

## **BILL ANALYSIS**

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S.B. 577  
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State Affairs  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 577 promotes independence and stability in the judiciary, and reduces the influence of fundraising in judicial campaigns. This bill adds nonpartisan retention elections to the current electoral process for all courts.

Under current law, when a vacancy occurs, the governor appoints a judge for the remainder of the vacated term. Upon appointment, the judge or justice faces a partisan election at the next succeeding general election, which does not necessarily coincide with the end of the vacated term.

This system will continue under S.B. 577, except that once elected, the judge or justice will face a nonpartisan retention election at the end of the term and at each succeeding election. The bill provides that all currently elected judges and justices will face a nonpartisan retention election at their regularly scheduled election.

As proposed, S.B. 577 amends current law relating to filling vacancies in appellate judicial offices by appointment, partisan elections for all judicial offices, and nonpartisan elections for the retention or rejection for all judicial offices.

### **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 Subchapter D, Chapter 22, Government Code, by adding Sections 22.303 and 22.304, as follows:

Sec. 22.303. ELECTION, RETENTION, AND APPOINTMENT OF APPELLATE JUSTICES AND JUDGES. (a) Provides that the office of appellate justice or judge is subject to partisan election in accordance with the applicable provisions of the Election Code at the last general election for state and county officers to be held before the date:

(1) the term of a justice or judge who was elected in a partisan election or retained in a nonpartisan judicial retention election expires, if the justice or judge does not seek retention; or

(2) the initial term, including a partial term, of a justice or judge who was appointed expires.

(b) Provides that the justice or judge, 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 an appellate justice or judge is elected, and in conjunction with the last general election to be held before the end of each following continuous term in that office, is subject to retention or rejection at the nonpartisan judicial retention election in accordance with Chapter 521, Election Code.

(c) Requires that the vacancy existing at the beginning of the succeeding term be filled in the manner prescribed by the constitution if an appellate justice or judge does not seek retention, or withdraws from the retention election, as provided by Chapter 521, Election Code.

(d) Requires that the vacancy be filled in the manner prescribed by the constitution if a vacancy occurs in the office of an appellate justice or judge seeking retention and the name of the justice or judge is omitted from the retention election ballot under Chapter 521, Election Code.

Sec. 22.304. EFFECT OF RETENTION VOTE. (a) Entitles a person 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, if a majority of the votes received on the question are for the retention of the appellate justice or judge.

(b) Provides that if less than a majority of the votes received on the question are for retention, then a vacancy in the office exists on the first day of the following January. Requires that the vacancy be filled in the manner prescribed by the constitution.

(c) Provides that if the name of an appellate justice or judge seeking retention appears on the retention election ballot under Chapter 521, Election Code, although a vacancy has occurred in the office, then the retention election for that office has no effect. Requires that the vacancy be filled in the manner prescribed by the constitution.

SECTION 2. Amends Chapter 24, Government Code, by adding Subchapter A-1, as follows:

#### SUBCHAPTER A-1. ELECTION AND RETENTION OF DISTRICT JUDGES

Sec. 24.051. ELECTION AND RETENTION CYCLE. (a) Provides that a district judge is subject to partisan election in accordance with the applicable provisions of the Election Code at the last general election for state and county officers to be held before the date:

(1) the term of a judge who was elected in a partisan election or retained in a nonpartisan judicial retention election expires, if the judge does not seek retention; or

(2) the initial term, including a partial term, of a judge who was appointed expires.

(b) Provides that the judge is subject to retention or rejection at the nonpartisan judicial retention election in accordance with Chapter 521, Election Code, 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 district judge is elected, and in conjunction with the last general election to be held before the end of each following continuous term in that office.

(c) Requires that the vacancy existing at the beginning of the succeeding term be filled in the manner prescribed by the constitution if a district judge does not seek retention, or withdraws from the retention election, as provided by Chapter 521, Election Code.

(d) Requires that the vacancy be filled in the manner prescribed by the constitution if a vacancy occurs in the office of a district judge seeking retention and the judge's name is omitted from the retention election ballot under Chapter 521, Election Code.

Sec. 24.052. EFFECT OF RETENTION VOTE. (a) Entitles a person to remain in office for a regular term of four years beginning on the first day of the following January, unless

the person becomes ineligible or is removed as provided by law, if a majority of the votes received on the question are for the retention of the district judge.

(b) Provides that if less than a majority of the votes received on the question are for retention, then a vacancy in the office exists on the first day of the following January. Requires that the vacancy be filled in the manner prescribed by the constitution.

(c) Provides that if the name of a district judge seeking retention appears on the retention election ballot under Chapter 521, Election Code, although a vacancy has occurred in the office, then the retention election for that office has no effect. Requires that the vacancy be filled in the manner prescribed by the constitution.

SECTION 3. Amends the Election Code by adding Title 18, as follows:

#### TITLE 18. NONPARTISAN JUDICIAL RETENTION ELECTIONS

##### CHAPTER 521. RETENTION ELECTION

Sec. 521.001. DECLARATION OF CANDIDACY. (a) Requires a justice or judge who seeks to continue to serve in that office, not later than 5 p.m. on November 1 of the year preceding the nonpartisan judicial retention election at which the justice or judge is subject to retention or rejection, to file with the secretary of state a declaration of candidacy to succeed to the next term.

(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 22.303, Government Code, for an appellate justice or judge or Chapter 24, Government Code, for the office of district judge.

Sec. 521.002. WITHDRAWAL, DEATH, OR INELIGIBILITY. (a) Provides that this section supersedes Subchapter A, Chapter 145, to the extent of any conflict, with respect to withdrawal, death, or ineligibility of a candidate in a nonpartisan judicial retention election.

(b) Prohibits a candidate from withdrawing from the retention election after the 74th day before the election day.

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

(d) Requires that a candidate's name be omitted from the retention election ballot if the candidate withdraws, dies, or is declared ineligible on or before the 74th day before election day.

(e) Requires that the candidate's name 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 74th 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 22.303, Government Code, for an appellate justice or judge or Chapter 24, Government Code, for the office of district judge.

Sec. 521.003. CERTIFICATION OF NAMES FOR PLACEMENT ON RETENTION ELECTION BALLOT. (a) Requires the secretary of state, except as provided by Subsection (c), to certify in writing for placement on the nonpartisan judicial retention election ballot the name of each candidate who files with the secretary a declaration of candidacy that complies with Section 521.001.

(b) Requires the secretary of state, not later than the 68th 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 secretary of state learns that the name is to be omitted from the ballot under Section 521.002.

Sec. 521.004. RETENTION ELECTION BALLOT. Requires that the name of the person subject to retention or rejection 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." Sets forth the language to be included on the ballot.

Sec. 521.005. GENERAL PROCEDURE FOR CONDUCT OF RETENTION ELECTION. (a) Requires that the nonpartisan judicial retention election, except as otherwise provided by this code, 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.

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

Sec. 521.006. WRITE-IN VOTING PROHIBITED. Prohibits write-in voting from being permitted in a nonpartisan judicial retention election.

Sec. 521.007. POLITICAL CONTRIBUTIONS AND EXPENDITURES. Provides that a candidate for retention of a judicial office is subject to Title 15 (Regulating Political Funds and Campaigns) and requires the candidate to comply with that title in the same manner as a candidate for election to the office.

Sec. 521.008. 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. 521.009. 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 Subdivision (9) to redefine "independent candidate" and adding Subdivisions (12-a) and (12-b) to define "nonpartisan judicial candidate," and "nonpartisan judicial retention election."

SECTION 5. Amends Section 41.002, Election Code, to require that the general election for state and county officers, including the nonpartisan judicial retention election, be held on the first Tuesday after the first Monday in November in even-numbered years.

SECTION 6. Amends Section 52.092, Election Code, by amending Subsection (a) and adding Subsections (f-1) and (f-2), as follows:

(a) Requires that the offices, 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, be listed in a certain order.

(f-1) Requires that the nonpartisan statewide judicial retention election offices 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.

(f-2) Requires that nonpartisan district judicial retention election offices be listed in the order of district judge, criminal district judge, and family district judge.

SECTION 7. Amends Section 145.003(b), Election Code, to authorize a candidate in the general election for state and county officers, including the nonpartisan judicial retention election, to be declared ineligible before the 30th day preceding election day by the party officer responsible for certifying the candidate's name for placement on the general election ballot, in the case of a candidate who is a political party's nominee or the authority with whom the candidate's application for a place on the ballot or declaration of candidacy is required to be filed, in the case of an independent candidate or a nonpartisan judicial candidate, as applicable.

SECTION 8. Amends Section 145.005(a), Election Code, to require that the votes cast for the candidate be counted and entered on the official election returns in the same manner as for the other candidates if the name of a deceased, withdrawn, or ineligible candidate appears on the ballot, rather than requiring that the votes cast for the candidate be counted and entered on the official election returns in the same manner as for the other candidates if the name of a deceased, withdrawn, or ineligible candidate appears on the ballot under this chapter (Withdrawal, Death and Ineligibility of Candidate).

SECTION 9. Amends Section 202.001, Election Code, to add the offices of justice or judge of an appellate or district court to the list of elective offices of the state and county governments to which this chapter (Vacancy in Office of State or County Government) does not apply.

SECTION 10. Amends Section 253.153(a), Election Code, as follows:

(a) Prohibits a judicial candidate or officeholder, a specific-purpose committee for supporting or opposing a judicial candidate, or a specific-purpose committee for assisting a judicial officeholder from knowingly accepting a political contribution except during the period beginning on:

- (1) if the office is subject to a nonpartisan judicial retention election, the 210th day before the date a declaration of candidacy is required to be filed; or
- (2) if the office is not subject to a nonpartisan judicial retention election, certain time periods.

SECTION 11. (a) Provides that each appellate justice or judge in office January 1, 2014, unless otherwise removed as provided by law, continues in office subject to this section.

(b) Provides that each appellate justice or judge who is in office January 1, 2014, 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. (a) Provides that each district judge in office January 1, 2014, unless otherwise removed as provided by law, continues in office subject to this section.

(b) Provides that each district judge in office January 1, 2014, 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. Provides that a vacancy does not exist in those offices until the expiration of the term of the person who held the office January 1, 2014, or until that person does not hold the office, whichever occurs first.

SECTION 13. Effective date: January 1, 2014, contingent upon approval by the voters of the constitutional amendment providing for appointment to fill vacancies in the offices of the justices and judges of the appellate courts, for partisan elections for all judicial offices, and for subsequent nonpartisan retention elections for all judicial offices is approved by the voters.