

SUBJECT: Adjusting rules for presidential electors

COMMITTEE: Elections — committee substitute recommended

VOTE: 7 ayes — Laubenberg, Israel, R. Anderson, Fallon, Larson, Reynolds,
Swanson

0 nays

WITNESSES: For —Eric Opiela, Republican Party of Texas; Bill Fairbrother, Texas
Republican County Chairmen's Association; Virginia Abel; James
Randall; (*Registered, but did not testify*: Alan Vera, Harris County
Republican Party Ballot Security Committee)

Against —Joanne Richards, Common Ground for Texans; William
Greene; Curtis Nelson; Tara Ross; Matthew Stringer; (*Registered, but did
not testify*: Dan Eckam; Rosemary Edwards; Hans Maverick; Naiman
Rigby)

On — Glen Maxey, Texas Democratic Party; Keith Ingram, Texas
Secretary of State, Elections Division

BACKGROUND: Elections Code, ch. 192, subch. A governs presidential electors.

Eligibility and method. To be eligible to serve as a presidential elector, a person must be a qualified voter of Texas and must not hold the office of U.S. senator or representative, or any other federal office of profit or trust. To be eligible to serve as a presidential elector for a political party, the person must be affiliated with the party. To become a presidential elector candidate, a person must be nominated by a political party in accordance with party rules or be named as an elector candidate by an independent or write-in candidate for president.

Vacancy. An elector candidate nominated by a political party may withdraw before the presidential election day by delivering written notice to the secretary of state and the state party chair. The party may then name

a replacement candidate. If the party's rules do not provide the procedure for choosing a replacement, the party's state executive committee may choose a replacement. The state chair then must file with the secretary of state, before presidential election day, the name and residence address of the replacement candidate, and a written statement signed by the replacement stating that the individual consents to being a candidate.

A replacement elector may be appointed by a majority vote of the qualified electors present at the meeting to vote for president and vice-president if:

- the vacancy occurred before the presidential election day and a replacement was not chosen;
- an elector is declared ineligible or dies on or after presidential election day; or
- the vacancy is declared at the meeting.

Meeting. The secretary of state must arrange for the meeting place, notify the electors, and call the meeting to order at the state Capitol at 2 p.m. on the first Monday after the second Wednesday in December following their election. If an elector is absent at the time for convening, the electors may declare the position vacant by a majority vote of those present.

DIGEST:

CSHB 543 would make several changes to laws governing presidential electors, including changing the term for electors from "elector candidates" to "elector nominees."

Eligibility and method. The bill would require the state chair of each political party to submit to the secretary of state the names of two qualified individuals: one designated elector nominee and one alternate elector nominee.

The bill would require each political party holding a national presidential nominating convention to adopt rules providing for the selection of elector nominees and alternate elector nominees. The rules would have to require the presidential nominee of that party to provide a list of eligible persons

for nomination as alternate elector nominees and for an alternate method of selecting alternate elector nominees in the event that the presidential nominee did not timely provide the list.

Pledge. Each elector nominee and alternate nominee of an independent or write-in presidential candidate would have to execute a pledge before a notary agreeing to mark their ballots for that candidate and that candidate's vice-presidential running mate. If required by political party rule, each elector nominee and alternate nominee of the party would have to execute a pledge before a notary agreeing to mark their ballots for the candidates for president and vice president chosen by the party.

Vacancy. The bill would allow an elector nominee or alternate elector nominee to resign on or after the presidential election day. In addition to other necessary filings, a replacement would have to submit the executed pledge, if required, to the secretary of state.

The bill would remove the current method for replacing an elector at the meeting to vote for president and vice president. If a vacancy occurred on or after the presidential election day, the secretary of state would have to appoint an individual as a substitute elector to fill the vacancy following specific rules laid out in the bill.

Voting. At the time designated for voting and after all vacancies were filled, the chair would have to provide each elector with a ballot. The electors would have to mark their vote for president and vice president, and sign and legibly print their names. The chair would have to examine the completed ballots and accept as cast all ballots of electors whose votes were consistent with all necessary requirements.

If an elector refused to present a ballot, presented an unmarked ballot, presented a ballot in violation of the executed pledge, or refused or otherwise failed to vote for the candidates for president and vice president receiving the most votes in Texas in the general election, the elector would be ineligible to serve and could never serve as an elector in Texas and would vacate the office, creating a vacant position to be filled.

Certificates. The secretary of state would have to immediately prepare an amended certificate of ascertainment and transmit it to the governor for the governor's signature if the final list of electors differed from a previous list included on a certificate of ascertainment and transmitted under federal law. The electors would have to prepare and sign a certificate of vote and process and transmit the signed certificate with any amended certificate of ascertainment.

The bill would take effect September 1, 2017. If a provision of this bill or its application was held invalid, the invalidity would not affect other provisions or applications that could be given effect without the invalid provision or application.

**SUPPORTERS
SAY:**

CSHB 543 would make several necessary adjustments to the law as it relates to electors. First, the bill would bind electors to vote in a manner that reflected the November general election results. This requirement is necessary to ensure that the candidate chosen by popular vote in the state is also chosen by its electors. A majority of other states and the District of Columbia already do this, and it is permissible by the U.S. Constitution.

Second, the bill would provide for the selection of alternate electors to replace an elector who could not attend the elector meeting or who chose to vote in a manner that did not reflect the popular vote in the state. Providing alternate electors would alleviate any delay in selecting replacement nominees.

**OPPONENTS
SAY:**

CSHB 543 would bind electors, forcing them to cast their vote for the candidate chosen by the general population in the state, which diminishes the purpose of the Electoral College. Electors are meant to consider the popular vote in the state, but ultimately should choose the candidate they believe to be the most qualified.

Binding electors is unnecessary because electors generally honor their pledges and vote for the candidate who received the most votes in the state. Last November's election was only the eighth to have had a faithless

elector in the history of the Electoral College, and no election outcome has ever been determined by a faithless elector.

NOTES:

A companion bill, SB 394 by Buckingham, was left pending in the Senate State Affairs Committee following a public hearing on April 20.