes. Furthermore, current state election law does not provide for a scenario that contemplates the death of a candidate shortly before election day or before the electoral college has gathered to ratify results. H.B. 87 seeks to address these issues by providing for the replacement of faithless electors and by clarifying provisions relating to the withdrawal, death, or ineligibility of certain candidates.

H.B. 87 amends current law relating to the presidential electors of this state.

### **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 Section 192.004, Election Code, as follows:

Sec. 192.004. New heading: ELECTOR CANDIDATE WITHDRAWAL. Deletes existing text of Subsections (b), (c), and (d). Makes a nonsubstantive change.

SECTION 2. Amends Section 192.006(b), Election Code, to delete existing text requiring the secretary of state (SOS) to act as temporary chair of the meeting until the electors elect a chair from among themselves.

SECTION 3. Amends Subchapter A, Chapter 192, Election Code, by adding Section 192.009, as follows:

Sec. 192.009. REPLACEMENT NOMINEE. Requires an elector to consider a replacement candidate certified under Subchapter C to be the presidential or vice-presidential candidate for whom the elector is the corresponding presidential elector candidate.

SECTION 4. Amends the heading to Subchapter C, Chapter 192, Election Code, to read as follows:

SUBCHAPTER C. WITHDRAWAL, DEATH, AND INELIGIBILITY OF PRESIDENTIAL AND VICE-PRESIDENTIAL CANDIDATES; CERTIFICATION OF INABILITY TO SERVE

SECTION 5. Amends Section 192.062(a), Election Code, as follows:

(a) Requires SOS to certify in writing, rather than in writing for placement on the ballot, the name of a political party's replacement nominee for president or vice-president of the United States as follows:

(1) for placement on the ballot for an original nominee who withdraws, dies, or is declared ineligible on or before the 74th day before presidential election day if the

party's state chair delivers certification of the replacement nominee's name, signed by the state chair, to SOS not later than 5 p.m. of the 71st day before presidential election day; or

(2) to the nominating party's presidential elector candidates for an original nominee who withdraws, dies, or is declared ineligible after the 74th day before presidential election day if the party's state chair delivers certification of the replacement nominee's name, signed by the state chair, to SOS not later than 2 p.m. on the Monday after the second Wednesday in December of a presidential election year.

Makes nonsubstantive changes.

SECTION 6. Amends Section 192.064(a), Election Code, as follows:

(a) Requires SOS to certify in writing, rather than in writing for placement on the ballot, the name of a replacement vice-presidential running mate for an independent candidate for president of the United States as follows:

(1) for placement on the ballot for an original running mate who withdraws, dies, or is declared ineligible on or before the 74th day before presidential election day if the independent presidential candidate delivers certification of the replacement running mate's name, signed by the presidential candidate, to SOS not later than 5 p.m. of the 71st day before presidential election day; or

(2) to the presidential candidate's corresponding presidential elector candidates for an original running mate who withdraws, dies, or is declared ineligible after the 74th day before presidential election day if the independent presidential candidate delivers certification of the replacement running mate's name, signed by the presidential candidate, to SOS not later than 2 p.m. on the Monday after the second Wednesday in December of a presidential election year.

Makes nonsubstantive changes.

SECTION 7. Amends Subchapter C, Chapter 192, Election Code, by adding Section 192.065, as follows:

Sec. 192.065. CERTIFICATION OF WINNING CANDIDATE'S INABILITY TO SERVE; AFFIRMATION OR DENIAL BY ELECTORS. (a) Requires SOS to certify on the seventh day before the meeting of electors that a candidate for president or vice president who received the most votes in this state in the general presidential election is willing and able to serve in the position for which the candidate was elected, unless SOS has received a written certification from one of the following individuals, in order of precedence, that the candidate is unable or unwilling to serve:

(1) the candidate;

(2) the executive director of the candidate's campaign; or

(3) the candidate's spouse or, if the candidate does not have a surviving spouse, the person to whom the candidate's estate would descend under Section 201.001 (Estate of an Intestate Not Leaving Spouse), Estates Code.

(b) Requires SOS, upon receipt of a certification under Subsection (a), to notify the party of the candidate who submitted the certification and post the certification on SOS's Internet website.

(c) Authorizes SOS to promulgate a form for a certification under this section of inability or unwillingness to serve.

(d) Requires the electors, if before the meeting of electors SOS receives a certification under Subsection (a) that a candidate is unwilling or unable to serve, to first vote on the issue of whether that candidate is willing and able to serve in the position for which the candidate was elected. Provides that Sections 192.102, 192.103(b), 192.103(d), and 192.104(d) and (e), if a majority of electors vote that the candidate is not willing or able to serve in the position for which the candidate was elected, do not apply to that meeting of electors with respect to that candidate.

SECTION 8. Amends Chapter 192, Election Code, by adding Subchapter D, as follows:

**SUBCHAPTER D. REQUIRED ACTION BY PRESIDENTIAL ELECTORS;  
REPLACEMENT OF ELECTOR**

Sec. 192.101. DESIGNATION OF STATE'S ELECTORS. Requires that each elector position in this state be nominated in accordance with political party rules or by an independent or write-in presidential candidate, as applicable. Provides that this state's electors, except as otherwise provided in Sections 192.006, 192.103, and 192.104, are the winning elector nominees under the laws of this state.

Sec. 192.102. OATH. (a) Requires each elector nominee and alternate elector nominee of a political party, not later than the seventh day before the meeting of electors, to execute a certain oath. Sets forth the required language of the oath.

(b) Requires each elector nominee and alternate elector nominee of an independent presidential candidate, not later than the sixth day before the meeting of electors, to execute a certain oath. Sets forth the required language of the oath.

(c) Requires that the executed oaths accompany the submission of the corresponding names to SOS.

Sec. 192.103. PRESIDING OFFICER; ELECTOR VACANCY. (a) Requires SOS to preside at the meeting of electors described in Section 192.104.

(b) Provides that the position of an elector is vacant if the elector has failed to execute the oath under Section 192.102.

(c) Requires SOS to fill a vacancy with a substitute elector nominated in accordance with political party rules or named by an independent or write-in candidate for president, as applicable. Provides that a substitute elector who is filling the position of an elector is considered an elector for purposes of Chapter 192 (Presidential Electors and Candidates). Prohibits a person, if the person's position as elector is determined to be vacant, from serving as a substitute elector with respect to that meeting of electors.

(d) Requires an individual who has not executed the oath required under Section 192.102, to qualify as a substitute elector under Subsection (c), to execute a certain oath. Sets forth the required language of the oath.

Sec. 192.104. ELECTOR VOTING. (a) Requires SOS, at the time designated for elector voting and after all vacant positions have been filled, to provide each elector with a presidential and a vice-presidential ballot. Requires the elector to mark the elector's presidential and vice-presidential ballots with the elector's votes for the offices of president and vice president, respectively, along with the elector's signature and the elector's legibly printed name.

(b) Requires each elector, except as otherwise provided by law of this state other than this subchapter, to present both completed ballots to SOS. Requires SOS to examine the ballots and read each vote publicly.

(c) Requires SOS to accept as cast all ballots of electors whose votes are consistent with their oaths executed under Section 192.102 or 192.103(d). Prohibits SOS, except as otherwise provided by law, from accepting or counting either an elector's presidential or vice-presidential ballot if the elector has not marked both ballots or has marked a ballot in violation of the elector's oath.

(d) Provides that an elector who refuses to present a ballot, presents an unmarked ballot, or presents a ballot marked in violation of the elector's oath executed under Section 192.102 or 192.103(d) vacates the office of elector, creating a vacant position to be filled under Section 192.103.

(e) Requires SOS to distribute ballots to and collect ballots from each elector and repeat the process under this section of examining ballots, publicly reading the votes, declaring and filling vacant positions as required, and recording appropriately completed ballots from the substituted electors, until all of this state's electoral votes have been cast and recorded.

SECTION 9. Repealer: Section 192.007 (Replacement After Election), Election Code.

SECTION 10. Effective date: upon passage or September 1, 2023.