

## **BILL ANALYSIS**

Senate Research Center  
77R2107 GGS-D

S.B. 129  
By: Duncan  
Jurisprudence  
1/22/2001  
As Filed

### **DIGEST AND PURPOSE**

Currently, Texas is one of the few states in which judges are elected, not appointed. As proposed, S.B. 129 would help reduce the partisan election of judges by creating law regulating the retention election for nonpartisan judicial candidates, and prohibit straight-party voting for nonpartisan judicial candidates.

### **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 22, Government Code, by adding Subchapter E, as follows:

#### **SUBCHAPTER E. APPOINTMENT AND RETENTION OF JUSTICES AND JUDGES**

Sec. 22.401. APPOINTMENT AND RETENTION CYCLE. (a) 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 in accordance with Chapter 291, Election Code.

(b) 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.

(c) Requires the vacancy to be filled, 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, in the manner prescribed by the Texas Constitution.

Sec. 22.402. EFFECT OF RETENTION VOTE. (a) 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 of six years beginning on the first day of the following January, unless the person becomes ineligible or is removed as provided by law.

(b) Provides 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. Requires that vacancy to be filled in the manner prescribed by the Texas Constitution.

(c) Provides 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. Requires that vacancy to be filled in the manner prescribed by the Texas Constitution.

SECTION 2. 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 3. Amends the Election Code by adding Title 17, as follows:

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

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 Chapter 22 (Appellate Courts), 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 the 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 the election day.

(f) Provides that the filling of the subsequent vacancy for the office following implementation of Subsection (d) or (e) is covered by Chapter 22, Government Code.

Sec. 291.003. CERTIFICATION OF NAMES FOR PLACEMENT ON RETENTION ELECTION BALLOT. (a) Requires the secretary of state to certify in writing for placement on the nonpartisan judicial retention election ballot, except as provided by Subsection (c), the name of each candidate who files with the secretary of state a declaration of candidacy that complies with Section 291.001.

(b) Requires the secretary of state 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 not later than the 55th day before the election.

(c) Prohibits a candidate's name from being certified if, before delivering the certification, the secretary of state 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 a certain form.

Sec. 291.005. GENERAL PROCEDURE FOR CONDUCT OF RETENTION ELECTION.

(a) Requires the nonpartisan judicial retention election to be conducted, except as otherwise provided by this code, and canvassed, tabulated, and reported in the manner applicable to partisan offices in the general election for state and county officers.

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

Sec. 291.006. WRITE-IN VOTING PROHIBITED. Provides that write-in voting is not permitted in a nonpartisan judicial retention election.

Sec. 291.007. 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 the office.

Sec. 291.008. APPLICABILITY OF OTHER PARTS OF CODE. Provides that 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 secretary of state to prescribe any additional procedures necessary for the orderly and proper administration of elections held under this chapter.

SECTION 4. Amends Section 1.005, Election Code, by amending Subdivisions (9) and (20) and adding Subdivisions (25), (26), and (27), as follows:

(9) Redefines “independent candidate.”

(20) Redefines “straight-party vote.”

(25) Defines “nonpartisan judicial candidate.”

(26) Defines “nonpartisan judicial retention election.”

(27) Defines “partisan district court office.”

SECTION 5. Amends Section 52.065, Election Code, by adding Subsection (f), as follows:

(f) Requires partisan district court offices to appear on the ballot in the same format as other offices but under a certain heading after the listing of the other offices.

SECTION 6. Amends Section 52.066, Election Code, by adding Subsection (e), to make a conforming change.

SECTION 7. Amends Chapter 52C, Election Code, by adding Section 52.0661, as follows:

Sec. 52.0661. SEPARATE LISTING OF UNOPPOSED PARTISAN DISTRICT COURT CANDIDATES. (a) Requires any unopposed candidate for partisan district court offices to be listed separately on the ballot under a certain heading following the contested races for those

offices.

(b) Requires that in the general election for state and county officers, the party alignment of each unopposed candidate for an office covered by this section to be indicated next to the candidate's name.

(c) Requires the secretary of state to prescribe any procedures or instructions necessary to implement this section.

SECTION 8. Amends Section 52.070(b), Election Code, to require certain instructions to be printed immediately below "Official Ballot" and "Partisan District Court Offices."

SECTION 9. Amends Section 52.071, Election Code, as follows:

(a) Requires, on a ballot on which a party column appears in connection with offices other than partisan district court offices, a square larger than the square prescribed by Section 52.070(a) to be printed to the left of each political party's name.

(b) Requires certain instructions to be added to the instructions required by Section 52.070(b) in connection with offices other than partisan district court offices. Makes conforming and nonsubstantive changes.

SECTION 10. Amends Section 52.092, Election Code, by amending Subsection (a), (c), (d), and (g) through (j), and adding Subsections (k) and (l), as follows:

(a) Requires, for an election at which offices regularly filled at the general election for state and county officers, including the nonpartisan judicial retention election, are to appear on the ballot, the offices to be listed in a certain order.

(c) Deletes existing text pertaining to the listing of statewide judicial offices.

(d) Deletes existing text pertaining to the listing of district judicial offices.

(g) Requires partisan district court offices to be listed in a certain order.

(h) Requires nonpartisan judicial retention election offices to be listed in a certain order.

(i) Redesignates Subsection (g) as Subsection (i).

(j) Requires the secretary of state to assign a place number to each position to be voted on, rather than filled, at the nonpartisan judicial retention, rather than general, election for certain offices. Deletes existing text pertaining to state and county officers.

Redesignates Subsections (h)-(j) to Subsections (j)-(l).

SECTION 11. Amends Section 65.007(b) and (c), Election Code, to make conforming changes.

SECTION 12. Amends Chapter 124A, Election Code, by amending Section 124.003, and adding Section 124.0031, as follows:

Sec. 124.003. New heading: SEPARATE LISTING OF UNOPPOSED CANDIDATES. (a) Makes a conforming change.

(c) Authorizes candidates listed under the uncontested races heading to be arranged in a manner requiring voting on them as one or more groups, rather than blocs, but only if

certain conditions are present.

Sec. 124.0031. SEPARATE LISTING OF UNOPPOSED PARTISAN DISTRICT COURT CANDIDATES. Authorizes candidates listed under the uncontested partisan district court races heading to be arranged in a manner requiring voting on them as one or more groups, but only if an additional ballot or ballot label would otherwise be necessary to accommodate all the candidates and propositions to be listed.

SECTION 13. Amends Section 124.061(b), Election Code, to require the first sheet of the sequence, if more than one sheet is used, to indicate the sheet on which the listing of partisan district court offices, if any, begins.

SECTION 14. Amends Section 124.063(a), Election Code, to require the ballot to contain the same instruction in conjunction with any partisan district court offices appearing on the ballot.

SECTION 15. Amends Section 145.003(b), Election Code, to make conforming changes.

SECTION 16. Amends Section 145.005(a), Election Code, to delete existing text pertaining to the scope of this subsection.

SECTION 17. Amends Section 172.021(e), Election Code, to delete existing text referencing Section 172.024(a)(12). Requires a candidate for an office specified by certain sections or for justice of the peace in a county with a population of more than one million, rather than 850,000, who chooses to pay the filing fee to also accompany the application with certain items.

SECTION 18. Amends Section 172.024(a), Election Code, to delete existing text pertaining to fees. Makes conforming changes.

SECTION 19. Amends Section 202.001, Election Code, to provide that this chapter does not apply to the office of justice or judge of an appellate court.

SECTION 20. (a) Provides that each appellate court justice or judge in office January 1, 2002, unless otherwise removed as provided by law, continues in office subject to this section.

(b) Provides that each appellate court justice or judge who is in office January 1, 2002, 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.

SECTION 12. Effective date: January 1, 2002.

Makes application of this Act contingent upon adoption of the constitutional amendment proposed by the 77th Legislature, Regular Session, 2001, providing for gubernatorial appointment to fill vacancies in offices of appellate justices and judges and for nonpartisan retention elections for those justices and judges.